

PRIORITIZING RESOURCES AND ORGANIZATION FOR INTELLECTUAL PROPERTY ACT OF 2007

HEARING BEFORE THE SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS FIRST SESSION ON **H.R. 4279**

DECEMBER 13, 2007

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**PRIORITIZING RESOURCES AND ORGANIZA-
TION FOR INTELLECTUAL PROPERTY ACT
OF 2007**

THURSDAY, DECEMBER 13, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:11 a.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Berman (Chairman of the Subcommittee) presiding.

Present: Representatives Conyers, Berman, Boucher, Watt, Jackson Lee, Johnson, Sherman, Schiff, Lofgren, Sutton, Coble, Feeney, Smith, Goodlatte, Cannon, Chabot, and Issa.

Staff present: Perry Apelbaum, Majority Staff Director and Chief Counsel; Shanna Winters, Subcommittee Chief Counsel; David Whitney, Subcommittee Minority Counsel; Joseph Gibson, Minority Chief Counsel; and Rosalind Jackson, Professional Staff Member.

Mr. BERMAN. I would bang the gavel, but I can't find the gavel. The hearing of the Subcommittee on Courts, the Internet, and Intellectual Property will come to order. I would like to begin by welcoming everyone to this hearing on H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007," known as PRO-IP.

[The text of the bill, H.R. 4279, follows:]

110TH CONGRESS
1ST SESSION

I

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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Prioritizing Resources and Organization for Intellectual Property Act of 2007”.

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

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

TITLE I—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

- Sec. 101. Registration of claim.
- Sec. 102. Registration and infringement actions.
- Sec. 103. Civil remedies for infringement.
- Sec. 104. 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 offenses.
- Sec. 203. Directive to United States Sentencing Commission.
- Sec. 204. Trafficking in counterfeit goods or services.

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

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

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

Subtitle B—Joint Strategic Plan

- Sec. 321. Joint Strategic Plan.
- Sec. 322. Reporting.
- Sec. 323. 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.

SEC. 2. REFERENCE.

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

SEC. 3. DEFINITION.

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

- (1) any United States resident or national,
- (2) any domestic concern (including any permanent domestic establishment of any foreign concern), and
- (3) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern,

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

TITLE I—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

SEC. 101. REGISTRATION OF CLAIM.

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

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

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

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

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

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

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

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

SEC. 102. REGISTRATION AND INFRINGEMENT ACTIONS.

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

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

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

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

SEC. 103. CIVIL REMEDIES FOR INFRINGEMENT.

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

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

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

SEC. 104. COMPUTATION OF STATUTORY DAMAGES IN COPYRIGHT CASES.

Section 504(c)(1) of title 17, United States Code, is amended by striking the second sentence and inserting the following: “A copyright owner is entitled to recover statutory damages for each copyrighted work sued upon that is found to be infringed. The court may make either one or multiple awards of statutory damages with respect to infringement of a compilation, or of works that were lawfully included in a compilation, or a derivative work and any preexisting works upon which it is based. In making a decision on the awarding of such damages, the court may consider any facts it finds relevant relating to the infringed works and the infringing conduct, including whether the infringed works are distinct works having independent economic value.”.

SEC. 105. TREBLE DAMAGES IN COUNTERFEITING CASES.

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

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

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

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

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

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of the Internal Revenue Code of 1986, beginning on the date of the service of the claimant’s pleadings setting

forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.”.

SEC. 106. STATUTORY DAMAGES IN COUNTERFEITING CASES.

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

- (1) in paragraph (1)—
 - (A) by striking “\$500” and inserting “\$1000”; and
 - (B) by striking “\$100,000” and inserting “\$200,000”; and
- (2) in paragraph (2), by striking “\$1,000,000” and inserting “\$2,000,000”.

SEC. 107. EXPORTATION OF GOODS BEARING INFRINGING MARKS.

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

- (1) in the title heading, by inserting after “IMPORTATION” the following: “OR EXPORTATION”; and
- (2) in section 42—
 - (A) in the first sentence—
 - (i) by striking the word “imported”; and
 - (ii) by inserting after “custom house of the United States” the following: “, nor shall any such article be exported from the United States”.

SEC. 108. IMPORTATION AND EXPORTATION.

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

“CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION”.

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

- (1) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and moving such subparagraphs 2 ems to the right;
- (2) by striking “(a)” and inserting “(a) INFRINGING IMPORTATION AND EXPORTATION.—

“(1) IMPORTATION.—”;

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

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

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

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

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

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

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

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

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

(B) in subsection (b)—

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

(ii) by striking “if this title had been applicable” and inserting “if the copies or phonorecords had been made in the United States”.

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

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

TITLE II—ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

SEC. 201. CRIMINAL INFRINGEMENT OF A COPYRIGHT.

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

- (1) in subsection (b)(2), by inserting “is a felony and” after “offense” and by striking “paragraph (1)” and inserting “subsection (a)”;
- (2) in subsection (c)(2), by inserting “is a felony and” after “offense”, and by striking “paragraph (1)” and inserting “subsection (a)”;
- (3) in subsection (d)(3), by inserting “is a felony and” after “offense”, and by inserting “under subsection (a)” before the semicolon; and
- (4) in subsection (d)(4), by inserting “is a felony and” after “offense”.

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

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

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

“(d) **FORFEITURE AND DESTRUCTION; RESTITUTION.**—

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

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

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

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

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

“(C) In this paragraph, the term ‘aiding and abetting’ means to knowingly provide aid to the violator with the intent to facilitate the violation.

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

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

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

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

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to

have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

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

(2) by striking subsection (e); and

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

(b) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—

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

“(g) FORFEITURE AND DESTRUCTION; RESTITUTION.—

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

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

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

“(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of section 506(a) of title 17 that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation.

“(B) The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(C) In this paragraph, the term ‘aiding and abetting’ means to knowingly provide aid to the violator with the intent to facilitate the violation.

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

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

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

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

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such infringing copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

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

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

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

(c) UNAUTHORIZED FIXATION AND TRAFFICKING.—

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

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

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

“(b) FORFEITURE AND DESTRUCTION; RESTITUTION.—

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

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

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

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

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

“(C) In this paragraph, the term ‘aiding and abetting’ means to knowingly provide aid to the violator with the intent to facilitate the violation.

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

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

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

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

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

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

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

(2) APPLICABILITY.—Section 2319A(e), as redesignated by paragraph (1) of this subsection, is amended by inserting before the period the following: “, ex-

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

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

“(b) FORFEITURE AND DESTRUCTION; RESTITUTION.—

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

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

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

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

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

“(C) In this paragraph, the term ‘aiding and abetting’ means to knowingly provide aid to the violator with the intent to facilitate the violation.

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

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

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

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

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

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

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

SEC. 203. DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.

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

to the manner in which manufacturing, importing, and uploading such items introduces them into the stream of commerce.

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

SEC. 204. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

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

(1) in subsection (a)—

(A) by striking “Whoever” and inserting “

“(1) **IN GENERAL.**—Whoever”;

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

(C) by adding at the end the following:

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

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

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

(2) in subsection (b)(1)—

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

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

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

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

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

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

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

(b) **UNITED STATES INTELLECTUAL PROPERTY ENFORCEMENT REPRESENTATIVE.**—The head of the Office shall be the United States Intellectual Property Enforcement Representative (in this title referred to as the “IP Enforcement Representative”) who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the IP Enforcement Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on the Judiciary. The IP Enforcement Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(c) **DUTIES OF IP ENFORCEMENT REPRESENTATIVE.**—

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

(A) have primary responsibility for developing, coordinating, and facilitating the implementation, by the departments and agencies listed in subsection (d)(2), the policies, objectives, and priorities of the Joint Strategic Plan against counterfeiting and piracy under section 321;

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

(C) assist the United States Trade Representative in conducting negotiations on behalf of the United States relating to international intellectual property enforcement, including negotiations on any intellectual property enforcement matter considered under the auspices of the World Trade Or-

ganization or in the course of commodity and direct investment negotiations in which the United States participates;

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

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

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, intellectual property enforcement programs;

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

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

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

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

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

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

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

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

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

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

(d) COORDINATION OF INTELLECTUAL PROPERTY ENFORCEMENT ACTIONS.—

(1) IN GENERAL.—In carrying out the functions of the IP Enforcement Representative, the IP Enforcement Representative shall coordinate the allocation of interagency resources for intellectual property enforcement, including identifying, and referring to the appropriate Federal department or agency, for consideration with respect to action, violations of intellectual property laws.

(2) ADVISORY COMMITTEE.—For purposes of assisting the IP Enforcement Representative in carrying out the functions of the IP Enforcement Representative, there is established an interagency intellectual property enforcement advisory committee composed of the IP Enforcement Representative, who shall chair the committee, and senior representatives of the following departments and agencies who are involved in intellectual property enforcement, and are appointed by the respective heads of those departments and agencies:

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

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

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

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

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

(F) The United States International Trade Commission.

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

(H) The United States Copyright Office.

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

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

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

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

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

(3) use for administrative purposes, on a reimbursable basis, the available services, equipment, personnel, and facilities of Federal, State, and local government agencies;

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

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

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

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

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

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

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

“United States Intellectual Property Enforcement Representative.”.

SEC. 302. DEFINITION.

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

Subtitle B—Joint Strategic Plan

SEC. 321. JOINT STRATEGIC PLAN.

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

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

(2) Identifying individuals, financial institutions, business concerns, and other entities involved in the financing, production, trafficking, or sale of counterfeit or pirated goods.

(3) Identifying and sharing information among the relevant departments and agencies for the purpose of arresting and prosecuting individuals and enti-

ties that are knowingly involved in the financing, production, trafficking, or sale of counterfeit or pirated goods.

(4) Disrupting and eliminating counterfeit and piracy networks.

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

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

(7) Protecting intellectual property rights overseas by—

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

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

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

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

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

(v) are not on the Priority Watch List issued by the United States Trade Representative under section 182 of the Trade Act of 1974 (19 U.S.C. 2242);

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

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

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

(b) **TIMING.**—Not later than 6 months after the date of the enactment of this Act, and not later than December 31 of every third year thereafter, the IP Enforcement Representative shall submit the joint strategic plan to the President, to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives, and to the Committee on the Judiciary and the Committee on Appropriations of the Senate.

(c) **RESPONSIBILITY OF THE IP ENFORCEMENT REPRESENTATIVE.**—In developing the joint strategic plan, the IP Enforcement Representative—

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

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

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

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

(2) share relevant department or agency information with the IP Enforcement Representative, including statistical information on the enforcement activities of the department or agency against counterfeiting or piracy.

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

(1) A detailed description of the priorities identified for activities of the Federal Government relating to intellectual property enforcement.

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

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

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

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

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

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

(8) Such other information as the IP Enforcement Representative considers important in conveying to the recipients of the report, and to the people of the United States, the costs imposed on the United States economy and the threats to public health and safety created by counterfeiting and piracy, and the steps that the Federal Government will take over the period covered by the succeeding joint strategic plan to reduce those costs and counter those threats.

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

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

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

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

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

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

SEC. 322. REPORTING.

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

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

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

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

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

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

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

(6) Recommendations for any changes in statutes, regulations, or funding levels that the IP Representative considers would significantly improve the ef-

fectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and piracy and otherwise strengthen intellectual property enforcement.

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

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

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

SEC. 323. OTHER INTELLECTUAL PROPERTY ACTIVITIES.

If in any other case in which the IP Representative identifies other intellectual property initiatives of the Federal Government that include enforcement activities similar or identical to the activities described in this title, the IP Representative shall consolidate those activities into the work of the Office of the IP Representative in order to prevent duplication. Other activities that may improve intellectual property enforcement may continue outside of the Office of the Intellectual Property Enforcement Representative, including—

- (1) capacity building in other countries (other than activities to carry out the objectives described in section 321(a)(7); and
- (2) bilateral and multilateral cooperative efforts.

SEC. 324. SAVINGS AND REPEALS.

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

(b) **CURRENT AUTHORITIES NOT AFFECTED.**—Except as provided in subsection (a), nothing in this title shall alter the authority of any department or agency of the United States to investigate and prosecute violations of laws protecting intellectual rights.

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

SEC. 325. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title. By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the IP Representative shall submit to the Committees on the Judiciary of the House of Representatives and the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.

TITLE IV—INTERNATIONAL ENFORCEMENT AND COORDINATION

SEC. 401. INTELLECTUAL PROPERTY ATTACHÉS.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this title referred to as the “Director”), in consultation with the Director General of the United States and Foreign Commercial Service, shall appoint 10 intellectual property attachés to serve in United States embassies or other diplomatic missions. The 10 appointments shall be in addition to personnel serving in the capacity of intellectual property attaché at United States embassies or other diplomatic missions on the date of the enactment of this Act.

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

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

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

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

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

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

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

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

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

SEC. 403. TRAINING AND DESIGNATION OF ASSIGNMENT.

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

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

SEC. 404. COORDINATION.

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

(b) **REPORT ON ATTACHÉS.**—The Director shall submit to the Congress each year a report on the appointment, designation for assignment, and activities of all intellectual property attachés of the Department of Commerce who are serving at United States embassies or other diplomatic missions.

SEC. 405. AUTHORIZATION OF APPROPRIATIONS.

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

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

Subtitle A—Coordination

SEC. 501. INTELLECTUAL PROPERTY ENFORCEMENT OFFICER.

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

(b) **DUTIES.**—The IP Officer shall—

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

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

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

(c) **TRANSFER OF FUNCTIONS.**—

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

- (A) Section 506 and 1204 of title 17, United States Code.
- (B) Section 2318 through 2320 of title 18, United States Code.
- (C) Sections 1831 and 1832 of title 18, United States Code.
- (D) Any other provision of law, including the following, to the extent such provision involves the enforcement of any provision of law referred to in subparagraphs (A) through (C) or comparable provision of law:
 - (i) Section 1341 of title 18, United States Code, relating to frauds and swindles.
 - (ii) Section 1343 of title 18, United States Code, relating to fraud by wire, radio, or television.
 - (iii) Section 2512 of title 18, United States Code, relating to trafficking in interception devices.
 - (iv) Section 633 of the Communications Act of 1934 (47 U.S.C. 553), relating to the unauthorized reception of cable service.
 - (v) Section 705 of the Communications Act of 1934 (47 U.S.C. 605), relating to the unauthorized publication or use of communications.

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

Subtitle B—Law Enforcement Resources

SEC. 511. LOCAL LAW ENFORCEMENT GRANTS.

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

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

(2) in subsection (e)(1), relating to authorization of appropriations, by striking “fiscal years 2001 through 2004” and inserting “fiscal years 2008 through 2012”.

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

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

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

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

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

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

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

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

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

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

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

(C) a plan for coordinating the programs funded under this section with other federally funded technical assistance and training programs, including directly funded local programs such as the Local Law Enforcement Block Grant program (described under the heading “Violent Crime Reduction Programs, State and Local Law Enforcement Assistance” in title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105-119)).

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

(4) **AUTHORIZATION OF APPROPRIATIONS.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **COORDINATION WITH STATE AND LOCAL AUTHORITIES.**—The United States attorney for each Federal judicial district in which a CHIP unit is in operation shall ensure that the activities of that unit are coordinated with the corresponding activi-

ties of State and local law enforcement agencies operating within that Federal judicial district in the investigation of intellectual property crimes and other crimes involved in counterfeiting or piracy, including by coordinating Federal, State, and local operations and intelligence sharing to the extent appropriate.

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

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

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

(3) All relevant units of the Department of Justice are allocated sufficient funding and other resources as may be necessary to provide expert computer forensic assistance, including from nongovernmental entities, in investigating and prosecuting intellectual property crimes in a timely manner. For purposes of this paragraph, the term “all relevant units” includes those officers and employees assigned to carry out the functions transferred by section 502(a)(1), CHIP units, offices of the United States attorneys, and units of the Federal Bureau of Investigation that are engaged in the investigation of intellectual property crimes.

SEC. 513. TRANSPARENCY OF PROSECUTORIAL DECISIONMAKING.

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

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

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

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

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

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

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

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

SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

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

Subtitle C—International Activities

SEC. 521. INTERNATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATORS.

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

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

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

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

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

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

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

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

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

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

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

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

Subtitle D—Coordination, Implementation, and Reporting

SEC. 531. COORDINATION.

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

SEC. 532. ANNUAL REPORTS.

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



Mr. BERMAN. At this point, I would like to recognize the chief sponsor of this legislation, the Chairman of the full Judiciary Committee, and our great friend and champion on these issues, Chairman Conyers.

Mr. CONYERS. Thank you very much, Howard Berman, Committee Chair on Intellectual Property. I may be the one that put this bill out, but I didn't name it PRO-IP, the Prioritizing Re-

sources and Organization for Intellectual Property Act of 2007. We have strong support on both sides of the aisle and we think this is very important in the fight to maintain our competitive edge in a global marketplace.

By providing additional resources for enforcement of intellectual property, we ensure that innovation and creativity will continue to prosper in our society. I don't even know why I am talking about why we need this legislation. It is pretty clear, or it ought to be. Contrary to popular views expressed online, this bill is for the American people, not a specific industry. Counterfeiting and piracy cost the United States 750,000 jobs. Secondly, it hits the economy of our country somewhere between \$200 billion and \$250 billion every year in lost sales.

Moreover, counterfeiting of items such as pharmaceuticals, aircraft, and auto parts is placing human lives at risk. Right now, fake and unsafe drugs, inadequate brake pads, aircraft parts, undetectable to the average unsuspecting citizen—are being passed off as the real thing. Consumer Reports investigators have seized brake pads made of kitty litter, sawdust, dried grass; smoke alarms with phony product safety certifications; toothpaste made with a chemical found in antifreeze; cell phone batteries that have a potential to explode.

We have two options. The first is we can sit on our hands and do nothing, or we can try to make a difference. This bill is our attempt at the latter. There are concerns over some of these provisions that I just want mentioned. First, there are some people claiming that section 104 of this legislation, the provision allowing a court to consider whether to award statutory damages for each work in a compilation will result in opportunistic lawsuits that would drive some smaller companies out of business.

Well, we are always watching lawyers that are hustling the system, so that goes with the turf. That is part of the problem. But, I believe the current law is outdated. Damages need to reflect the fact that we live in a world where music and published works are being consumed in bite-size pieces, not just in albums or whole books. I understand the concerns, and I want everyone to know that I am committed to working further on the issue.

On the issue of civil forfeiture, some think the bill will allow the seizure of a family's general purpose computer in a download case. Well, it is already in the law. We want to make sure that it is not abused. H.R. 4279 builds this current civil forfeiture law by enabling the seizure of property used to commit or facilitate violations of law. A warehouse used to store counterfeit goods could be seized. Property used to transport goods would be subject to forfeiture.

We have carefully crafted the language in these sections to allow seizure only if the property was owned or predominantly controlled by the infringer. We have worked with a lot of different parties—civil rights organizations, Internet service providers—to arrive at the language that we are going to examine here this morning. In fact, the provisions were the subject of extensive negotiations, and I feel comfortable about it, but we are going to continue discussions. As everybody knows, you don't start off a bill written in concrete to begin with.

I am aware of the concerns within the administration over restructuring the IP enforcement efforts. Yes, we create a new office of the U.S. intellectual property enforcement representative in the executive office of the President, as well as a key leadership position at the Department of Justice. The new Intellectual Property Enforcement Division that we envision is to provide better national planning and more effective coordination and accountability.

So I want to work with DOJ and the administration on how we can accomplish these goals. Your constructive comments are going to be carefully considered. We have worked hard. We have a bipartisan bill. We have the Teamsters, the Directors Guild, AFTRA, SEIU, United Here, laborers, AFM, OPEIU, the Coalition Against Counterfeiting and Piracy, the Motor Equipment Manufacturing Association, even PhRMA, NBC Universal, and others.

These are the ideas that I have that I am happy to start this discussion off with this morning, Mr. Chairman. I appreciate your courtesy.

Mr. BERMAN. Thank you very much, Chairman Conyers.

I am now pleased to recognize the Ranking Member of our Subcommittee, Howard Coble.

Mr. COBLE. Thank you, Mr. Chairman. I want to initiate my comments by thanking you for the leadership that you have demonstrated in chairing what I regard as the Judiciary's best Subcommittee generally. I want to thank you specifically for having convened this hearing today. On the rare occasions, Mr. Chairman, that you and I have not seen eye to eye on certain issues, we have without exception disagreed agreeably.

Along with my colleagues who are cosponsors of this bipartisan bill, I share the view that this Congress must act to provide more effective tools and resources for those charged with combating piracy and counterfeiting. Indeed, I support the overwhelming majority of the provisions contained in this bill, and I hope to be able to add my name to that growing list at some point in the near future.

Prior to doing so, however, I believe it is in the interests of copyright holders and users to have further conversation and to develop a better understanding about the potential impact of section 104, which relates to the computation of statutory damages in certain categories of copyright infringement actions. This, Mr. Chairman, as you and I have discussed earlier, is a complex issue.

I appreciate your understanding of my concerns and your suggestions that the Copyright Office should, as soon as practicable, commence a roundtable dialogue among the broad cross-section of interested stakeholders, with the goal of providing further recommendations to our Subcommittee. I support this process, and want to take this opportunity to publicly encourage anyone with concerns about section 104 to fully participate in this proposed dialogue.

Mr. Chairman, earlier this year, you will recall that Attorney General Gonzales appeared before the full Judiciary Committee to discuss a range of issues involving the Department of Justice. During the question and answer period, I asked the Attorney General to specifically address concerns that his department may lack the necessary tools to investigate and prosecute high-level intellectual

property cases. I also asked him for guidance as to what steps we could take to more successfully prevent or prosecute counterfeiting and intellectual property piracy crimes within the United States and abroad.

I was impressed with the breadth and candor of General Gonzales' unscripted response. He talked about the importance of increasing our level of cooperation with friends and allies around the world, as well as the need to improve communications and education efforts targeted at American consumers. He stressed the determination and sophistication of criminals and terrorists who will pay to advance technology by offering top dollar for the top innovators.

The Attorney General described the department's engagement as an escalating real war that is being waged over the Internet through technology, and he candidly offered, "I do sometimes worry that we don't have the best minds on this. We don't have adequate resources, and I think this is something that I would love to talk to the Congress about because I worry about this very much." General Gonzales also noted that you always need more FBI agents because these are very, very complicated cases.

Mr. Chairman, the bill before us today is one that has been drafted with a high degree of deliberation, thought and sensitivity to the concerns expressed by former Attorney General Gonzales. I might add that they have been shared by many of us on this Subcommittee for some time. The views of the department, as well as other executive branch agencies and entities involved in enforcing and protecting IP rights have been weighed and given a great deal of consideration.

That said, the bill includes two bold new proposals. The first will establish an Office of the United States Intellectual Property Enforcement Representative in the executive office of the President that is modeled, but on a much smaller scale, after the organic legislation that established the Office of the United States Trade Representative.

The second will establish a new IP Enforcement Division at the Department of Justice that will ensure that IP enforcement issues, which are often forced to compete with other valid departmental priorities for scarce investigative and prosecutorial resources, will be able to receive a high level of dedicated attention, resources and priority that is commensurate to their importance to United States rights holders and to United States law enforcement interests.

Mr. Chairman, I am sure much will be said as we continue to plow this field, but for the moment I look forward to hearing from our distinguished panel. I again thank you, Mr. Chairman, for having convened this hearing, and I yield back.

[The prepared statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, AND RANKING MEMBER, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

Thank you, Mr. Chairman, for convening this hearing on the newly-introduced anti-counterfeiting and piracy bill, your friendship and your leadership of this Subcommittee.

On the few occasions you and I have not seen eye to eye on an issue, I have respected the fact that we have, as they say back home, been able to disagree without being disagreeable.

Along with my colleagues who are cosponsors of this bipartisan bill, I share the view that this Congress must act to provide more effective tools and resources to those charged with combating piracy and counterfeiting.

Indeed, I support the overwhelming majority of provisions contained in this bill and I hope to be able to add my name to that growing list at some point in the near future.

But before doing so, I believe it is in the interests of copyright holders and users to have a further conversation and to develop a better understanding about the potential impact of section 104, which relates to the computation of statutory damages in certain categories of copyright infringement actions.

This is a complex issue. I appreciate your understanding of my concerns and your suggestion the Copyright Office should, as soon as practicable, commence a dialogue among a broad cross-section of interested stakeholders with the goal of providing further recommendations to our Subcommittee.

I support this process and want to take this opportunity to publicly encourage anyone with concerns about section 104 to fully participate in this planned dialogue.

Mr. Chairman, earlier this year, General Gonzales appeared before the full Judiciary Committee to discuss a range of issues involving the Department of Justice.

During the Q and A period, I asked the Attorney General to specifically address concerns that the Department may lack the necessary tools to investigate and prosecute high-level intellectual property cases.

I also asked for guidance as to what steps we can take to more successfully prevent or prosecute counterfeiting and intellectual property piracy crimes within the U.S. and abroad.

I was impressed with the breadth and candor of General Gonzales' unscripted response.

He talked about the importance of increasing our level of cooperation with friends and allies around the world as well as the need to improve communications and education efforts targeted at American consumers.

He stressed the determination and sophistication of "[c]riminals and terrorists [who] will pay to advance technology" by offering "top dollar for the top innovators."

The Attorney General described the Department's engagement as an escalating "real war that is being waged over the Internet" through technology and he candidly offered:

I do sometimes worry that we don't have the best minds on this, we don't have adequate resources. And I think this is something that I would love to talk to Congress about because I worry about this very much.

General Gonzales also noted, "[y]ou always need more [FBI] agents, because these are very, very complicated cases."

Mr. Chairman, the bill before us today is one that has been drafted with a high degree of deliberation, thought and sensitivity to the concerns expressed by General Gonzales. Concerns, I might add, that have been shared by many of us on this Subcommittee for a long time.

The views of the Department as well as other executive branch agencies and entities involved in enforcing and protecting IP rights have been weighed and given a great deal of consideration.

That said, this bill includes two bold new proposals.

The first will establish an Office of the U.S. Intellectual Property Enforcement Representative (USIPER) in the Executive Office of the President that is modeled, but on a much smaller scale, after the organic legislation that established the Office of the U.S. Trade Representative.

The second will establish a new IP Enforcement Division at the Department of Justice that will ensure that IP enforcement issues, which are often forced to compete with other valid departmental priorities for scarce investigative and prosecutorial resources, will be able to receive a level of dedicated attention, resources and priority that is commensurate to their importance to U.S. rights-holders and to U.S. law enforcement interests.

Mr. Chairman, I plan to have much more to say later about the specific solutions contained in H.R. 4279 but for now, I'm interested in giving our witnesses an opportunity to speak. With that, I yield the balance of my time.

Mr. BERMAN. Thank you very much, Mr. Coble.

Now, I am pleased to recognize the Ranking Member of the House Judiciary Committee, and a cosponsor of this legislation, Congressman Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman. I want to thank you, as well as Ranking Member Coble, for having a hearing on this important bill. I notice that it is, of course, bipartisan. There are five Republican and five Democrat original cosponsors, which augurs well for its success in this Congress, or more likely next year.

I also want to point out, and I don't know who came up with it, that the acronym for H.R. 4279 is PRO-IP, which is very appropriate, and not a surprise. One of my favorite quotes is from the last days of the 19th century, in 1899, when the patent commissioner himself, Charles Duell, said "Everything that can be invented has been invented." With all due respect to Mr. Duell, over 100 years later, it is abundantly clear that he was wrong.

As we stand at the dawn of the 21st century, lawmakers must be willing to reexamine assumptions and consider new initiatives that help promote America's vital national and economic interests. Doing more of what has been done before is simply not good enough. We must work to improve the policies and institutions of the past to promote the ideas of the future.

One specific area that should be provided more permanence and priority in our government is the promotion, protection and enforcement of intellectual property rights. The value of U.S. intellectual property is estimated at between \$5 trillion and \$5.5 trillion—an amount that is about 45 percent of our country's gross domestic product. America's IP industries provide valuable employment opportunities to tens of millions of our citizens.

One recent study attributed 40 percent of the growth in GDP achieved by all private industry to U.S. IP industries alone. That same study concluded that nearly 60 percent of U.S. export growth is driven by international demand for the products and services created by our IP entrepreneurs. Significant investments are required to create and produce world-leading intellectual property. Unfortunately, those investments are in stark contrast to the easy, massive, unauthorized reproduction and distribution of fraudulent and unlicensed products and services. It is undisputed that the theft of U.S. IP costs American businesses their markets and American citizens their livelihoods.

In cases that involve products such as fake pharmaceuticals, auto parts or aircraft parts, American consumers may even face debilitating injuries or even death. The ill-effects of counterfeiting and piracy cannot be catalogued by merely reciting statistics and cold mathematical calculations of economic costs alone. Neither, as I stated earlier, can we meet the new challenges and techniques employed by sophisticated counterfeiters and pirates by merely doing more of what has been done before.

Our response to these threats must be proportionate to the harm inflicted. Among other efforts, our private and public activities must be directed towards, one, improving consumer education; two, enhancing communication and coordination among government departments and agencies involved in IP enforcement; and three, providing the resources to meet the challenges of protecting IP in an age of advanced technologies and globalization.

Chairman Conyers, if he is still here—he is gone—but in any case, I want to commend him for the deliberate and transparent manner in which this bill was drafted. I also commend the work

of the Bush administration, which has done more to elevate IP enforcement than any previous administration, in my judgment.

Finally, I want to recognize the work of the Coalition Against Counterfeiting and Piracy, which succeeded this year in enlisting and uniting hundreds of businesses, associations and labor organizations in the fight against global IP theft. Protecting intellectual property is critical to preserving a strong economy. This bill protects American jobs, encourages innovation, and creates strong policies to protect the ideas of the future.

Unlike Mr. Duell, I believe that we have merely scratched the surface of creativity and invention. I look forward to a productive discussion about ways to promote the efforts of American businesses and help preserve a strong American economy.

Mr. Chairman, thank you for yielding to me, and I will yield back.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

Thank you, Mr. Chairman and Ranking Member Coble, for scheduling this important legislative hearing on H.R. 4279, a bill known as the PRO-IP Act.

During the waning days of the 19th century (1899), the Patent Commissioner, Charles H. Duell, remarked "everything that can be invented has been invented."

With all due respect to Mr. Duell, over 100 years later it is abundantly clear that he was wrong.

But as we stand at the dawn of the 21st century, lawmakers must be willing to reexamine assumptions and consider new initiatives that help promote America's vital national and economic interests.

Doing more of what's been done before is simply not good enough. We must work to improve the policies and institutions of the past to promote the ideas of the future.

One specific area that should be provided more permanence and priority in our government is the promotion, protection and enforcement of intellectual property rights.

The value of U.S. intellectual property (IP) is estimated at between \$5 and \$5.5 trillion—an amount that is about 45 percent of our country's Gross Domestic Product (GDP).

America's IP industries provide valuable employment opportunities to tens of millions of our citizens.

One recent study attributed 40 percent of the growth in GDP achieved by all U.S. private industry to U.S. IP industries. That same study concluded that nearly 60 percent of U.S. export growth is driven by international demand for the products and services created by our IP entrepreneurs.

Significant investments are required to create and produce world-leading intellectual property. Unfortunately, those investments are in stark contrast to the easy, massive unauthorized reproduction and distribution of fraudulent and unlicensed products and services.

It is undisputed that the theft of U.S. IP costs American businesses their markets and American citizens their livelihoods.

In cases that involve products such as fake pharmaceuticals, auto parts or aircraft parts, American consumers may even face debilitating injuries or even death.

The ill effects of counterfeiting and piracy cannot be catalogued by merely reciting statistics and cold mathematical calculations of economic cost alone. Neither, as I stated earlier, can we effectively combat the new challenges and techniques employed by sophisticated counterfeiters and pirates by merely doing more of what's been done before.

Our response to these threats must be proportionate to the harm inflicted. Among other efforts, our private and public activities must be directed towards:

- 1) improving consumer education;
- 2) enhancing communication and coordination among government departments and agencies involved in IP enforcement; and

- 3) establishing vigorous new organizations and leadership that are engineered to capitalize on the solid foundation laid by this Administration and providing the resources to meet the challenges of protecting IP in an age of advanced technologies and globalization.

Chairman Conyers, I commend the deliberate and transparent manner in which this bill was drafted. I also commend the work of the Bush administration, which has done more to elevate IP enforcement than any previous administration.

Finally, I want to recognize the work of the Coalition Against Counterfeiting and Piracy (CACPP), which succeeded this year in enlisting and uniting hundreds of businesses, associations and labor organizations in the fight against global IP theft.

Protecting intellectual property is critical to preserving a strong economy. This bill protects American jobs, encourages innovation and creates strong policies to protect the ideas of the future.

Unlike Mr. Duell, I believe that we have merely scratched the surface of creativity and invention. I look forward to a productive discussion about ways to promote the efforts of American businesses and help preserve a strong American economy.

With that, I yield the balance of my time.

Mr. BERMAN. Thank you, Mr. Smith.

I will recognize myself for an opening statement at this point.

From Chairman Conyers, Howard Coble and Lamar Smith, we have had a good picture of the devastating impact of counterfeiting and piracy on our economy, on our health and on our safety. I share their desire to prioritize and better coordinate U.S. efforts at enforcing our intellectual property rights here and abroad.

We will be hearing from the witnesses shortly to get their thoughts about this legislation and speak to any problems they see with it. I would like to note a couple of issues at the outset, rather than focus on that which has already been said. There were many suggestions proposed, such as allowing wiretapping for intellectual property crimes, or criminalizing attempted copyright infringement—both of which were purposely not included in this bill. I fought very hard to make sure that the death penalty would not appear either. [Laughter.]

The Chairman and the Ranking Member of the Committee and their staffs worked very hard at trying to vet through many proposals to find an appropriate balance. Therefore, in addition to what was excluded from the bill, there were a number of provisions which underwent significant revisions to accommodate additional concerns. Furthermore, we met with the Department of Justice about some of their apprehensions, and our door remains open to try and constructively resolve our mutual concerns.

My Ranking Member, Mr. Coble, has raised a good point about examining the possible effect of the change in statutory damages language in section 104 of the bill. In the course of the discussion of the provision, it became clear that there are a number of questions about the state of current law and the scope of this change as it relates to compilations and derivative works.

But in this age where technology makes it possible and appealing to offer and purchase copyrighted materials either in compilations or in disaggregated formats or both, it would be irresponsible to ignore the policy implications of a provision that limits damages for compilations which in reality contain any number of valuable works. As such, I have asked, as Mr. Coble has mentioned, the Copyright Office to convene a series of meetings about this issue with the various parties.

An additional point: While the bill represents a good compromise on a number of issues, I believe we shouldn't overlook many of the main issues facing owners and users today. As we approach the 10th anniversary of the Digital Millennium Copyright Act, we should be analyzing some of the protections we gave to intermediary services such as ISPs, and some exemptions provided to educational institutions, and the effectiveness of the takedown notice and procedure.

We should also examine whether filtering technologies have advanced enough today that there should be some obligation to adopt them where appropriate. Mr. Boucher and I have even talked about this, and if he and others on the Committee feel that the review by the Librarian of Congress every 3 years on the ability to make fair use of copyrighted works, protected by digital rights management, is inadequate, we should look at the review process and discuss H.R. 1201 at that time as well.

In other words, there are a number of issues this bill isn't addressing that come down on both sides of the debate that goes on about copyright in this new digital age. We don't want this bill to keep from having a discussion about those issues, but I think there is a logic to dealing with those issues in a separate framework.

We saw recently a number of user-generated content sites and copyright owners sit down and negotiate an agreement which acknowledged the need for filtering and the importance of fair use. It would be nice if more companies could strive for the gold standard in terms of corporate copyright policy. With IP being one of America's top exports and the source of numerous jobs employing a huge sector of the economy, I don't see how we can afford not to prioritize intellectual property enforcement.

Now, I think, contrary to the usual practice in the Committee, we may have other Members who want to make opening statements. Mr. Boucher, might you be one of them? I recognize Congressman Boucher.

Mr. BOUCHER. Mr. Chairman, in the interest of bipartisan harmony, if there are Republican Members who would like to make a statement, it probably is time for the transition to go to that side of the aisle.

Mr. BERMAN. Well, I hesitated, as we had done two on that side of the aisle, and now we are——

Mr. BOUCHER. You are looking for balance here, is what you are saying.

Mr. BERMAN. Go ahead.

Mr. BOUCHER. I thank both gentlemen very, very much.

Thank you, Mr. Chairman. There is much in this legislation that I support, and I also want to commend you and Chairman Conyers and Mr. Smith and Mr. Coble for bringing it forward.

Let me also say that I appreciate the suggestion that you just made, Chairman Berman, that we should look perhaps at a broader range of issues. I welcome the suggestion that perhaps elements of H.R. 1201 and the fair use protections that it involves could be examined as a part of this overall comprehensive discussion.

I want to make just a couple of comments today about some concerns that I have about the increase in statutory damages for compilations that would be contemplated by section 104 of the bill.

That increase in statutory damages, in my opinion, would do little or nothing to deter willful infringers. There are already ample statutory damages directed at them. Those statutory damages are not deterring their conduct. They frankly don't think about that. They don't fear enforcement. The increase in statutory damages is not going to cause them to change.

But there are legitimate companies that make devices that have the ability to record from TiVos to iPods to software products that facilitate the devices that have recording functions and that involve transmissions over the Internet, that always weigh the risk of a finding of secondary copyright infringement that would arise because of the infringing conduct of the users of those devices or software products or services, and then weigh that particular risk against the fair use privilege that they also have in the law to introduce those products or services.

A balance based on that analysis is achieved, and then the decision is made as to whether or not to introduce that product and to involve themselves in that level of innovation. If we increase the statutory damages, we inevitably will increase the risk component of that analysis. And the effect on innovation will be real and it will be adverse. I would direct Members' attention to the letter that this Committee received from America's leading technology companies that produce software and services that involve copying and transmission as evidence of the effect that this measure would have on innovation.

I think that perhaps as a part of the general larger conversation that the introduction of this bill might engender, that the time may have arrived when we consider a change in the way that we apply statutory damages. Bear in mind that anyone who can show actual damages because of either direct copyright infringement by an infringer, or because of secondary copyright infringement by a manufacturer of a product or service, can already get the actual damages that that individual can show he or she has sustained. We would not interfere with that.

But the time may have arrived when we consider de-coupling the award of statutory damages for direct infringers on the one hand—the people who are willfully infringing copyright directly, and the award of statutory damages for indirect infringement, which would be secondary liability of device manufacturers. I have actually introduced a bill—Mr. Berman referenced that—that would remove the statutory damage liability with regard to secondary infringement. Perhaps the time for that de-coupling has now arrived. If we do that, that would address the concerns of the technology companies that have raised objections to section 104.

There are other problems with section 104, which I won't burden the Committee with at this point, and we can discuss those at the proper time. I am sure some of the witnesses today will have some comments about those as well. But I would simply like to suggest that we not run the risk through this measure of retarding American innovation. That innovation is incredibly important.

There was a study released last year that shows that companies that depend upon fair use as the legal foundation for their products or services, contribute fully 16 percent of American gross domestic product. They have annual combined revenues of \$2.2 trillion per

year. They employ one of eight Americans. It is critically important that we not dampen the innovation that has led to that economic success and that engenders that amount of economic contribution.

Thank you, Mr. Chairman. I yield back.

Mr. BERMAN. Thank you.

I would remind the Committee that there is no mandate for any particular technology in this bill, and there is no mandate in the Committee rules that every Member needs to have an opening statement.

With that, I recognize for an opening statement Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. Thank you for recognizing my wanting to be recognized.

I want to associate myself, oddly enough, with both Mr. Boucher and with the Chairman, because I believe that both are essential when the final passage of this bill occurs. I am a cosponsor of this bill and very proudly so. I believe that we have to put real teeth into enforcement.

I do share the concern of Mr. Boucher that statutory damages for real disputes about what is or isn't fair use. Statutory damages, when you are dealing with, let's just say \$100 million-plus companies on both sides, who might also be dealing in patent at the same time as they are dealing in copyright. We have no statutory rules, no per-piece minimum damages on a patent infringement. As a patent holder, some might say we should. But it is very clear that we do have to look carefully at the difference between a dispute about what is legitimate use and what isn't, versus those who wantonly use somebody else's intellectual property.

Now, many people know that I came out of hardware production. I came out of the consumer electronics industry, which I note is one of the signatories to this grand alliance of companies with concerns. I would say that one of the things that people don't understand is that although the industry has concerns, the industry is also constantly being adversely affected.

Taking only my former company that I have no economic interest in at all today, but I have a history. That history includes having my own voice that said "protected by vipers, stand back" stolen and used by others for profit, with no payment. I also had my major brand names, and in fact clones of my car security products, high-end home audio and car audio products duplicated, mostly in China, but not exclusively, and brought to this country to not only be sold, but for the defectives to come back to me, never having made the original sale.

Those occur every day and they are not covered by patents, that in fact teeth in protection of copyright, trade dress and other protections are equally essential to patent protection on products, and particularly as consumer electronic products tend to become commoditized, except for their origin or source. The name Sony or Panasonic, et cetera, mean something and give you a premium over something produced somewhere in mainland China and delivered with a name that usually is not known.

I believe therefore that we do have to make a differentiation between a dispute of a product like Slingbox, the dispute of a product like TiVo, where in fact the court needs to be available to both sides to enter into whether or not they are fairly using and fairly

paying for intellectual property. But it is very, very clear that we should not be putting additional statutory demands that would simply cause these products not to be innovated.

Therefore, I look forward to working not just on the bipartisan basis of the 10 of us who cosponsored this bill, but with those who are presently concerned, to make this bill not just good, but as close to revolutionary in protecting intellectual property, both here and on that 60 percent of products that we export.

With that, I would yield back, in the nick of time.

Mr. BERMAN. I don't know how many revolutionary efforts my heart can stand working with you, Mr. Issa. [Laughter.]

Mr. ISSA. Well, three or four ought to do it. And we can look at the death penalty again if we can't get statutory.

Mr. BERMAN. I know Mr. Sherman had an opening statement, so I will recognize Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman.

The theft of intellectual property and counterfeiting costs U.S. businesses \$250 million annually. It is 6 percent to 9 percent—

Mr. ISSA. Billion.

Mr. SHERMAN. Did I say "billion"?

Mr. ISSA. You should.

Mr. SHERMAN. I should say "billion." Thank you, Mr. Issa.

It accounts for 6 percent to 9 percent of world trade annually. It steals 750,000 American jobs, including 200,000 in the auto industry and the auto parts industry, and 106,000 jobs just in the Los Angeles area, robbing our area of \$5.2 billion in productivity, according to a Gallup study.

As Chairman Conyers pointed out, it is also a consumer safety issue. Worldwide some 10 percent of all pharmaceuticals are counterfeit, 2 percent of all airplane parts are counterfeit as well. And finally, it is a threat to national security. The 1993 World Trade Center bombings were partially financed through the sale of counterfeit goods, and just a couple of years ago over \$1 million of counterfeit brakes were found in Lebanon with the profits earmarked for Hezbollah.

So clearly, we ought to do all we can. I commend the Chairman for introducing this legislation. Several months ago, I introduced, along with Mr. Chabot, Mr. Cohen, and Mr. Donnelly, the Intellectual Property Rights Enforcement Act. We have the support of the National Manufacturers Association, and the AFL-CIO.

I take, however, no particular pride of authorship in this bill, because it is a 100 percent rip-off of the Bayh-Voinovich bill introduced in the Senate. This does not mean that I don't respect intellectual property rights. I am a fully licensed user of the Bayh-Voinovich bill. We could spend a lot of time worrying about the differences between the two approaches. Frankly, I think those can get ironed out rather quickly, and I think the greatest sage in America today is Larry the Cable Guy, when he said, "git'er done." Let us move forward and get a bill passed that organizes the American government to deal with this major problem.

I yield back.

Mr. BERMAN. I thank the gentleman.

Mr. Goodlatte?

It would be great if we could finish opening statements before we have to go for our 15-minute and three 5-minute votes. I think we ought to come back and hear the witnesses. [Laughter.]

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman. I will abbreviate my statement.

Because the United States has been the pioneer for intellectual property protections, it is no surprise that copyright industries are so successful and are so crucial to our national economy. The U.S. copyright industry has created millions of high-skilled, high-paying U.S. jobs and has contributed billions to our economy.

However, the proliferation of copyright piracy in America is growing and is threatening to undermine the very copyright protections our founding fathers envisioned. The same fast Internet connections and innovative technologies that continue to bring us wonderful new products can also be used to download, upload and otherwise share illegal copies of songs, movies, games and software at an unprecedented level.

To combat this rising theft, I am pleased to cosponsor this legislation which strengthens many provisions in the law, including increasing penalties for civil violations and repeat offenders, allowing treble damages in counterfeiting cases, increasing statutory penalties in counterfeiting cases, and increasing the maximum penalties for trafficking in counterfeit goods when those offenses endanger public health and safety.

The bill creates an Office of U.S. IP Enforcement Representative within the executive office of the President to coordinate all the various agencies and departments that work on IP enforcement issues and to serve as the President's principal advisor for IP matters. In addition, it increase the number of IP liaisons from the Patent and Trademark Office in U.S. embassies around the world, and enhances the Department of Justice's computer crime units to make sure they are equipped and being used to prosecute IP violations.

While I am a cosponsor of this legislation and believe it is a very good start, I also acknowledge that the bill is not perfect, and note that some of the technology and online sectors and the Internet users community have raised concerns about the effect that some of the damages provisions in the bill could have on innovation and their legitimate operations. I look forward to working with the Chairman and others on these issues as we consider this comprehensive update of our Nation's intellectual property laws.

I yield back.

Mr. BERMAN. I thank the gentleman.

The gentlelady from Texas, Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I am very pleased to join as an original cosponsor of this legislation. As I look at the witnesses and can imagine the diversity of their statements, I might offer the thought that Americans are not absolutely against trade. They just want it to be a two-way street and they want it to work for them.

The same thing with this question of piracy and the stealing of our creativity. What it does is it dumbs down the American genius and simply we have to protect that. That is what this legislation

stands for—the opportunity for us to be creative and the opportunity for trade to be a two-way street. Enforcement has to be the key of moving us into the 21st century to ensure that more of us create and more of us have our creations protected.

I thought one of the glaring insults of this piracy and trademark violation had to do with the incident in June, where counterfeit toothpaste containing a dangerous chemical was distributed and sold to U.S. consumers under a trademark owned by the company Colgate-Palmolive. The trademark holders were forced to apologize for the ill-effects of a product they had no part in creating or distributing, and the company suffered a loss of both reputation and sales.

As we make our way through this legislation, I am considering and would hope that we would consider an enhancement of penalties on the trademark violation if, for example, there is an injury, a physical injury or an injury in some other form, so that there is an increased penalty, not a tort action, but an absolute increased penalty as it results in the harm to the individual who may have consumed the particular product.

Mr. Chairman, I think this is an important step forward. Enforcement has to be the key to protect what is ours, and certainly to build our trade and effectively protect our creativity. I believe this is an important step and important legislative initiative.

With that, I will yield back.

Mr. BERMAN. Thank you.

We have about 7 minutes. I don't want to put my friend from California under the notion of what she says—

Would you like to make your statement when we come back?

Ms. LOFGREN. I will make a statement of about 2 minutes.

Mr. BERMAN. You got it.

Ms. LOFGREN. I just would like to say that the hearing we had in October I thought was a good one, focusing on international piracy and what can bring us together. One of the things I note is that when we inspect less than 1 percent of the containers coming into the United States, this bill is not going to stop the piracy that we see that infuriates us, especially in China and in Russia. There are parts of this bill that I think are important. I would like to say I am deeply troubled by section 104 and I would ask unanimous consent to put in the record a letter signed by myself, Congressman Sensenbrenner, and Congressman Boucher, including a letter signed by 25 law intellectual professor law professors, expressing concern on section 104.

Mr. BERMAN. That will be included in the record.

[The information referred to is available in the Appendix.]

Ms. LOFGREN. Thank you.

I do believe, as Mr. Boucher has indicated, that the statutory damages would have the effect of chilling innovation and preventing economic growth. It is of grave concern to me.

There are other elements of the bill that I am sure we can work together on, but absent some modification, these statutory damages would provide for \$1.5 million in statutory damages for a single CD. I think that is unreasonable, and I look forward to continuing to work with my friend from California on this.

I would yield back.

Mr. BERMAN. I can't resist pointing out that the 104 authority is a discretionary authority. It is not a mandate.

Ms. LOFGREN. If I could just note, the courts have plenty of discretion right now and this section is unnecessary, but we will have a long dialogue on this, I am sure.

Mr. BERMAN. I am sure we will. I didn't want my silence to be acquiescence. [Laughter.]

I would recognize the gentlelady from Ohio, Ms. Sutton.

Ms. SUTTON. Mr. Chairman, I will put my statement into the record. Thank you.

Mr. BERMAN. Okay. Thank you very much.

[The prepared statement of Ms. Sutton follows:]

PREPARED STATEMENT OF THE HONORABLE BETTY SUTTON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OHIO

Mr. Chairman,

Thank you for calling this important hearing today. I would like to thank the panelists for their participation and for their thoughtful remarks.

H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007," will help to reduce counterfeiting and piracy and increase our Nation's economic strength. I want to thank the Chairman for his efforts to preserve the jobs of my constituents through enforcement of our intellectual property laws. I hope that we can continue to work together toward the goal of eliminating counterfeiting and piracy for the safety and security of all Americans.

Thank you.

Mr. BERMAN. We will recess for votes. We will be back to hear the reason we came.

[Recess.]

Mr. BERMAN. We will resume the hearing. I would like to introduce our excellent panel of witnesses. For one of the introductions, I would like to recognize the Chairman of the Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

It is my pleasure to introduce James Hoffa, a Michigander. He joined the union when he was 18 years old. My father knew his father. My dad was an international representative for the United Automobile Workers. Of course, I knew James Hoffa's father as well. And so I am very proud of him. He is more than just a powerful labor leader. His interest in human rights, civil rights, and other issues makes him someone that I am proud to say comes from Detroit. We have had a good working relationship for a number of decades now.

Thank you.

Mr. BERMAN. Thank you, Mr. Conyers.

Going back to the other panelists, Sigal Mandelker is Deputy Assistant Attorney General in the Criminal Division of the Department of Justice, and has been since July of 2006. She supervises the child exploitation and obscenity section, the computer crime and intellectual property section, the domestic security section, and the Office of Special Investigations.

Prior to joining the Department of Justice, Ms. Mandelker served as counselor to the Secretary of Homeland Security, was an Assistant United States attorney in the Southern District of New York, and clerked for Justice Clarence Thomas on the United States Supreme Court, and the Honorable Edith Jones on the United States Court of Appeals for the Fifth Circuit.

Ms. Mandelker received her bachelor's degree from the University of Michigan and her law degree from the University of Pennsylvania.

Chairman Conyers has introduced Mr. Hoffa, who we are very pleased to have as part of our panel.

Next to him is Gigi Sohn, who is President and Co-founder of Public Knowledge, a nonprofit organization that addresses the public stake in the convergence of communications policy and intellectual property law. Ms. Sohn's comments and articles on intellectual property and telecommunications matters have appeared in a variety of publications, including the New York Times and The Washington Post.

Ms. Sohn is a nonresident fellow at the University of Southern California Annenberg Center, and a senior fellow at the University of Melbourne faculty of law in Melbourne, Australia. Ms. Sohn holds a BS in broadcasting and film from Boston University and a law degree from the University of Pennsylvania Law School. You can all get together.

Richard "Rick" Cotton is Executive Vice President and General Counsel of NBC Universal. He supervises the NBC Universal law department, among other duties. Prior to his appointment, Mr. Cotton held other positions within NBC, including President of London-based CNBC Europe.

Prior to his work for NBC, Mr. Cotton was in private practice and served as Deputy Executive Secretary of the United States Department of Health, Education and Welfare, and was law clerk to another of my favorite judges, Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia, and law clerk to one of my favorite judges, Justice William Brennan of the United States Supreme Court.

Mr. Cotton holds a law degree from Yale Law School.

None of that should be taken as any comment about either Edith Jones or Clarence Thomas. [Laughter.]

Without objection, I authorize myself to declare a recess of the hearing at any point.

I would ask the witnesses now to let you know that your prepared statements will all be made part of the record in their entirety. I would ask you now, if you would, to summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow, and then red when 5 minutes are up.

We welcome all of you, and Ms. Mandelker, why don't you start?

TESTIMONY OF SIGAL P. MANDELKER, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. MANDELKER. Thank you, Chairman Berman, Chairman Conyers, Ranking Member Coble, and Members of this Committee. Thank you for the opportunity to discuss the efforts of the Department of Justice to protect intellectual property rights through criminal enforcement. This Committee has been an important partner in this effort, and I look forward to discussing ways in which we can further enhance our efforts to combat IP theft.

The proliferation of harmful counterfeit products entering our marketplace, the emergence of organized criminal syndicates increasingly financed by IP theft, and the exponential growth of IP crime worldwide emphasize the importance of criminal enforcement to protecting IP rights.

In addition to establishing the intellectual property task force within the department to focus greater attention to IP enforcement efforts, the department plays a key role in targeted and coordinated administration efforts. First, we are an integral part of President Bush's strategy targeting organized piracy, or STOP initiative. We work closely with our partners in other departments, local and national law enforcement's rights-holders, and our international partners in a coordinated and aggressive strategy to fight global intellectual property crime.

Second, we have significantly increased our domestic enforcement efforts. We now have over 230 computer hacking and intellectual property, or CHIP, prosecutors dedicated to these crimes, and 25 specialized CHIP units spread across the country. In the Criminal Division, where I work, we have 40 prosecutors in the computer crimes and intellectual property section, including 14 who are specifically dedicated to combating IP theft. These efforts are yielding results. In fiscal year 2007, 287 defendants were sentenced on IP charges, representing a 35 percent increase over fiscal year 2006 and a 92 percent increase over fiscal year 2005.

Third, with the advent of the Internet and the steady increase in counterfeit products smuggled across our borders, we are placing great emphasis on our international efforts. We now have two intellectual property law enforcement coordinators stationed overseas—one in Bangkok and one in Sofia, Bulgaria. Indeed, I just got back from Bangkok, where we launched a new intellectual property crime enforcement network in Southeast Asia, with high-level law enforcement and customs officials from 13 countries.

Of course, IP theft in the People's Republic of China remains a key concern to the department and the administration. So we have enhanced our law enforcement relationships with China's ministry of public security. This past summer, these efforts resulted in the largest-ever joint FBI-MPS international piracy operation, resulting in the seizure of over \$500 million worth of counterfeit software and the dismantlement of what is believed to be one of the largest piracy syndicates in the world.

Fourth, we are working closely with victim rights-holders, both by putting on joint training conferences, and most importantly through our aggressive enforcement actions.

We are also working, of course, with this Committee and Congress on new policy initiatives and legislative tools to improve our enforcement efforts. While we are still in the process of reviewing the PRO-IP Act introduced last week, and hope to be able to provide more comprehensive comments at a later time, I wanted to share the administration's preliminary views toward this legislation.

First, we greatly appreciate that the PRO-IP Act incorporates a large number of legislative recommendations contained in the administration's Intellectual Property Protection Act of 2007. These include provisions to increase penalties, harmonize and strengthen

forfeiture and restitution provisions, and ensure that exportation and transshipment of pirated goods to the U.S. are subject to criminal penalties.

I thank you, Chairman Berman and Chairman Conyers, on your remarks regarding working with the administration on other key provisions in this bill. As my written testimony reflects, we do have significant concerns with title V of the act, which we believe could have a detrimental effect on how the department conducts intellectual property enforcement.

I see that my time has expired, so in conclusion I would like to thank you and other Members of the Committee for your leadership on protecting IP rights. We look forward to continuing to work with this Committee on the PRO-IP Act and to identify ways in which to advance our common goal of providing owners of intellectual property with the robust legal protections that they deserve.

[The prepared statement of Ms. Mandelker follows:]

PREPARED STATEMENT OF SIGAL P. MANDELKER



Department of Justice

STATEMENT OF

**SIGAL P. MANDELKER
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON COURTS, THE INTERNET, AND
INTELLECTUAL PROPERTY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**H.R. 4279, THE PRIORITIZING RESOURCES AND ORGANIZATION FOR
INTELLECTUAL PROPERTY ACT OF 2007**

PRESENTED

DECEMBER 13, 2007

Introduction

Chairman Berman, Ranking Member Coble, and Members of the Committee, thank you for the opportunity to discuss the Department of Justice's efforts to protect intellectual property rights through criminal enforcement. This Committee has been an important partner in this effort and I look forward to discussing additional ways in which we can enhance our efforts to improve intellectual property protection.

As America continues its transformation into an information- and innovation-based economy, the Department has made the protection of America's creative assets one of its top priorities. With the advent of new technologies, a global supply chain economy, and the increased involvement of transnational criminal organizations, criminal enforcement is now more important than ever in protecting intellectual property rights.

Today, the Department is dedicating more energy and resources than ever before to the protection of U.S. intellectual property rights from the increasing theft and exploitation of these rights by criminals. As an integral part of President Bush's Strategy Targeting Organized Piracy, or "STOP", initiative, we work closely with our partners in other Departments, local and national law enforcement, rights holders, and our international partners in a coordinated and aggressive strategy to fight global intellectual property crime.

Under the umbrella of the STOP initiative and the Department of Justice's Task Force on Intellectual Property, we have significantly increased our domestic enforcement efforts, with a special emphasis on organized criminal operations and counterfeiting crimes that threaten the health and safety of Americans. Additionally, recognizing that an increasing number of IP crimes are global in nature, we have stepped up our international outreach efforts to strengthen enforcement capacity in foreign nations and increase cooperation in joint operations. And finally, in the legislative package that the Attorney General transmitted to Congress on May 14, 2007, the Department is seeking additional tools to help prosecute and deter intellectual property thieves.

My remarks today will describe in more detail the Department's contributions to the coordinated U.S. Government effort to protect intellectual property rights. In addition, although we are still reviewing the Prioritizing Resources and Organization for Intellectual Property Act, I will provide some preliminary comments with the hope that we can work together in the coming weeks to achieve our common goal: increasing the protection of intellectual property rights through strong and coordinated enforcement efforts by the federal government.

The Department's Domestic Criminal Enforcement Efforts

In 2004, the Department created a Task Force on Intellectual Property ("IP Task Force") to conduct a comprehensive assessment of its IP enforcement program and to

coordinate efforts across the Department and strengthen its enforcement resources. The Task Force analyzed existing resources and proposed significant improvements in the following areas: Criminal Enforcement; International Cooperation; Civil Enforcement; Antitrust Enforcement; Legislation; and prevention. Following the review, the IP Task Force made 31 specific recommendations, including a directive that the Department hire, train and retain more intellectual property prosecutors in order to keep pace with the growing number and complexity of criminal piracy and counterfeiting operations. The Department implemented all 31 recommendations of the Task Force, and today has more prosecutors focusing on intellectual property crime than at any time in its history.

i. The CHIP Network and CCIPS

Over the last few years, the Department has significantly increased our enforcement efforts, including the number of prosecutors focused on intellectual property crimes nationwide. The Department currently has a national network of approximately 230 specially-trained Computer Hacking and Intellectual Property (CHIP) prosecutors in U.S. Attorneys Offices across the country. In June of 2006, the Department designated seven new Computer Hacking and Intellectual Property (CHIP) units in U.S. Attorneys Offices nationwide, bringing the total number of such specialized units to 25. We are already seeing significant increases in CHIP Unit prosecutions: in FY 2007, CHIP Units successfully obtained sentences against 199 defendants for IP offenses, representing an 80% increase over the 110 defendants sentenced by CHIP Units in FY 2006.

This national network of CHIP prosecutors is trained and supported by the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS), in conjunction with the Executive Office of U.S. Attorneys (EOUSA). To improve its support and coordination of the CHIP Network, CCIPS created a dedicated position devoted exclusively to these responsibilities – the National CHIP Coordinator – and filled the position with a highly experienced CHIP prosecutor on a two-year detail from the Northern District of California.

In addition to its responsibilities to the CHIP Network of Assistant U.S. Attorneys, CCIPS has fourteen prosecutors dedicated exclusively to prosecuting intellectual property crime. These attorneys prosecute single- and multi-district cases across the country. From 2002 – 2006, CCIPS' criminal caseload increased more than 800%, and in FY 2007, CCIPS attorneys charged 82 defendants with IP crimes, a 35% increase over the 64 new cases opened in FY 2006. CCIPS also conducts extensive training of foreign law enforcement on intellectual property crime and enforcement. In fact, in 2006 alone, CCIPS provided training and technical assistance to more than 3,300 foreign prosecutors, judges, and investigators from 107 countries.

ii. *Criminal Prosecutions*

At the core of the Department of Justice's IP enforcement program are criminal prosecutions, and the Department has worked hard to increase both the quality and the number of intellectual property prosecutions nationwide. Through the dedicated efforts of U.S. Attorney's Offices, our Criminal Division, and law enforcement across the country, the Department filed 217 intellectual property cases in FY 2007, representing a 7% increase over cases reported in FY2006 (204), and a 33% increase over cases reported in FY2005 (169). Also in FY2007, 287 defendants were sentenced on intellectual property charges, representing a 35% increase over FY2006 (213) and a 92% increase over FY 2005 (149).

The increase in prosecutions in FY 2007 is not an aberration, but rather reflects a continuing trend. For example, in FY 2006, federal prosecutors convicted 187 defendants of criminal copyright and trademark offenses alone – an increase of 57% over the previous year. Thirty-nine (39) of those defendants received terms of imprisonment of 25 months or more, a 130% increase from the 17 sentenced to such terms in 2005. Indeed, in the previous year (FY 2005), the Department prosecuted twice the number of defendants for intellectual property violations than it had in FY 2004.

As these statistics highlight, the Department's prioritization of the most serious intellectual property crimes is paying off in terms of more convictions and higher sentences. That, in turn, leads to increased deterrence for both the individual defendant and the general public. Deterrence is a key component of any effective enforcement strategy, and it is one reason that we publicize IP prosecutions through the print media as well as through online distribution channels, such as CCIPS' website, www.cybercrime.gov. Among other things, the website seeks to publicize the federal IP prosecutions of the CHIP Network, Assistant U.S. Attorneys, and CCIPS prosecutors, which in the past year alone have included:

Justice Department Announces Conviction in P2P Crackdown

On November 14, 2007, in the Eastern District of Pennsylvania, Duc Do, 25, of Orlando, Florida, pleaded guilty to a two-count felony information charging him with conspiracy to commit criminal copyright infringement and copyright infringement in violation of the Family Entertainment Copyright Act. Duc Do's conviction is the seventh in a series of convictions arising from Operation D-Elite, a nationwide federal enforcement operation against the illegal distribution of copyrighted movies, music, software and games over Peer-to-Peer ("P2P") networks employing the BitTorrent file-sharing technology.

Counterfeit Trafficker Gets 57 Month Prison Term, \$7 Million Forfeited

On October 12, 2007, in the Eastern District of Virginia, Abbas Chouman, 43, of Astoria, N.Y., was sentenced to serve 57 months in prison on one count of conspiracy to commit criminal copyright infringement by U.S. District Judge Henry E. Hudson of the

Eastern District of Virginia. Chouman was also ordered to forfeit \$7 million. Chouman pleaded guilty to conspiracy on July 3, 2007, for operating a store that sold more than \$7 million worth of counterfeit clothing. He was the fifth of seven defendants to be sentenced as a result of Operation Throwback, a multi-agency, multi-state federal enforcement operation targeting traffickers in counterfeit and pirated goods that resulted in arrests in four states during March of this year.

Two Bay Area Men Indicted on Charges of Economic Espionage

On September 26, 2007, in the Northern District of California, two Bay Area men were indicted on charges of economic espionage and theft of trade secrets, and a related conspiracy charge. Defendants Lan Lee and Yuefi Ge allegedly conspired to steal trade secrets involving computer chip design and development from their employer and another company, and sought to obtain venture capital funding from the government of China, in particular the 863 Program and the General Armaments Department. The 863 Program is a funding plan created and operated by the government of the People's Republic of China, also known as the national High Technology Research and Development Program.

Remaining Two Defendants Sentenced In Largest CD & DVD Manufacturing Piracy and Counterfeiting Scheme Prosecuted in the United States to Date

On August 6, 2007, in the Northern District of California, two co-defendants were each sentenced to 37 months in prison for conspiracy to commit copyright infringement and trafficking in counterfeit goods and labels. The defendants led piracy and counterfeiting schemes by using sophisticated replication machinery for the mass reproduction of copyrighted works. The sentences were the result of Operation Remaster, an extensive undercover investigation by the FBI in which agents seized approximately 494,000 pirated music, software, and movie CDs, and DVDs, and more than 6,135 stampers (devices used to produce high-quality counterfeit copies on optical disks), from 13 different locations. This case is believed to be the largest ever manufacturing case involving commercially duplicated, high-quality counterfeits that closely resemble authentic CDs in US history.

Former Chinese National Convicted for Committing Economic Espionage To Benefit China Navy Research Center in Beijing and For Violating the Arms Export Control Act

On August 2, 2007, in the Central District of California, defendant Xiaodong Sheldon Meng was convicted of violating the Economic Espionage Act, the Arms Export Control Act, and the International Traffic in Arms Regulations. Meng willingly violated the Economic Espionage Act by possessing a trade secret belonging to Quantum3D. Meng, knowing it would benefit the China Navy Research Center, exported source code for a visual simulation software program used for training military fighter pilots. This is the first conviction for the illegal export of military source code in US history.

Eighteen Charged with Racketeering in Internet Drug Distribution Network

On August 2, 2007, in the Southern District of California, a 313-count indictment charged 18 individuals with operating an online pharmaceutical distribution network known as Affpower. The Affpower organization received over 1 million Internet orders for controlled and non-controlled prescription pharmaceuticals from customers in all 50 states, and it generated more than \$126 million in gross revenue. Affpower allegedly paid licensed doctors to issue prescriptions based only on answers to health questionnaires filled out over the Internet and requiring no mental or physical exams. The defendants have been charged with various crimes, including racketeering and conspiracy to commit racketeering, distribution and dispensing of controlled substances, mail and wire fraud, and conspiracy to dispense and dispensing of misbranded drugs with the intent to defraud and mislead. Twelve individuals have already pleaded guilty in connection with the Affpower conspiracy.

29 Defendants in Three States Charged with Conspiracy to Smuggle Counterfeits

On June 6, 2007, in Brooklyn, New York, 29 defendants were charged in three separate complaints with conspiracy to smuggle over 950 shipments of merchandise into the United States through ports of entry at Newark, N.J., Houston Texas, Long Beach, California, New York Container Terminal in Staten Island, N.Y., and John F. Kennedy International Airport. The counterfeit merchandise was principally from China. Four of the defendants were also charged with money laundering. The charges resulted from a 19- month coordinated initiative by ICE and Customs and Border Protection.

Nine Convictions for Selling \$30 Million of Counterfeit Software on eBay

On June 22, 2007, in the District of Wisconsin, Department prosecutors obtained the eighth and ninth felony convictions involving the eBay auction sales of counterfeit Rockwell Automation software. All nine defendants pled guilty in separate proceedings to felony copyright infringement for selling counterfeit Rockwell Automation software on eBay. The software had a combined retail value of approximately \$30 million. These convictions are part of a larger Department initiative combating online auction piracy nationwide.

Extradited Australian Ringleader Gets 51 Months for Software Piracy

On June 22, 2007, in the Eastern District of Virginia, Hew Raymond Griffiths was sentenced to 51 months in prison for crimes committed as leader of one of the oldest and most renowned Internet software piracy groups worldwide. From his home in Australia, Griffiths violated the criminal copyright laws of the United States as the leader of an organized criminal group known as DrinkOrDie, which caused the illegal reproduction

and distribution of more than \$50 million worth of software, movies, games and music. This was one of the first ever extraditions for an intellectual property offense.

Ex-Employee of Coca Cola and Co-defendant Sentenced for Stealing Trade Secrets

On May 23, 2007, in the District of Georgia, two defendants were sentenced after being charged with conspiring to steal and sell trade secrets of the Coca Cola Company. Joya Williams, a former employee of Coca-Cola, was sentenced to 8 years in prison and Ibrahim Dimson was sentenced to 5 years in prison. The convictions resulted from an FBI investigation, which was initiated after PepsiCo provided the FBI with a copy of a letter from someone claiming to be a Coca-Cola employee and offering PepsiCo classified information about the Coca-Cola Company.

Eleven Indicted for Scheme to Import Adulterated Counterfeit Drugs for Sale on Internet

09/20/06 (Atlanta, GA): Eleven individuals and an Atlanta-based company were indicted on charges related to a scheme to sell counterfeit drugs over the internet. According to the indictment, the defendants marketed approximately 24 different drugs, including versions of Ambien, Valium, Lipitor, and Vioxx, through spam advertisements. Instead of buying safe and authentic generic versions of these vital drugs from Canada, customers were unwittingly buying adulterated fakes manufactured in an unsanitary house in Belize.

Texas Pharmacist Sentenced to Two Years in Prison for Selling Counterfeit Drugs

On September 25, 2006, in Houston, Texas, a licensed pharmacist was sentenced to two years imprisonment for selling counterfeit and misbranded Cialis and Viagra from China. He was convicted by a jury's verdict in May 2006 after a two-day trial during which the United States proved he had ordered counterfeit and misbranded pharmaceuticals from China via the internet and arranged for the drugs to be shipped to him at his home in Sugarland, Texas.

Internet Distributor of Pirated Software Sentenced to 6 Years' Imprisonment and Ordered to Pay \$4.1 Million in Restitution

On August 25, 2006, in the Eastern District of Virginia, a Florida man was sentenced to six years in prison and ordered to pay \$4.1 million in restitution for operating a for-profit piracy website known as BUYSUSA.com. The ordered forfeiture included a wide array of assets, including two Cessna airplanes, a helicopter, a Lamborghini, a 2005 Hummer, a 28 foot boat, and an ambulance.

Florida Men Sentenced to Terms of 7 and 8 Years¹ Imprisonment, respectively, for Massive Conspiracy to Sell Counterfeit Goods, Including Electrical Cords and Batteries

On August 25, 2006, in the Southern District of Florida, two men were sentenced to 97- and 87-month prison terms, respectively, for a massive conspiracy to sell counterfeit goods, including but not limited to electrical cords, batteries, and handbags bearing the counterfeit marks of Underwriters Laboratories, Duracell, and Louis Vuitton and Gucci, respectively.

Operations FastLink and SiteDown: Continued Convictions in Largest International Online Piracy Enforcement Actions

In addition to the above cases, the Department has continued to prosecute defendants from the two largest international enforcement actions ever undertaken against online piracy, known as Operations FastLink and SiteDown. The takedowns of these international FBI undercover operations in 2004 and 2005, respectively, resulted in a total of more than 200 search warrants executed in 15 countries; the confiscation of hundreds of computers and illegal online distribution hubs; and the removal of more than 100 million dollars worth of illegally-copied copyrighted software, games, movies, and music from illicit distribution channels. Countries participating in these U.S.-led operations included: France, Canada, Sweden, Denmark, the Netherlands, the United Kingdom, Portugal, Hungary, Israel, Spain, Australia, Singapore, Belgium, and Germany. Together, these operations have resulted in over 100 felony convictions to date. On October 3, 2007, in the Eastern District of Virginia, Department prosecutors obtained the 53rd conviction in Operation FastLink.

The Department's International Programs

As Operations FastLink and SiteDown show, prosecuting criminal organizations engaged in large-scale piracy and counterfeiting operations requires the ability to reach beyond America's borders. The growth in global trade and communications networks makes America's intellectual property assets increasingly susceptible to exploitation by criminal organizations that operate overseas. The Department has found in several investigations that criminals are using industrial-scale overseas manufacturing facilities to produce counterfeit products and pirated optical discs on a commercial scale. Criminals are also using servers located overseas to host massive repositories of pirated software, movies, and music – some of which have not yet been released on commercial markets – with the belief that they will be beyond the reach of U.S. law enforcement and outside the interest of foreign law enforcement.

The Department is attacking this significant problem with a multi-faceted strategy that includes increased dedication of personnel to foreign enforcement coordination; broader international outreach and education efforts; more joint investigations and enforcement operations with foreign law enforcement; and new and stronger mechanisms

for cooperation with counterfeit source countries such as China. For instance, in 2006, the Department established the first ever IP Law Enforcement Coordinator for Asia in Bangkok, Thailand; and this past November, the first IPLEC Coordinator for Eastern Europe began work in Sofia, Bulgaria. Both IPLEC positions are dedicated to advancing the Department's regional IP goals through training, outreach, and the coordination of investigations and operations against IP crime throughout the region.

On October 23-26, 2007, the U.S. Department of Justice hosted a regional conference of approximately 60 key law enforcement officials from over a dozen nations in Asia, with the aim of launching the IP Crimes Enforcement Network (IPCEEN), an international network targeting large-scale intellectual property crimes. This week-long gathering in Bangkok, Thailand, was organized by CCIPS and our IPLEC for Asia, with the assistance of the Association of Southeast Asian Nations (ASEAN), the U.S. Patent and Trademark Office, and the U.S. Department of State.

High-level police and customs officials and prosecutors from the United States, China, Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Philippines, Singapore, South Korea, Thailand and Vietnam took part in the conference. The IPCEEN will serve two primary functions in the future. First, it will operate as a forum to exchange successful investigation and prosecution strategies in combating piracy and counterfeiting crimes. Second, the IPCEEN will strengthen communication channels to promote coordinated, multinational prosecutions of the most serious offenders. Additionally, in recognition that effective prosecution of intellectual property crime depends heavily on cooperation between victims and law enforcement authorities, industry representatives also addressed the IPCEEN conference regarding the scope and severity of counterfeiting crimes in Asia, and discussed ways to collectively enhance enforcement efforts.

The Department's outreach is not limited by regions or countries. For instance, in 2006 alone, Criminal Division prosecutors provided training and technical assistance on IP enforcement to over 3,300 foreign prosecutors, investigators, and judges from 107 nations. However, some countries pose greater problems than others for U.S. intellectual property protection efforts. Pirated and counterfeit goods coming from China, for example, have been of particular concern to U.S. intellectual property rights holders and law enforcement. The Department is confronting this issue, in part, by building stronger international mechanisms to foster cooperation and joint investigations with China.

Any solution to this massive enforcement problem must begin with greater cooperation and coordination on joint criminal investigations and prosecutions. To that end, in March 2007, the Criminal Division hosted and chaired the inaugural meeting of the Intellectual Property Criminal Enforcement Working Group ("IPCEWG") of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation ("JLGE"), which included 15 Chinese law enforcement officials and the Ministry of Public Security's Vice Director General of the Economic Crimes Investigation Department, as well as officials from the FBI and Department of Homeland Security. The IPCEWG met again alongside the annual JLGE Plenary meeting in Beijing, China in June 2007. The working group's principal focus is on the development of more U.S.-China joint operations to combat

transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety.

The IPCEWG has already yielded unprecedented results. On July 23, 2007, 25 Chinese nationals were arrested and more than half a billion dollars worth of counterfeit software was seized as a result of the largest ever joint investigation conducted by the FBI and the People's Republic of China. This operation, code-named "Operation Summer Solstice," was one of the cases nominated to the IPCEWG for joint investigation and prosecution. China's Ministry of Public Security ("MPS") searched multiple businesses and residential locations and seized more than a half billion dollars in counterfeit and pirated software, \$7 million in assets, and confiscated over 290,000 counterfeit software CDs and Certificates of Authenticity. The criminal syndicate dismantled by the FBI and MPS is believed to be the largest of its kind in the world, responsible for distributing an estimated \$2 billion in counterfeit Microsoft software.

The Department also led an initiative with members of the G8 industrialized nations to develop a framework for cooperation on intellectual property crime investigations. In November 2006, all members of the G8's Lyon-Roma anti-crime group approved the "Principles and Recommendations for Cooperative Investigation and Prosecution of Serious and Organized Intellectual Property Rights Crime," which set forth a foundation for future cooperation on criminal IP enforcement among the G8 members. In June 2007, the G8 Leaders endorsed the Principles and Recommendations at their annual Summit in Munich, Germany.

The Department's Civil Enforcement Efforts

The Civil Division has supported the enforcement of IP rights by owners of those rights principally through participation in private law suits as *amicus*. Most recently, on December 3, 2007, the Department moved to intervene to defend the constitutionality of the Copyright Act's statutory damages provision in post-trial briefing in *Capitol Records Inc. v. Thomas*, where a jury convicted a peer-to-peer user of willful copyright infringement and imposed statutory damages. In addition, since October 2004, the Department has filed 18 *amicus* briefs in 14 Supreme Court cases, and numerous other cases in the lower courts. Recently, in three important patent cases -- *Microsoft v. AT&T Corp.*, *KSR International v. Teleflex*, and *MedImmune v. Genentech* -- the Supreme Court adopted the arguments of the Department recognizing the important balance between intellectual property rights and the overarching aim of spurring innovation.

In addition, the Civil Division's Office of Consumer Litigation ("OCL") handles criminal and civil cases involving intellectual property laws that protect public health and safety, particularly in the regulation of drugs and medical devices by the Food and Drug Administration. To maintain the high quality of drugs and medical devices sold in the United States, allegations regarding counterfeit or adulterated drugs or medical devices are taken very seriously, as problems associated with these drugs or devices can threaten

human health. In one recent case that is indicative, *United States v. Albers*, OCL attorneys have assisted in the prosecution and conviction of top officials in companies charged with distributing counterfeit Lipitor, among other drugs. To date, twenty-four individuals have been charged, and sixteen convicted in connection with that investigation. More than \$5.2 million in assets have been ordered forfeited and terms of imprisonment totaling 34 years have been imposed.

Since the 2006 Progress Report of the Department of Justice's Task Force on Intellectual Property, the Antitrust Division has continued to promote respect for intellectual property rights in the administration of antitrust law through numerous competition advocacy presentations to international and United States audiences. In April 2007, the Division, together with the Federal Trade Commission, issued a report entitled ANITRUST ENFORCEMENT & INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION, which set forth key areas of debate and consensus regarding the antitrust analysis of six categories of intellectual property licensing practices. The Division also issued two favorable business review letters analyzing the competitive impact of patent licensing policies proposed by technology standard-setting organizations, and it assisted the Solicitor General in drafting briefs on IP-related cases including *Quanta Computer, Inc. v. LG Electronics, Inc.*, for which the Supreme Court has granted *certiorari*.

Interagency Coordination

The Department plays an active role in the President's STOP initiative, working with other federal agencies to ensure an effective government-wide approach to protecting intellectual property rights. The Department also works closely with industry and victim rights holders to strengthen the public-private partnership so essential to strong IP protection. For instance, as part of a focused outreach to the private sector, the Department hosted a series of training conferences for IP rights holders on topics including, 1) the investigation and prosecution of federal IP cases, 2) the parameters for permissible cooperation and assistance in federal investigations by private rights holders, and 3) procedures and tips for how best to report criminal violations of the copyright, trademark, and trade secret laws. The latest such victims' rights conference was sponsored jointly with the U.S. Chamber of Commerce on November 28, 2007, in Miami, Florida. Approximately 100 members of industry and the law enforcement community attended the one-day training conference that covered, among other things, criminal case studies and a detailed presentation on the permissible and appropriate parameters for industry's assistance to federal law enforcement.

Thanks in no small part to the efforts of Chris Israel, the Coordinator for International IP Enforcement, the Department has been able to work effectively with other STOP agencies to support important Department initiatives. For example, the Department supports the IP enforcement missions of other Departments and agencies, including the Special 301 process and Free Trade Agreement negotiations run by the U.S. Trade Representative; the State Department's IP Training Coordination Group; and

public outreach events for small businesses developed by the Department of Commerce. Despite the widely divergent roles played by many of the agencies involved in the STOP initiative, coordination and support amongst agencies has never been greater in the effort to enforce IP rights.

The Need for New Criminal Enforcement Tools

The Department shares the Committee's goal to improve enforcement efforts by improving tools for Federal investigators and prosecutors to pursue counterfeiting and piracy cases. We applaud the Committee's leadership in this area and we are particularly appreciative that H.R. 4279, the *Prioritizing Resources and Organization for Intellectual Property Act* ("PRO IP Act"), introduced on December 5, 2007, contains many important provisions to enhance our tools. We are still in the process of reviewing this legislation, and we hope to be able to provide more comprehensive comments at a later time. At this time, however, we would like to offer some preliminary comments and also flag a few areas of major concern.

i. Shared Proposals

First, we greatly appreciate that the *PRO IP Act* incorporates (in Titles I and II) a large number of proposals that the Department previously recommended in the *Intellectual Property Protection Act of 2007* ("IPPA"), which the Attorney General transmitted to Congress on May 14, 2007. These provisions will help ensure that U.S. law enforcement is equipped to better protect intellectual property rights and provide real deterrence against criminals seeking unjust enrichment by exploiting the creativity, innovation, and reputation of American artists, inventors, and businesses.

Specifically, the PRO IP Act includes the following important provisions:

- Increases the maximum penalty for counterfeiting offenses from 10 years to 20 years imprisonment where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury, and increases the maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death;
- Provides stronger penalties for repeat-offenders of the copyright laws;
- Implements forfeiture reforms to ensure the ability to forfeit property derived from or used in the commission of criminal intellectual property offenses;
- Strengthens restitution provisions for certain intellectual property crimes;
- Clarifies that registration of copyright is not a prerequisite to criminal prosecution;

- Ensures that the exportation and transshipment of pirated goods through the United States is subject to criminal penalties, just as the exportation of counterfeit goods is now subject to criminal penalties.

At the same time, I note that the *PRO IP Act* does not include certain provisions recommended by the Department in the *IPPA* that would assist prosecutors in combating IP crime, such as criminalizing attempts to commit criminal copyright infringement, harmonizing the forfeiture and restitution provisions for Digital Millennium Copyright and Economic Espionage Act offenses with those of other IP crimes, and amending 18 U.S.C. § 2516 to include criminal copyright infringement and trafficking in counterfeit goods or services as predicate offenses for which a wire or oral intercept may be obtained. We hope to further discuss these with this Committee in the coming weeks and months.

ii. *Restructuring Proposal: Title V*

Title V of the *PRO IP Act* would effect fundamental and substantial changes to how the Department conducts intellectual property enforcement. For example, it mandates that the Department's criminal IP enforcement function be taken out of the Criminal Division and placed into a newly-created Division dedicated solely to IP. This Division would be headed by an "Intellectual Property Enforcement Officer" reporting directly to the Deputy Attorney General. Title V also calls for the rapid deployment of 10 new CHIP Units, 5 new IP Law Enforcement Coordinators overseas, and a large number of IP-dedicated FBI personnel to field offices and FBI Headquarters.

These restructuring proposals raise a number of serious concerns for the Department. For example, we believe that it would be ill-advised to create a new IP Division within the Department of Justice, headed by an IP Enforcement Officer. There are a number of factors that we believe the Committee should weigh carefully before it takes such sweeping action, including the following:

- 1 The Department of Justice fights against the theft of intellectual property most visibly through its enforcement of the Nation's criminal laws, and these efforts benefit greatly from close collaboration with other components of the Criminal Division, including but not limited to the Office of International Affairs ("OIA"), the Organized Crime and Racketeering Section, the Asset Forfeiture and Money Laundering Section, and the Narcotics and Dangerous Drug Section. For example, OIA was instrumental in CCIPS' successful extradition from Australia of Hew Raymond Griffiths earlier this year, to face criminal copyright charges. On June 22, 2007, Griffiths was sentenced to 51 months' imprisonment for his leadership of one of the most renowned piracy groups operating on the Internet. CCIPS also works very closely with OIA and the Criminal Divisions Overseas Prosecutorial Development and

Training (OPDAT) section in a number of important international efforts, including the aforementioned JLG, the G8, international training, and capacity building, and the IPLEC program. Among other sections, CCIPS works with the Narcotics and Dangerous Drug Section on prosecutions of illegal online pharmacies, with the Organized Crime and Racketeering Section on violent organized criminal syndicates that are branching out into the lucrative market for pirated and counterfeit goods, and with the Asset Forfeiture and Money Laundering Section (AFMLS) on forfeiture matters. Moving the Department's IP enforcement efforts out of the Criminal Division will disrupt important relationships within the Criminal Division and will make intradepartmental IP coordination more difficult.

- 2 CCIPS supports and trains the national CHIP Network, in conjunction with EOUSA. The CHIP Network of AUSAs consists -- like CCIPS itself -- of prosecutors specially-trained to combat both computer crime and IP offenses. This network of approximately 230 AUSAs nationwide is a cornerstone of the Department's IP enforcement program. To divide the IP and computer crime functions of CCIPS between separate Divisions would undermine its ability to continue to provide effective operational support and training to the CHIP Network, which in turn would undermine the cohesion and integration of the CHIP network itself.
- 3 A growing portion of IP crime involves the Internet, and virtually all the large, multi-district IP cases led by CCIPS have involved computerized evidence. Accordingly, the IP enforcement mission requires expertise and core competencies in both IP and computer crime, and the Department benefits greatly from the synergies between the two. For example, CCIPS's recently-established Cybercrime Laboratory provides critical forensic support to both IP and computer crime investigations. This close collaboration within CCIPS, as well as within and among the national CHIP Network, could be jeopardized if the IP enforcement component were split off from computer crime and placed into a separate Division. Moreover, it may lead to duplicative administration and training programs.
- 4 The Department currently has 14 attorneys within CCIPS dedicated exclusively to IP enforcement. Even with additional IPLECS mandated in Title 5, the "IPE Division" would be significantly smaller than any other Division in the Department, but would still carry significant administrative overhead.
- 5 To the extent that Title V is intended to make the IP enforcement program directly accountable to the Office of the Deputy Attorney General, that is already being done under the current structure. Both the Criminal Division and EOUSA report directly to ODAG. The IP Task Force reports to the Attorney General through ODAG. Thus, the current structure is not only working and achieving substantial results, but it also

is ensuring that its components are accountable to the highest levels of the Department.

The Department has demonstrated its willingness to reexamine, reassess, and restructure its IP enforcement programs as necessary to maximize its effectiveness, as evidenced by the establishment of the IP Task Force and the rapid implementation of its 31 recommendations. Notably, at no time during the IP Task Force's exhaustive internal review of the Department's IP program, its many consultations with prosecutors in the field, or its frequent discussions with investigators and representatives of the IP industry, did anyone suggest the need to create an entirely new Division for IP. The Department's IP enforcement efforts have significantly increased under the current effective structure.

Restructuring Proposal: Title III

Finally, with respect to Title III and its creation of a U.S. Intellectual Property Enforcement Representative in the Executive Office of the President having various responsibilities and exclusive cross-agency powers, while I am not in a position to provide the Administration's views at this time, I note that the Department historically has been concerned with government re-structuring proposals in which non-law enforcement officials are empowered to develop policies and objectives directly impacting criminal investigations and prosecutions. Given the need for criminal enforcement policies and priorities to be set by the Department of Justice in an impartial manner based on law enforcement needs and the interests of justice, such proposals require careful scrutiny to avoid such encroachments. Moreover, Title III is objectionable because the function of the Office of the U.S. Intellectual Property Enforcement Representative is more appropriately handled in a federal enforcement agency, and it is not an office designed to provide policy support to the President.

In addition, the Department has stated on past occasions that we should be careful not to divert finite resources away from our core prosecution mission merely to fuel the creation, maintenance, and servicing of additional bureaucracy, however well-intended that new bureaucracy may be. Past re-structuring proposals have been premised on the assumption that federal IP enforcement is hampered by a lack of information sharing and coordination within the United States government, with state and local officials, with industry, and with law enforcement officials overseas. In the Department's experience, however, information flow and coordination among government agencies has never been better. Government agencies having a stake in IP enforcement regularly coordinate and exchange information through informal channels as well as formal groups, such as the National Intellectual Property Coordination Council (NIPLECC), which coordinates ongoing work under STOP. The STOP initiative has helped to coordinate and improve the U.S. government's overall response to protecting intellectual property rights.

One of the reasons the STOP initiative has been effective is that it sought to work through existing interagency coordinating mechanisms and statutory regimes, rather than creating additional bureaucratic structures and reporting responsibilities. In 2005, Congress created the Office of the International IP Enforcement Coordinator, and made

the head of that office also the Director of the National IP Law Enforcement Coordination Council (NIPLECC). Because the STOP initiative provides a government-wide strategy for protecting American intellectual property, the Office of the International IP Enforcement Coordinator, working through NIPLECC and other agencies, has been well situated to coordinate implementation of the STOP initiative.

To the extent that there is a desire to create more permanence than the statutory regime already in place, we think it especially important that due care be taken not to create additional bureaucracy and rigidity at the expense of actual enforcement efforts. The STOP Initiative, as coordinated by the International IP Enforcement Coordinator, has been successful in large part because it has allowed agencies the necessary flexibility to maximize the effective use of their resources to best fulfill their individual statutory missions.

Conclusion

In conclusion, I would like to thank you, Chairman Berman, and other Members of the Committee, for your leadership on this critically important enforcement issue. The Department shares your commitment to strengthening the U.S. government's enforcement of intellectual property rights, and we are working aggressively to fulfill our criminal enforcement mission. The Department looks forward to continuing to work with this Committee on the PRO-IP Act, and to sharing law enforcement experience and our ideas on how best to achieve our common goals.

Mr. BERMAN. Thank you very much, Ms. Mandelker.
Mr. Hoffa?

TESTIMONY OF JAMES P. HOFFA, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WASHINGTON, DC

Mr. HOFFA. Thank you very much, Chairman Berman, Ranking Member Coble, and Members of the Subcommittee. It is a great honor to be here today. I want to thank you for the opportunity to testify about this very important bill, H.R. 4279. It is very important because it protects intellectual property rights and raises the fines for stealing copyrights.

I am here on behalf of the Teamsters Union and our 1.4 million members. I am also speaking for all workers who are lucky enough to belong to a union, and those who belong to a guild or an association. I am also speaking for those that are not as lucky to belong to a union, but we are here to protect them, too.

Intellectual property theft is a terrible problem for American workers. As Chairman Conyers said, over 750,000 jobs have been lost. By the way, I say hello to my great friend, the great congressman from Michigan, John Conyers. We go back many, many years.

You know, we are talking about where do we go from here? How do we protect these jobs at a time that we see America losing jobs? We see trade deficits out of control. Where do we start? One of the ways to start is to stop the counterfeiting and stop the invasion of these products and all the different things we see coming into our markets.

I also appreciate the fact that there has been tremendous work done by the Coalition Against Counterfeiting and Piracy. The job they have done in documenting many of the things that we are talking about here today is very important. They have spoken out about these crimes that hurt corporate profits and take American jobs.

Some people might think that it is no big deal to buy a knockoff handbag or a fake DVD, but it is. These crimes kill jobs. They take good jobs and it is in the hundreds of thousands. As part of our fight for good jobs, my union and many other unions have battled against so-called "free trade agreements" that open the door for piracy. We fought NAFTA and we fought PNTR. We have said all along that they kill American jobs and hurt the American economy, but even in my wildest dreams did I ever think the damage would be as severe as it is, or that counterfeiting would be as widespread as it is today.

China is now the biggest source of knockoff products and pirated goods in the world. There are 88 different companies in China that make knockoff Yamaha motorcycles. Can you imagine that? Almost all the personal computers in China use pirated operating systems. When the Chinese government tried to crack down on counterfeiting last year, they confiscated 85 million books, movies and computer discs.

In the United States, if we hadn't agreed to PNTR with China, we might not now be dealing with tainted food, exploding cell phone batteries, toxic toothpaste, and defective tires. Today, China's aggressive export agenda is more than our country can handle.

The part of the bill that creates new intellectual property enforcement positions within the executive branch will do much to control and address the problems we are talking about.

Changes in civil and criminal law to keep pace with new technologies is also important. This bill is particularly relevant to my union. We represent workers in many industries that are hurt by counterfeiting and piracy. Teamsters work very hard to keep good-paying jobs in this country. We are very active in the motion picture industry. We also have many members that are animal handlers, location managers, and drivers who transport actors around the sets. We are very active in that industry and we have seen layoffs because of counterfeiting and knockoffs.

People who steal movies may think that they are not hurting anyone, but they are. They are stealing 140,000 jobs a year. They are also stealing millions of dollars from pension and health and welfare funds that have revenues that are linked to the sales of DVDs.

The recording industry has been hit even harder than the motion picture industry. In the past few years, EMI Group, Warner Music, Sony Music, and Universal Music Group have laid off thousands of American workers because of theft and counterfeiting. All told, the American entertainment industry loses 370,000 jobs to pirates and counterfeiters every year.

Some people think that they have a right to information on the DVDs and CDs, stuff they can take right off their computer. They don't think that they are hurting anybody, but in the end they really are. I think that is wrong. People have a right to earn money from the intellectual property that they create. By the way, the Teamsters Union supports our brothers who are very active in this strike with the Writers Guild. The television and motion picture industry wouldn't exist without the content that these proud union members provide.

The Teamsters represent several hundred thousand truck drivers. According to the Consumer Reports, there is a growing problem with counterfeiting of brake pads. There are brake pads that are even made with kitty litter, and we find out that many, many people have had this problem and we see that there are problems there.

I see that my time has run out. Let me summarize by saying this is a continuing problem, and what we have to do is to have strong legislation to address it. But we have to do more than that. We have to do something with trade. We have to inspect what comes into this country, whether it comes across the border from Mexico or whether it comes in from the Far East. It is a global problem that all of us can address, and I think that this bill is a very important beginning to enforcement and to stop counterfeiting.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Hoffa follows:]

PREPARED STATEMENT OF JAMES P. HOFFA

TESTIMONY OF

JAMES P. HOFFA

GENERAL PRESIDENT

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

ON

"PRIORITIZING AND ORGANIZATION FOR INTELLECTUAL PROPERTY ACT

H.R. 4279

BEFORE THE

SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL
PROPERTY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

DECEMBER 13, 2007



Chairman Berman, Ranking Member Coble and Members of the Subcommittee:

Thank you for inviting me here today to testify on H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007" otherwise known as the PRO IP Act.

I appear before you today as the General President of the 1.4 million men and women of International Brotherhood of Teamsters, but also on behalf of all the men and women of the unions, associations and guilds in the industries impacted by this very important issue. In fact I believe my message reflects the concerns of all workers, even those not fortunate enough to have the benefits of union membership.

Mr. Chairman and the other co-sponsors of this bill, I applaud your efforts, and those of my dear friend and fellow Michigander Chairman John Conyers, to highlight the seriousness of this issue. While there are those who would minimize the impact of an illegally copied DVD here or a cheap imitation of a designer tie there, the total impact of these crimes is very real. Hundreds of billions of dollars per year in lost revenue and the resulting lost taxes, and millions of quality jobs, the kind of jobs my Union has fought for 100-plus years, should never be dismissed so easily.

I am particularly pleased to be able to support legislation that not only has bipartisan support but also brings Labor and Management together, something I'm sure you'd agree doesn't often happen. I appreciate the good work that Rick Cotton and the CACP (Coalition Against Counterfeiting and Piracy) have done to highlight the damage of these crimes, not just to the corporate bottom line, but also to the lives of workers who give so much to produce these goods and services.

I also want to point out that the entertainment industry, where much of the piracy damage is done, is one of the most unionized industries

in the world, with consistently good wages and benefits (despite the current differences of opinion in the writers' strike). The Teamsters Union supports our brothers and sisters in their efforts to obtain a good contract that recognizes their hard work and creativity. These are the quality jobs that symbolize the American workforce in an industry that is uniquely American and we are prepared to fight to protect it.

In addition to job loss, lost profits in the entertainment industry directly impact our brothers and sisters in the industry unions, guilds and associations. Many of these workers' pension and health and welfare funds are directly linked to sales of DVDs and other entertainment products. Piracy and counterfeiting is literally stealing millions of dollars out of their pockets.

In his introduction of H.R. 4279 last week, Chairman Conyers said that,

"This legislation is an important and necessary step in the fight to maintain our competitive edge in a global marketplace."

As I believe the members of this committee are aware, my union has been very vocal in our efforts to raise concerns about the passage of Free Trade Agreements that we believe will put American workers and the American economy at a disadvantage. From NAFTA to China PNTR, we have fought to make Congress and the American public aware of the possible pitfalls of a run-away trade agenda. And now it's China that leads the world as the main source for counterfeit goods.

As I travel the country, I take no great pleasure in having workers, business owners and the media tell me I was right to have fought those fights. Set aside, for purposes of this hearing, the issue of the inability of the American worker to compete on an unlevel playing field; in my wildest dreams I never believed we would see the impact

on American families that we have seen as a result of goods and products that are now being imported to the U.S.

Unsafe levels of lead and other toxins in our children's toys; unsafe food causing serious illnesses, especially among the elderly and the very young; untested and unsafe pharmaceuticals... these issues and more are, I believe examples of a trade agenda that far outpaced our country's ability to monitor it.

So again, I thank you for taking steps to correct this problem by bringing about changes necessary to protect the American public. The provisions in this legislation that create new Intellectual Property Enforcement positions within the White House and Department of Justice, in addition to a new Division and assignment of additional staff in the FBI, and IP specialists at the state level and Internationally are vital to efforts to begin to get control of this problem. Needed changes in civil and criminal laws to ensure that the legal system can keep pace with constantly evolving technologies are vital.

This legislation is particularly important to my union because of the many industries that are impacted by counterfeiting and piracy. Chairman Conyers in his introduction of H.R. 4279 puts the cost of these crimes at \$200 to \$250 billion and 750,000 lost jobs for America's workforce.

Many people think of the Teamsters as just a transportation union; true, several hundred thousand Teamsters go to work every day with the task of making sure America's products move smoothly throughout the country. But the fact is, we are America's most diverse union, with members who, as we say, work in industries from A to Z, from Airline Pilots to Zookeepers. And many of those 750,000 lost jobs are in industries where my Teamsters work.

As an example, within the entertainment industry alone, we know that \$60 billion a year in revenue and more than 370,000 jobs per

year are lost. Many of those jobs are performed by Teamsters. Our Teamster drivers move the equipment, the crew and the actors from location to location when a movie is being filmed. Others work as location managers and some are animal handlers. Teamsters at UPS, our largest employer, deliver millions of DVD's, video games, CD's and computer software produced by reputable manufacturers. When pirated DVDs and CDs are sold on a street corner in an underground economy, we lose jobs.

Our members in the food processing industry and their employers pride themselves on providing safe, quality produce in sanitary conditions yet are often painted with the same brush as foreign producers who do not meet the same standards. Our members produce fine clothing products with brand names such as Ralph Lauren, Calvin Klein, Izod, Sean John and other manufacturers, but cannot compete with products sold with fake labels and inferior materials in sweatshop conditions. Thousands of Teamster members work in warehouse, distribution or production of products including automotive parts, pharmaceuticals, dog and cat food, electronic components; batteries, tools and even baseball caps. All of these types of products are under attack in the intellectual property war against counterfeiting, piracy and adulterated products.

As for our members who drive a truck, a bus, a package car, pilot an airliner or operate a locomotive engine, we work constantly on their behalf to ensure they have the safest and most up-to-date equipment so that they return home at the end of the day to their families. As you can imagine, we are extremely concerned about the increasing instances of counterfeit brake pads made from kitty litter, sawdust and dried grass as highlighted in a recent Consumer Reports study (*Consumer Reports.com January 2008 report*). I'm certain we all recognize the danger of a fleet of long-haul 18-

wheelers with kitty litter for brakes, or airplanes flying with unsafe, counterfeit airplane parts.

Obviously, lost revenue means lost taxes. Lost tax revenue has a significant and potentially debilitating impact on American working families.

By most anyone's calculations, the bridges and roads that our members both build and travel over are in a critical state of disrepair throughout the country. Governments at all levels are scrambling to identify funding sources to pay for these desperately needed projects; failure to do so results in serious safety concerns and lack of work for men and women in the construction industry.

To public employees, it can be doubly painful. The Teamsters, along with the American Federation of State, County, Municipal Employees, the Service Employees International Union, the American Federation of Government Employees, the American Federation of Teachers and other unions and associations have millions of members who derive their income from tax revenues. They understand better than most the impact of the billions of dollars in lost taxes that is the result of losing \$200 billion in revenue; fewer pay raises to help keep up with rising gas prices, mortgages and tuition, while their own taxes are increased to make up for budget shortfalls.

The bottom line for American workers is this: The effort you are undertaking here will significantly impact peoples' lives. Certainly there are those who will portray this legislation as just an attempt by big business and, perhaps big Labor, to protect their own interests. While we are not always on the same side up here on Capitol Hill, on this issue we both have the same interests -- protecting the rights of Americans who create, produce, deliver, buy and utilize goods and services that they want and need.

And education will play a key role in our chances for success. An entire generation of I-pod and Internet users are coming of age believing that there is no crime associated with piracy. Our message today, and the good work you are doing on this legislation, can begin the process of forcing the public to recognize the price we pay for this shortsighted thinking.

I know that the Senate is also considering legislation to address this issue, and the Teamsters will work hard to help pass a good bill. I hope the New Year will find both Chambers ready to agree to legislation and move it to the President's desk for his signature.

Thank you for the opportunity to testify here today and I look forward to answering any questions you may have.

Mr. BERMAN. Thank you, Mr. Hoffa. It is great to have your support.

And speaking of support, I recognize Gigi Sohn.

**TESTIMONY OF GIGI B. SOHN, PRESIDENT AND CO-FOUNDER,
PUBLIC KNOWLEDGE, WASHINGTON, DC**

Ms. SOHN. Chairman Berman, Chairman Conyers, Ranking Member Coble and other Members of the Subcommittee, thank you for inviting me to speak today on H.R. 4279. I want to thank you first for keeping the process of looking at this bill open and inclusive, and I do want to praise you, both Chairmen, for you and your staff's work in deleting some of the most onerous provisions, as you mentioned before, Mr. Berman. Thanks are definitely due to both of you.

While I agree that enforcing IP laws is essential to encouraging creativity and promoting economic growth, certain parts of the bill could undermine these goals by threatening ordinary consumers and legitimate innovators with broad and inappropriate penalties. I would like to focus specifically on three provisions.

First, section 104 of the bill would disaggregate the parts of a compilation or derivative work for the purposes of calculating damages, multiplying the already massive statutory damages associated with copyright infringement. Increasing damages this way will have a severe chilling effect on legitimate users of copyrighted work and on innovation. This stands in stark contrast not only to the legislative history of the 1976 Copyright Act, but also to the goals of the Patent Reform Act of 2007. The apportionment of damages in that bill recognizes the harm to innovators inherent in disproportionate damages awards.

Second, section 202 significantly expands the forfeiture provisions attached to four different kinds of IP violations, applying the exact same standards to each. This expansion risks even further upending rational copyright remedies and ignores the significant differences between copyright, trademark and anti-bootlegging laws. Section 202 allows forfeiture of materials only remotely connected to an infringement, including materials and devices merely intended to be used in infringement. It also creates a new civil forfeiture remedy with a far lower burden of proof.

Third, section 102 eliminates the requirement that copyrights be registered before criminal enforcement proceeds. Copyright registration is critical to informing the public of a work's copyright status and its proper owner. Without a vibrant copyright registry, users of a work are often unable to find the copyright owner and obtain permission to use that work. This leads to orphan works that can no longer be exhibited, reproduced, or seen. Reducing the incentives for creators and authors to register their works can only worsen this problem.

These three provisions represent a step away from a rational, realistic copyright regime, one that can allow a copyright law enacted before the invention of the VCR to adapt to a post-YouTube world.

Numerous problems confront current copyright law, but increased enforcement is not a cure-all. When the mere act of forwarding your e-mail or posting pictures on your blog can infringe

copyright, it makes more sense to have the law comport with reality before increasing the sanctions for infringement.

While a complete review and overhaul of copyright law might be an ideal, I propose a set of six more modest reforms for the immediate future. They include, one, reforming fair use. With the introduction of new technologies, courts have recognized newer forms of fair use like time-shifting and other personal transformative and incidental uses of copyrighted works yet these uses continue to be challenged by litigious plaintiffs. These fair uses should be expressly added to section 107. Fair use should also be restored to section 1201 of the DMCA and passing H.R. 1201 would be good place to start. I was pleased that that is something you might consider, Mr. Chairman.

Two, placing reasonable limits on secondary liability. Innovators should not be afraid to innovate. Congress should codify the standards set out in Sony, that technologies with substantial non-infringing uses are not liable for infringement committed by others.

Three, preventing copyright abuse. Copyright owners should be discouraged from filing spurious DMCA takedown notices or from threatening copyright lawsuits in order to suppress speech.

Four, providing for fair and accessible licensing. Licensing provisions need to be clear, simple and rational for creators and users. The fee that webcasters pay to composers and performers should be reduced to a reasonable level, and performing artists should be compensated for public performances of their works regardless of the medium on which they are played.

Five, addressing the problem of orphan works. I discussed that already.

Six, informing consumers of digital restrictions on their media. Consumers should know before they buy digital media whether it is restricted by DRM and they should know the legal penalties for removing it.

Each of these proposals directly addresses a situation where a consumer innovator might face the already draconian sanctions of copyright law. If the disconnect between the law and the reality of copyright isn't tackled first, increasing the severity of those sanctions further does very little good.

Thank you again for the opportunity to testify and I look forward to your questions.

[The prepared statement of Ms. Sohn follows:]

PREPARED STATEMENT OF GIGI B. SOHN



**Testimony of Gigi B. Sohn
President, Public Knowledge**

**Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Courts, the Internet, and Intellectual Property**

**Hearing on:
H.R. 4279, the Prioritizing Resources and Organization for Intellectual
Property Act of 2007**

**Washington, DC
December 13, 2007**

**Testimony of Gigi B. Sohn
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**Before the
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H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property
Act of 2007**

December 13, 2007

Chairman Berman, Ranking Member Coble, and members of the Subcommittee, my name is Gigi B. Sohn. I am the president of Public Knowledge, a nonprofit public interest organization dedicated to defending user rights in the emerging digital culture. I want to thank you for inviting me to speak today on H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property Act of 2007, and the opportunity to discuss the need for reform in copyright law.¹

Introduction and Summary

While we agree that enforcement of intellectual property laws is essential to encouraging creativity, certain provisions in the proposed Act risk undermining this essential goal by threatening ordinary consumers with an overbroad and inapposite enforcement regime.

The Act has undergone many changes over the course of the last few months, and I want to thank the Subcommittee for working hard to maintain open channels of communication as the bill has evolved through its various drafts. While this Act is a

¹ I would like to thank Public Knowledge Staff Attorney Sherwin Siy for his assistance in preparing this testimony.

lengthy and wide-ranging piece of legislation, I would like to focus today on three particular provisions that remain problematic to Public Knowledge and to the many companies, trade associations, and public interest groups with which we work.

First, the bill would disaggregate the parts of a compilation or derivative work for the purpose of calculating damages, multiplying severalfold the already-onerous statutory damages associated with copyright infringement. Eliminating the current method of calculating these damages worsens the already evident problem of disproportionate penalties for infringement. Such a provision stands in stark contrast to the House's work to reduce the ill effects of excessive damages in patent law.

Second, the bill significantly expands the forfeiture provisions attached to four different types of IP violations, applying the exact same sets of standards to each. This expansion risks even further upending rational copyright remedies and ignores the significant differences in the various subject matters of copyright, trademark, and anti-bootlegging laws.

Third, the bill eliminates the requirement that copyrights be registered before criminal copyright enforcement proceeds. Copyright registration serves an essential purpose in giving the public notice of a work's copyright status and the proper holder of copyright. Without a vibrant copyright registry, subsequent users of a work are often hard-pressed to locate the original copyright owner to obtain permission to use the work, leading to "orphan works" that can no longer be exhibited, reproduced, or seen. Reducing the incentives for creators and authors to register their works can only exacerbate this problem.

In summary, these provisions of the bill merely increase penalties and remove safeguards against disproportionate awards. They represent a step away from a rational, realistic copyright regime—one that can allow a law last overhauled before the invention of the VCR to adapt itself to a world of Tivo and YouTube. It's no secret that the law needs to better reflect technological and social reality. Otherwise, we subject millions of people to the threat of unrealistically harsh penalties. These issues ought to be addressed more directly, before we simply raise those penalties again.

Disaggregation of Damages

Section 104 of the bill proposes to significantly increase damages by allowing each part of a compilation or a derivative work to be counted as a separate work for the purposes of infringement. This is precisely what current law prohibits. The current language states that for statutory damages purposes, "all the parts of a compilation or derivative work constitute one work."²

The major change proposed by the bill would greatly escalate statutory damages beyond their currently bloated state. Though statutory damages are necessary to allow for action when actual damages are insufficient deterrence or difficult to measure, current levels, where *non-willful* infringers must pay a minimum of \$750, and may pay up to \$30,000 per violation, and willful infringers up to \$150,000, are already stretching the bounds of reason.

A forthcoming article by Utah law professor John Tehranian discusses, among other things, the disproportionate nature of damages. Cataloguing the ordinary activities of a hypothetical person—forwarding emails, passing out news articles, reciting a poem, singing "Happy Birthday"—Tehranian finds that these mundane acts of a single day can

² 17 U.S.C. 504(c)(1).

subject his imaginary person to \$12.45 million in damages,³ all without a single act of P2P file sharing or other commonly recognized "bad acts."

In another example, much recent news coverage has been devoted to the case of Jammie Thomas, a single mother in Minnesota who, found liable for sharing 24 songs on a P2P network, was fined \$222,000, or \$9,250 per song.⁴ The fact that this award is far below the maximum penalty for willful infringement, or even innocent infringement, is less a sign of clemency on the jury's part, and more of a clear indication that statutory damages exceed any value rationally tied either to the actual injury or any effective deterrent value. Instead, such penalties merely distort the ongoing copyright debate by forcing faster and larger settlements, rather than bringing important legal questions before the courts.

The bill heightens these problems by allowing, for instance, an infringed album of ten songs to multiply tenfold the damages awarded against the infringer. A copy of a scholarly journal, if found to be infringing, could be counted several times over, with a new \$150,000 penalty for each article. A series of 24 photographs reprinted from the same collection would suddenly risk a multi-million dollar penalty. In the Internet context, a highly litigious website or magazine owner could assert a separate infringement for every separate photograph in a magazine, or every separate image and block of text on a website.

Increasing damages through disaggregation will also have a major chilling effect upon legitimate uses of copyrighted works, while providing little additional deterrent

³ John Tehranian, *Infringement Nation: Copyright Reform and the Law/Norm Gap* 2007 UTAH L. REV. (forthcoming 2007) (online draft at 543-46), available at http://www.turnergreen.com/publications/Tehranian_Infringement_Nation.pdf

⁴ Jeff Leeds, *Labels Win Suit Against Song Sharer*, N.Y. TIMES, Oct. 5, 2007, <http://www.nytimes.com/2007/10/05/business/media/05music.html>

effect on willful commercial pirates. Recently, twenty five different intellectual property law scholars have expressed their concern over this particular provision, noting, for example, that a documentary filmmaker's potential liability for using period music from a single album could increase from \$150,000 to \$450,000, or that a poetry reviewer excerpting from different poems in a published book could face an increase in exposure from \$150,000 to \$750,000.⁵ Whether or not such values might be awarded by a court, the fear of such damages will drive creators away from making fair uses.

The dangers of aggregating statutory damages in this way were anticipated in the language of the existing Copyright Act, which explicitly prevents such a calculation. This decision was deliberately made during discussion of what was to become the 1976 Act to prevent awarding multiple instances of damages for a single act of infringement, such as when an infringement of a work might infringe both the first edition and the current one.⁶ The Copyright Office, in its comments on the legislation, continually noted that compilations and derivative works should be counted as one work for the purposes of calculating damages.⁷

The Second Circuit has recognized the general danger of multiplied statutory damages as well. In a 2003 decision, the court noted that aggregating large numbers of statutory damages risks distorting the purpose of statutory damages, instead "creat[ing] a potentially enormous aggregate recovery for plaintiffs, and thus an *in terrorem* effect on

⁵ Letter from 25 Intellectual Property Professors to the Honorable John Conyers, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives (Nov. 13, 2007) *available at* <http://www.publicknowledge.org/pdf/professors-letter-20071113.pdf>.

⁶ See WILLIAM PATRY, PATRY ON COPYRIGHT § 22:156 (2007) (citing Copyright Law Revision Part 4: Further Discussions and Comments of the Preliminary Draft for Revised U.S. Copyright Law 139-140.).

⁷ PATRY ON COPYRIGHT § 22:157 (citing Copyright Law Revision Part 5: 1964 Revision Bill with Discussion and Comments 203-204.).

defendants, which may induce unfair settlements."⁸ The court went on to note that these multipliers risk running afoul of constitutional due process.⁹

Regardless of the constitutional limits on damages, and the courts' deference to Congress on these matters, Congress should endeavor to ensure that statutory damages are reasonable. The House, and this Subcommittee, have already recognized that multiplying intellectual property damages risks warping the risks and incentives of litigation. For instance, H.R. 1908, passed by the House this September, calls on the courts to apportion patent damages relative to the actual harm done.¹⁰ In the patent context, the House has recognized that multiplied damages can threaten innovation by encouraging more frivolous claims and distorted settlements. The disaggregation proposal in the bill takes a step backward in the copyright realm even as patent law takes a step toward sanity.

Proponents of the disaggregation provision might point to judicial discretion as a safeguard against such ruinous damages. However, judges can only exercise their discretion in those cases that are resolved in their courts. The majority of copyright cases will settle under the cloud of expanded damages long before a judge will have any say in the rationality of the award, or the negotiations leading up to it.

⁸ *Parker v. Time Warner Entertainment Co.*, 331 F.3d 13, 22 (2d. Cir. 2003).

⁹ *Parker*, 331 F.3d at 22. See also *Fitzgerald Pub. Co. v. Baylor Pub. Co.*, 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) ("[Copyright statutory] damages should bear some relation to the actual damages suffered"). The Supreme Court has recognized that statutory damages can violate constitutional due process when they are "so severe and oppressive as to be wholly disproportioned to the offense." *Zomba Enters. v. Panorama Records*, 491 F.3d 574 (6th Cir. 2007) (paraphrasing *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919)). In the related area of punitive damages, the Court has held that damages greater than four times the amount of harm done were constitutionally suspect, and that few awards of more than ten times the amount of damage could satisfy due process. *BMW v. Gore*, 517 U.S. 559, 581 (1996) (quoting *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003)).

¹⁰ Patent Reform Act of 2007, H.R. 1908, 110th Cong. § 5(a) (2007).

Of the many problems present in copyright law and its damages provisions, the accounting of works in a compilation is not the most pressing. If anything, counting these works as separate is a step *away* from a rational copyright damages policy.

Forfeiture Provisions

The expansion of forfeiture provisions in the bill also risks creating disproportionate penalties. In these cases, the bill casts too broad a net, offering up for forfeiture materials and devices that may have only a fleeting connection to the offense. The proposed changes also remove the important safeguard of judicial discretion for copyright and audio bootlegging offenses. Furthermore, adding civil forfeiture provisions increases the risk that innocent parties will forfeit their property.

The bill applies essentially the same forfeiture language for four different areas of intellectual property, whether it be counterfeit goods, copyright infringement, bootlegging live music performances, or recording in a movie theater. The criminal provisions require forfeiture of not only the infringing goods, but "any property used, or intended to be used, to commit or substantially facilitate the commission of an offense." In contrast, existing law casts a more narrowly tailored net. Not only do the existing statutes more specifically target the infringing materials and devices, the current laws also tailor the scope of the forfeiture provisions more to the nature of the offenses.

The bill characterizes its changes to the law as a "harmonization" of the various realms of IP law. However, as Professor Yochai Benkler has noted, harmony isn't created when everyone is singing the same note.¹¹ By the same token, harmonization need not require a one-size-fits-all approach. This becomes apparent when these forfeiture

¹¹ Yochai Benkler, Professor, Harvard Law School, Welcome Address to the Second Access to Knowledge Conference (Apr. 27, 2007).

provisions are applied to certain types of activities. For instance, requiring the forfeiture of devices used in infringement makes more sense in commercial counterfeiting cases, where removing expensive, dedicated manufacturing equipment is a proportional punishment for large-scale infringements and an effective way of preventing further violations. This is less true when a family's general purpose personal computer is used to illegally download music. The general purpose nature of the machine makes its forfeiture a much less appropriate penalty. Should a teenager's illegal downloads deprive him or his siblings of Internet access or word processing? Furthermore, removing the computer fails to create a further deterrent to a determined infringer. On top of the already-astronomical monetary damages, a thousand dollars more will not affect a rational cost-benefit calculation.

Under current law, a court has the discretion to order the forfeiture of devices merely *intended* to be used in copyright infringement.¹² The proposed bill removes this discretion, mandating a wider range of property be forfeited. A second home computer in an infringer's house should not be marked for forfeiture based upon the fact that it contains a CD burner.

The expanded forfeiture provisions also remove judicial discretion from the audio bootlegging statute. Currently, 18 U.S.C. 2319A(b) specifically draws a line between the infringing goods, such as the tapes themselves, and the equipment used to make or reproduce them. While the actually infringing articles must be forfeited, the statute explicitly requires a court to consider the "nature, scope, and proportionality" of the equipment's use before deciding whether to order its forfeiture. In contrast, the proposed bill eliminates this crucial distinction, and thus a safeguard sorely needed in other areas

¹² 17 U.S.C. § 509.

of IP enforcement. While, as I've noted above, judicial discretion is not a cure-all for potentially onerous penalties, denying judges the ability to make fact-specific determinations helps no one.

Although these changes are being made in the name of harmonization with the counterfeiting statute, the current counterfeiting provisions were put in place just two years ago, when the justification was the need for harmonization with copyright law.¹³

The proposed bill also creates a new class of civil forfeitures across these four different areas of law, again requiring the forfeiture of any property "used, or intended to be used, to commit or facilitate" an offense. Creating extensive civil forfeiture provisions runs the risk of unintended consequences, given the lower burden of proof for civil forfeiture. There is a long history of civil forfeiture being over-applied in other contexts, and this history ought to be examined thoroughly before extending it to a completely new realm.¹⁴

I do want to comment on one major improvement that the bill has over its companion bill in the Senate, S. 2317. The Senate bill furthers the unwarranted expansion of the forfeiture provisions by requiring the forfeiture of equipment used in circumventing copy protection mechanisms, increasing the penalties for violations of a law with a long and storied history of overbreadth and misapplication. I thank the Subcommittee for its foresight in removing that provision as being disproportionate and

¹³ See H.R. Rep. No. 109-687 (2005) ("This section would amend current law to require the forfeiture of any property derived, directly or indirectly, from the proceeds of the violation as well as any property used, or intended to be used in relation to the offense. This is intended to provide forfeiture and destruction provisions similar to those already enjoyed by copyright and trade secret holders.").

¹⁴ See Douglas O. Linder, *Evil in the American Justice System: Case 2: Zero Tolerance and Asset Forfeiture*, <http://www.law.umkc.edu/faculty/projects/trials/evil/evilP14.html> (noting forfeiture seizures in the drug context that included a fishing boat confiscated when a crew member was, unbeknownst to the owner, in possession of 1.7 grams of marijuana).

inapposite, and similarly, I look forward to the other forfeiture provisions being more narrowly tailored to fit the offenses they seek to remedy.

Registration Requirements and Orphan Works

Section 102 of the proposed Act alters existing law to imply that a copyrighted work need not be registered before the government pursues criminal enforcement. Not only is this provision unnecessary, it further erodes the incentives for copyright holders to register their works, adding to the problem of orphan works.

Orphan works are works whose copyright owners cannot be found. This means that permission cannot be granted or even asked for by subsequent users of the works. Lacking a known owner, these works are locked away from public distribution, display, or further reproduction, and therefore lost to the public. Any who attempt to distribute the works without permission risk massive liability if the owner emerges later, with damages of up to \$150,000 per infringement. These considerations have prevented families from reprinting heirloom photographs because the professional photo finisher cannot identify the original photographer.¹⁵ Libraries, archives, and museums are left unable to collect and display works with unknown authors.¹⁶ Software developers are left unable to improve upon copyrighted programs because a dissolved company has left no clear indication as to the ownership of any copyright in the program.¹⁷

In its 2006 report on orphan works, the Copyright Office noted that one of the contributors to this body of unusable works was the fact that, after the 1976 Copyright Act, works no longer needed to be registered with the Copyright Office to receive

¹⁵ United States Copyright Office, Report on Orphan Works 24-25, January 2006, at www.copyright.gov/orphan/orphan-report-full.pdf.

¹⁶ *Id.*

¹⁷ *Id.* at 28-29.

copyright protection.¹⁸ Registration of copyrights helped to prevent this buildup of valuable yet unusable works by providing a central resource by which subsequent users can find copyright owners. Now-defunct renewal provisions also ensured that copyright owners maintained a point of contact for permissions requests after a certain period of time. These requirements reflected part of the copyright bargain—that in exchange for a government-granted monopoly rights over a creative work, the author also makes himself or a representative available to review requests for licenses.

But in the absence of registration and renewal requirements, some incentive must be present for copyright owners to register their works and maintain a point of contact. Current law accounts for this by allowing civil or criminal enforcement only after a work has been registered, though registration is allowed after the allegedly infringing conduct has occurred.¹⁹ This feature of our copyright law helps to maintain the vitality of the copyright registry and stem the tide of orphan works. In opposition to this vital mission, and with insufficient justification, the proposed bill eliminates the need for a work to be registered before criminal enforcement can proceed.

It's unclear what common harm the provision is meant to avert. The vast majority of pirated works are commercially produced and duly registered, precisely because their producers are aware that they might be infringed. If too few works are being registered, removing incentives for registration is not the answer.

Instead, maintaining the registration system as is helps align the interests of copyright owners in protecting their works with the public's interest in being able to seek

¹⁸ United States Copyright Office, Report on Orphan Works 41-43, January 2006, at www.copyright.gov/orphan/orphan-report-full.pdf.

¹⁹ Contrary to statements from the Department of Justice, the change proposed by the bill is not a mere clarification. The language of 17 U.S.C. § 411 is crystal clear: "no action for infringement of the copyright in any United States work shall be instituted without preregistration or registration of the copyright claim."

those authors' permission to use their works. By doing so, we can help to prevent valuable follow-on users from having to choose between letting a work slip into obscurity and facing millions of dollars in damages for reprinting a copy of a dozen orphaned works.

Conclusion

I want to end today by calling attention to an assumption that seems to underlie all too many efforts to improve IP enforcement. The assumption is that ever-higher penalties will somehow create a deterrent effect currently absent in today's laws. However, of all the changes that need to be made to IP law, increasing the severity of the penalties is one of the least necessary, and quite possibly the most counterproductive.

We should be clear that several problems confront IP law, and specifically copyright law, and these several problems have distinct causes and distinct solutions. It doesn't help to combat piracy if in doing so both commercial pirates and ordinary home consumers are subjected to the same harsh penalties. When the mere act of forwarding your email or updating your blog can infringe copyright, it makes more sense to have the law comport with reality before increasing the sanctions that accompany infringement.

While a complete review and overhaul of copyright law might be an aspirational ideal, a set of more modest reforms can provide some relief for the immediate future. At a talk at Boston University this past October, I proposed six steps that would help to narrow the gap between copyright law and norms.²⁰

First, fair use needs to be preserved in the digital age. While the current statute explicitly recognizes some of the most storied types of fair use—teaching, research,

²⁰ Gigi B. Sohn, Six Steps to Copyright Sanity: Reforming a Pre-VCR Law for a YouTube World, Presented to the New Media and Marketplace of Ideas Conference, Boston University College of Communication, (Oct. 26, 2007) *available at* <http://www.publicknowledge.org/node/1244>.

commentary, criticism, and news reporting—newer uses, consistently found to be fair by the courts, are still facing challenges by the litigious. Thus, incidental, transformative, and non-commercial personal uses should be added to this non-exhaustive list.

Furthermore, the anti-circumvention provisions of the DMCA should not be used as an end-run around fair use. Circumventing technological protection measures for lawful uses of the work must be allowed if fair use is to remain relevant for digital media. H.R. 1201, introduced earlier this year by Representatives Boucher, Doolittle, and Lofgren, takes an important step towards this goal.

Second, limits on secondary liability should be dealt with statutorily. The standard set out in 1984 by the Supreme Court in *Sony* should be codified—technologies should be protected from any secondary liability if they are capable of substantial non-infringing uses. In addition, secondary liability should be based upon actual damages suffered by the copyright holder, not upon the inflated statutory damages discussed today.

Third, there must be protections against copyright abuse. There should be clearer penalties when copyright holders recklessly send DMCA takedown notices. There should be an affirmative cause of action where plaintiffs abuse copyright as a means to stifle free speech. And overstating copyright holders' rights should be considered unfair and deceptive trade practices by the Federal Trade Commission.²¹

Fourth, the process of licensing works, especially music, must be made rational. Congress should also revisit its earlier attempts to simplify clearing the composition

²¹ Though it has declined to act on a complaint on this issue so far, the FTC has just this month recognized the importance of addressing consumer rights to content in the near future: "Widespread use of inaccurate copyright warnings could contribute to consumers' misunderstanding of the statutory protections available to them under the Copyright Act. Further, if consumers routinely confront exaggerated and inaccurate copyright warnings they may tend to disregard them altogether..." Letter from Mary K. Engle, Associate Director for Advertising Practices, Federal Trade Commission, to Edward J. Black and Matthew Schruers, Computer and Communications Industry Association (Dec. 6, 2007).

right, and should also resolve the problem created by the Copyright Royalty Board's recent decision to massively increase the royalty rates paid by Internet radio. The extreme disparity between high payments by Internet radio, and no payments at all by broadcast radio, must also be resolved. Likewise, the line between performances and distributions should be made clear. Simply adding a recording function to a radio, whether digital or analog, should not require an additional distribution license from the copyright holder.

Fifth, the problem of orphan works must be addressed. The Copyright Office has proposed that a user unable to find a copyright owner after a reasonable search should be liable only for "reasonable compensation," and not immense statutory damages.²² One implementation of this proposal, H.R. 5439, was introduced in the last Congress by Representative Smith. The thoroughness of this reasonable search can be improved by creating competitive visual registries, which not only would help users make use of orphaned works, but also help to reunite those orphans with their creators.²³

Sixth, technical and legal restrictions on the use of copyrighted works must be clearly and plainly disclosed to consumers. If consumers are to receive the products they pay for, and the rights to use those goods they normally expect, any use of technology to remove some of those uses should be communicated to them before a purchase is made. It should also be clear to consumers if altering digital locks on the products they buy will subject them to legal liability. As Professor Pamela Samuelson of U.C. Berkeley's Boalt Hall Law School has noted, concealing these limitations on the media that consumers buy is an unfair and deceptive trade practice, and should be recognized as such by the FTC.

²² MARYBETH PETERS, REPORT ON ORPHAN WORKS: A REPORT OF THE REGISTER OF COPYRIGHTS (2006), available at <http://www.copyright.gov/orphan/orphan-report-full.pdf>.

²³ See Public Knowledge, *Competitive Visual Registries for Copyrighted Works*, <http://www.publicknowledge.org/pdf/pk-visualregistry-memo-20070129.pdf>.

Each of these proposals directly addresses a situation where an ordinary consumer might face the already-draconian sanctions of copyright law. If the problems that create the disconnect between the law and the reality of copyright use aren't tackled first, increasing the severity of those sanctions further does very little good.

Thank you for inviting me to testify. I look forward to answering your questions.

Mr. BERMAN. Thank you.
Mr. Cotton?

**TESTIMONY OF RICK COTTON, EXECUTIVE VICE PRESIDENT
AND GENERAL COUNSEL, NBC UNIVERSAL, NEW YORK, NY**

Mr. COTTON. Chairman Berman, Ranking Member Coble and distinguished Members of the Subcommittee, I thank you for inviting me here today to testify on H.R.4279. My day job is executive vice president and general counsel at NBC Universal, but I appear here today in my role as the chair of the Coalition Against Counterfeiting and Piracy, or CACP.

The CACP is a broad cross-sector business coalition led by the U.S. Chamber of Commerce and the National Association of Manufacturers. The CACP now numbers more than 500 companies and associations from two dozen different sectors across the economy who have come together to fight the vital economic battle against counterfeiting and piracy. I might note that our coalition includes technology companies, both software and hardware, all of whom have IP that deserve and need protection.

At the outset, let me quickly emphasize four points, many of which were addressed by Committee Members in their opening statements. First, the economic future of the U.S. rests on our technological invention, our creativity, and our innovation. Counterfeiting and piracy corrosively and perniciously undermine that future. IP theft is a jobs issue and that is what brings the business community and the labor community before you today united in support of stronger IP enforcement. IP-dependent sectors drive 40 percent of the growth of the U.S. economy and 60 percent of the growth of our exportable goods and services.

Second, counterfeiting and piracy constitute a health and safety issue that presents a clear and increasing danger to the public, from counterfeit toothpaste laced with antifreeze to exploding batteries.

Third, counterfeiting and piracy is the new face of organized crime. Organized crime goes where the money is, and today that means piracy and counterfeiting.

And fourth, and this I submit should drive a lot of the attention of the Committee, counterfeiting and piracy today simply represent a global pandemic that is getting worse, not better, in every sector which it afflicts. Over the past 20 years, advances in technology, manufacturing capabilities, and transportation have allowed organized criminal gangs, counterfeiters and pirates to escalate the scale and the scope of their operations to tidal wave proportions. It is not a criticism to say that our current enforcement is not stemming the tide. Our efforts to counter this pandemic have simply not kept pace.

Despite the daunting scope of the challenge there is hope and a clear path forward. If we are to turn the tide in this country, we must radically escalate our efforts on many fronts to protect the economic fruits of our innovation and our creativity—efforts in the private sector in developing technology and at the forefront of our discussion today, government action.

The PRO-IP Act is a needed declaration of war, escalating the priority of this vital public policy and deploying dedicated enforce-

ment resources to the battle. We commend the Committee leadership and their staff who have worked so hard to pull this important and comprehensive bill together. While the act does not contain everything the CACP had proposed, it does recognize three fundamental steps that our government must undertake in order to make a difference.

Number one, the act creates key leadership positions to address the challenge of counterfeiting and piracy at the White House level and within the Department of Justice.

Number two, it mandates a dramatic reorientation of government strategy to focus on dedicated specialized resources, including FBI agents and Federal prosecutors dedicated to IP investigations, money for state and city IP enforcement programs and international specialists based in U.S. embassies in key countries around the world.

Number three, it updates several laws that have failed to keep pace with the burgeoning threat of counterfeiting and piracy.

In conclusion, two final points. First, these steps are strongly supported by a powerful new study released today by Dr. Laura Tyson, former chair of the Council of Economic Advisors. That study concludes that for every dollar invested in IP enforcement, Federal tax revenues would increase by four dollars to five dollars. U.S. economic output would increase anywhere from \$40 to more than \$120 for every dollar invested, and state and local revenues would increase by nearly \$1.5 billion.

In conclusion, a plea to the Subcommittee. Every generation faces new threats and is judged by how quickly it recognizes and responds to them. Make no mistake about it. The U.S. business community and the U.S. labor movement have come here today with a single and simple message: Global counterfeiting and piracy have reached epidemic proportions and will choke off future economic growth and future job growth if current trends continue.

It is not too strong to say that the unprecedented and explosive scale of counterfeiting and piracy represent a dagger aimed at the heart of America's future economic security and the health and safety of our people. My plea to the Subcommittee is to confront this threat and to take strong, swift action to enact the PRO-IP Act in this Congress.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Cotton follows:]

PREPARED STATEMENT OF RICHARD COTTON

TESTIMONY OF

RICHARD COTTON

EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL
NBC UNIVERSAL

AND

CHAIRMAN OF THE COALITION AGAINST
COUNTERFEITING AND PIRACY

ON

H.R. 4279,

THE PRIORITIZING RESOURCES AND ORGANIZATION
FOR INTELLECTUAL PROPERTY ACT OF 2007

BEFORE THE

SUBCOMMITTEE ON COURTS, THE INTERNET, AND
INTELLECTUAL PROPERTY

OF THE

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

DECEMBER 13, 2007

I. Introduction and Summary

Chairman Berman, Ranking Member Coble, and distinguished members of the Subcommittee - I thank you for inviting me here today to testify on H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007" (the "Act").

I appear here today primarily on behalf of the Coalition Against Counterfeiting and Piracy, or CACP, which I serve as Chairperson. The CACP is a cross-sector coalition of over 500 companies and associations, who have all come together to fight the vital economic battle against counterfeiting and piracy. (CACP's membership list is attached as Exhibit A.) I of course also represent NBC Universal, which I serve as Executive Vice President and General Counsel.

At the outset, let me emphasize four points:

First, intellectual property (IP) theft is a jobs and economic security issue, with hundreds of billions of dollars a year and millions of high-paying jobs at stake, making it a vital matter for business, for labor, and for government. Studies have shown that IP-dependent sectors drive 40% of the growth of the U.S. economy and 60% of the growth of our exportable goods and services.

Second, IP theft is a health and safety issue that presents a clear and increasing danger to the public, from counterfeit toothpaste laced with antifreeze to exploding batteries and other dangerous consumer goods. Indeed, even test strips for diabetes are being counterfeited and sold as legitimate, with obvious life-threatening results. Sectors where IP theft threatens health and safety include automobile parts, airplane parts, food, medical devices, medical supplies, electrical supplies, pharmaceuticals and many more.

Third, IP theft is the new face of organized crime. Organized crime goes where the money is, and today that means piracy and counterfeiting, where criminals can engage, with minimal risk, in high-value commerce such as manufacturing millions of bootleg DVDs or bottles of counterfeit medicine.

And fourth, IP theft is a global pandemic that is getting worse, not better, across a broad range of key sectors of the U.S. economy. Over the past 20 years, advances in technology, manufacturing capabilities and transportation have allowed organized crime gangs, counterfeiters and pirates to escalate the scale and scope of their operations many fold. Our efforts to counter this pandemic have simply not kept pace.

Despite the daunting scope of the challenges, there is hope, and a clear path forward. Within the last few months, other advanced nations including France and the United Kingdom have announced bold programs to protect their intellectual property industries. And if we are to turn the tide in this country, we too must significantly step up our efforts on many fronts to protect intellectual property - efforts in the private sector, in technology development, and, at the forefront of our discussion today, in government action.

The Act is a critical step in the right direction, and we commend the members and their staff who have toiled so hard to pull this important and comprehensive bill together. The Act recognizes three fundamental steps that our government must undertake in order to make a difference:

Number one, the Act creates key leadership positions to address the challenge of counterfeiting and piracy - government-wide, with the new United States Intellectual Property Enforcement Representative, and within the Department of Justice, with a new Intellectual Property Enforcement Division, headed by the Intellectual Property Enforcement Officer;

Number two, it authorizes more IP-devoted resources, including FBI agents and federal prosecutors dedicated to IP investigations, money for state IP enforcement programs, and international specialists dispatched around the world; and,

Number three, it updates several laws that have failed to keep pace with the burgeoning threat of counterfeiting and piracy.

Support for the sensible measures contained within the Act comes not only from business associations including the U.S. Chamber of Commerce, the National Association of Manufacturers and the other 500 plus trade associations and companies who are members of the CACP, but also from organized labor, as the testimony of my fellow witness, James Hoffa, President of the International Brotherhood of Teamsters, makes clear. Unions understand all too well that counterfeiting and piracy results in exporting good U.S. jobs and importing dangerous products that hurt American workers and their families, such as counterfeit brake pads, and fake medicines that harm and do not heal.¹

Congress should adopt this Act, and other complementary proposals that are within the jurisdictions of other Committees of Congress, in order to make a long-term difference to the health of our economy, which is ultimately vital to our national security.

¹ All of the following unions have sent letters to Chairman Conyers urging the passage of comprehensive IP enforcement legislation to counteract the effects of rampant counterfeiting and copy right:

American Federation of Musicians (AFM)
 American Federation of Television and Radio Artists (AFTRA)
 Screen Actors Guild (SAG)
 Directors Guild of America (DGA)
 International Brotherhood of Electrical Workers (IBEW)
 International Alliance of Theatrical Stage Employees (IATSE)
 Communications Workers of America (NABET/CWA)
 International Brotherhood of Teamsters (IBT)
 UNITE HERE
 Laborers International Union of North America (LIUNA)
 Change to Win coalition (including the Teamsters, SEIU, UFCW, UNITE HERE, UBC, LIUNA, and others)
 Office and Professional Employees (OPEIU)

This is not just my opinion; it is also the conclusion of a powerful new report entitled the “Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative” (the “Tyson Report”), released today by Professor Laura Tyson, formerly President Clinton’s National Economic Advisor, assisted by the respected economics firm, LECD. That study evaluates the costs and benefits of the type of prudent investment in enhanced IP protection that is embodied in this legislation. It concludes that:

- For every dollar invested, federal tax revenues would increase by at least \$2.90 and by as much as \$9.70, with an intermediate range of \$4.9 to \$5.7;
- Each dollar would increase U.S. economic output by at least \$38 and by as much as \$127, with an intermediate range of \$64 to \$75;
- The increase in output would result in the creation of between 174,000 and 348,000 new jobs during the third year of the program; and,
- State and local governments can expect to receive incremental revenues between \$1.25 billion and \$1.50 billion, in present value terms over three years.²

The Tyson Report confirms what we all know: We *must* tackle the problem of IP theft to safeguard our economic security, to create jobs, to protect our health and safety, to defend against organized crime, and to make the United States a model for our trading partners of how to address this issue. This legislation is a vital part of the strategy.

1. The Scope of the Problem

When I took the helm of the CACP in January of 2007, I already knew that piracy had a huge impact on the movie and television industry, causing revenue losses of over \$18 billion to movie companies around the world, and over \$6 billion just to the six major U.S. studios. I knew piracy had devastated the music industry, and, as studies had indicated, was significantly damaging the software and videogames sectors too.

We also know, from studies of the type I will discuss shortly, that revenue loss to business did not capture the full impact on the U.S. economy. Due to the impact upstream and downstream of affected businesses, the \$6 billion revenue loss to U.S. movie companies translates to \$20 billion of lost output to the U.S. economy.³

² The Executive Summary of the report is attached as Exhibit B to this testimony; the entire report can be found at the website of the CACP: www.thecacp.com.

³ See, “The True Cost of Motion Picture Piracy to the U.S. Economy” by Stephen E. Siwek, available at www.ipi.org or <http://www.copyrightalliance.org/files/u227/CostOfPiracy.pdf>.

The CACP members rapidly educated me about how counterfeiting affects other sectors of the economy, such as pharmaceuticals, auto parts, aircraft parts, consumer goods, footwear, fashion apparel, luxury goods, toys, electronics, food products, medical devices and health products, and machine tools.

I asked the experts all over the world, people who are working these issues everyday, whether, from their perspective, the problem was getting worse or getting better.

What they told me -- to a person -- was that the situation was bad and getting worse. Almost anything they manufacture can be -- and is being -- copied by others, who slap a fake trademark on an inferior, often unsafe good and pass it off as legitimate. From China to Brazil to right here at home, we are losing ground to the counterfeiters and pirates, and losing ground fast.

It is difficult to pick up a newspaper or go online these days without seeing headlines about counterfeit toys, dog food, razors, pharmaceuticals, even aircraft parts. Counterfeiting and piracy are no longer just a chronic problem: they are an acute and growing crisis.

Recent econometric studies document the importance of the IP-dependent industries to the US economy, and quantify the pernicious and pervasive effects of piracy and counterfeiting. Those studies put the anecdotal evidence into a context that underscores the critical need for dramatic action by this Congress and by the Executive Branch Departments and agencies that enforce IP laws.

A. Contributions of the IP Industries

It hardly needs stating that IP industries in the United States contribute greatly to the American economy and are worth protecting. But it is crucial to put some hard numbers around this obvious fact. Therefore, two years ago, we at NBC Universal commissioned a study designed to answer an important question: how dependent is the U.S. economy on those industry sectors that are driven by innovation, invention, and creativity? The study aggregated industries that rely heavily on copyright or patent protection and measured their revenue, employment, compensation to workers, and contribution to growth.

The study⁴ found that these industries are huge contributors to U.S. GDP. They are responsible for 40% of the growth achieved by all U.S. private industry, and contribute nearly 60% of the growth of exportable products and services. And these industries pay wages that are 40% more than the average wage in the U.S.

⁴ *Engines of Growth: Economic Contributions of the U.S. Intellectual Property Industries*, by Stephen E. Siwek, http://www.nbcuni.com/About_NBC_Universal/Intellectual_Property/pdf/Engines_of_Growth.pdf

These findings make plain the impact of IP on the ability of the U.S. to compete in the global economy. IP industries drive growth in today's world and hold the keys to our nation's future economic well-being. They are responsible for more jobs and better jobs than ever before.

Even measuring the contributions of just one segment of the IP industries -- the copyright sector -- reveals its critical importance. According to a recent study released by the International Intellectual Property Alliance, U.S. "total" copyright industries accounted for an estimated \$1.38 trillion, or 11.12 % of GDP, and employed 11.3 million workers.⁵

B. Impact of Piracy and Counterfeiting

Given the vast contributions of these crucial industries to the present and future U.S. economy, how badly are they -- and our economy as a whole -- hurt by piracy and counterfeiting?

In 2002, the FBI estimated that U.S. companies lose between \$200 and \$250 billion *per year* to piracy and counterfeiting.⁶ Given that, by all accounts, piracy and counterfeiting have been growing by leaps and bounds, that half-decade old figure must be seen as conservative.

But another recent study -- announced just last month -- provides an insight into just how devastating the damage from piracy and counterfeiting really is to the U.S. economy. It shows that we may have been guilty in the past of understating this damage.

The study is called "The True Cost of Copyright Industry Piracy," and was authored by economist Stephen Siwek and released by the Institute for Policy Innovation.⁷ The study analyzed the losses of four copyright industries -- movies, music, software, and videogames -- to determine the full upstream and downstream economic consequences on the economy, including lost economic output, lost jobs, and lost tax revenues. Utilizing a sophisticated methodology developed by the U.S. Department of Commerce, that study concluded that an estimated \$25.6 billion in *industry* annual losses due to piracy actually equals lost *economic output* to the total economy of nearly \$60 billion a year. Moreover, this illegal activity costs American workers 373,000 jobs. And it costs governments \$2.6 billion in tax revenue.

These losses flow from IP theft just within the copyright industries alone. When you add counterfeiting in other sectors, the costs are simply staggering, and the FBI's 2002 estimate -- \$200 to 250 billion in losses annually -- appears to be quite conservative.

⁵ *Copyright Industries in the U.S. Economies: The 2006 Report*, by Stephen E. Siwek, http://www.iipa.com/pdf/2006_siwek_full.pdf

⁶ FBI Press Release, July 17, 2002, <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>.

⁷ The study can be found at www.ipi.org or at http://www.copyrightalliance.org/files/u227/SiwecCopyrightPiracy_study.pdf.

III. The Shape of the Solution: The CACP Campaign to Protect America

A. The Content of the Campaign

When the experts from sectors across the economy informed me about the extent of the counterfeiting and piracy problem they were experiencing, I asked them what could be done. What, in their view, could make a real difference in alleviating the problem?

I'm pleased to report their response: while the situation is grave, it is not hopeless. The experts believed that strong action in three areas could have an impact, could reverse current trends, and could succeed in the long run. Those three areas are: (i) the development of technological tools; (ii) increasing private-sector responsibility; and (iii) strong government activity. Because the Act focuses on government activity, I will speak only briefly on the first two areas, but significant progress on each are critical to move the needle.

First, technology protections are a powerful tool to combat theft, whether we are talking about tangible goods or digital goods. These technologies will never be perfect, just as the best security systems in the world will never totally eliminate bank thefts. Nevertheless, committed development of technology has the potential to reduce dramatically the traffic in counterfeit and pirated products.

In the physical world, we are seeing advanced optical technologies, such as holograms and special color-shifting inks, employed to make counterfeiting of labels more difficult and genuine products easier to identify. Companies are using RFID technology, covert markers, even nanotechnologies, to help customs and other experts to distinguish between authentic and counterfeit goods.

On the digital side, while we know that technology is something that feeds piracy, it also can be harnessed to effectively combat it. Especially promising are filtering and blocking tools that can protect content in a wide range of applications.

Second, private sector responsibility must also play an important part. Counterfeiting and piracy are not just the rights holders' problem; they are a societal problem, and everyone has a stake in seeing to it that piracy and counterfeiting are reduced. That is why we are engaging in intensive private discussions with the full spectrum of our business partners: the entities involved in the distribution of our products, whose services are being misused by pirates and counterfeiters, and who thus are in a position to have a significant impact on the amount of piracy and counterfeiting taking place. Examples in the physical world include shippers, warehousemen, retailers and financial institutions. In the content community's world, key partners also include Internet Service Providers and universities, over whose broadband pipes pirated material is carried; consumer electronic and information technology companies, who can partner with us to make piracy more difficult; search engines through which pirated material is found; and auction sites through which people can sell pirated and counterfeit merchandise. All of these entities can and should take reasonable steps to reduce the ability of pirates and counterfeiters to misuse their services.

The CACP has engaged these sectors in discussions, and we have begun to make progress.⁸ And progress is being made in other countries, such as France, where the Olivennes report, released just weeks ago, reflects a groundbreaking agreement between content owners and ISPs to help reduce the volume of pirated material being distributed through French Internet providers.

All the experts realize, however, that whatever gains we could make through advances in protective technologies, and through negotiations on private sector responsibility, *must* be supplemented by active leadership by Congress and the Executive Branch on this issue. The private sector must do what it can, but IP enforcement clearly has to be a national priority for our effort to succeed.

The suggestions on improving the government's response to IP theft came from all quarters of the CACP's membership, and they can be grouped into three categories of activities that government can undertake to make a real difference.

First, we need real leadership institutionalized at the top levels of government on this issue. We need someone at the Department of Justice (DOJ) and Department of Homeland Security -- the two key enforcement agencies -- whose responsibilities prominently include leading their Department's efforts on IP enforcement. We need a high-level coordinator to orchestrate the many Departments and Agencies that have a part in IP enforcement, to synchronize their vital efforts into a unified strategic plan, and to proselytize for IP enforcement in this country and worldwide -- regardless of which party holds sway in the White House.

Second, the experts agree that we desperately need dedicated, trained personnel assigned to work exclusively on this issue. Given the size of the challenge we face, the number of law enforcement personnel actually devoted to IP on the federal, state, and local level is scandalously low.

The simple fact is that when IP enforcement falls to law enforcement agents with general jurisdiction, it generally falls off the radar screen. This is perfectly understandable: law enforcement agents are overwhelmed with important priorities, and many lack the specialized training needed to work counterfeiting and piracy cases. But if we are serious about enforcement, if we are serious about protecting our economic future, if we are serious about setting an example for our trading partners, then we can no longer let IP bring up the rear of the priority list. The best way to accomplish this is to have government personnel in key positions dedicated solely to addressing IP theft.

⁸ Just recently, major content companies and technology companies collectively issued "Principles for User Generated Content Services" to foster innovation, encourage creativity and thwart infringement. See <http://www.uecprinciples.com>. While this effort was not conducted under the auspices of the CACP, it serves as a good example of the type of private sector cross-industry agreement that can spur real progress on this issue.

Third, I was told over and over again that too many of our laws were out of date, that fines and sentences were inadequate to provide real deterrence, and that we needed to ensure that the law in this area kept pace with the quick march of technology.

Inspired by these conversations, we enlisted our membership in a careful and lengthy process to advance proposals that would enable the government to better address this critical challenge. The proposals, called the “Campaign to Protect America,”⁹ are organized into six categories. These categories are:

- (1) Increase resources at the Department of Homeland Security and the Department of Justice;
- (2) Strengthen enforcement at the borders;
- (3) Toughen penalties;
- (4) Improve federal government coordination;
- (5) Reform civil and judicial processes; and
- (6) Educate consumers.

In each of these categories, there are detailed and well-considered proposals calling for strengthening the capacity of our government to respond to the variety of threats piracy and counterfeiting represent. While comprehensive, the CACP’s proposals are not radical: they call for targeted legal changes, not a wholesale reshaping of existing laws, and they should not be controversial.

B. The Cost of the Campaign

The CACP proposals do not seek to impose an enormous new financial burden on government, or simply throw money at the problem. At the same time, it must be acknowledged that real progress cannot be achieved without adding resources to our enforcement efforts. It is fair to ask whether making the kind of investment called for by the CACP proposals is a worthwhile expenditure of taxpayer dollars.

To help answer this question, we turned to Laura Tyson, a professor at the Haas School of Business at the University of California at Berkeley, and the former Chair of the National Economic Council, to prepare a report.¹⁰ The Tyson Report, which I mentioned at the outset, extensively analyzes the costs of all the CACP proposals, and concludes that, based on the cost of similar programs, the government would spend between \$289 and \$489 million over three years in implementing them.

⁹ Available at <http://www.thecacp.com/portal/counterfeiting/default>.

¹⁰ The Executive Summary of the report is attached as Exhibit B to this testimony; the entire report can be found at the website of the CACP: www.thecacp.com.

The Tyson Report then reviews the economic literature quantifying the losses on U.S. businesses caused by piracy and counterfeiting. Based on that literature, it concludes that a \$225 billion annual loss -- the midway point in the 2002 FBI estimated range of \$200 to \$250 billion -- is fair, and indeed quite conservative in light of the increase in the scope of piracy and counterfeiting during the last five years.

Finally, the Tyson Report concludes that, based on the success of other similar types of government programs, the CACP's approach can reasonably be expected to reduce losses attributable to piracy and counterfeiting somewhere between five and ten percent over three years. If that reasonable expectation comes to pass, putting these proposals into place would result in:

- Increased U.S. output of between \$27 and \$54 billion per year;
- Increased U.S. employment of 174,000 to 348,000 per year (after a three-year period);
- Additional federal tax revenues of between \$1.4 and \$2.8 billion; and
- Additional state and local tax revenues between \$1.25 billion and \$1.5 billion over three years.

If the measures succeed even modestly beyond these assumptions, the return on investment -- in terms of business, tax revenue, health and safety, and our economic future -- will be much higher.

While the Tyson Report is tied to the set of CACP proposals and not specifically to the provisions found in the Act, the soundness of its core analysis applies to this legislation with equal force: prudent government spending on IP enforcement is undoubtedly a worthy investment. The Tyson Report shows that for every dollar government of government spending in this area, we can expect some \$3.00 to \$9.00 returned to the government in the form of tax dollars, and at least \$38 and as much as \$127 in increased output, with the creation of between 174,000 and 348,000 new jobs in the third year of the program. We cannot afford to allow this opportunity to slip away.

IV. The Act

Now I turn to the provisions of the Act itself, which offer a thoughtful and well-balanced approach to the task of improving government's response to the crisis of IP theft.

As I noted at the outset, the key provisions of the Act can be organized under three categories, all of which are vital to address this problem. These are: (i) creating and institutionalizing high-level leadership; (ii) authorizing dedicated resources; and (iii) updating the laws to keep pace with technology. While there are many examples I can choose from in this comprehensive piece of legislation, I will address only the key provisions under each category.

A. Institutionalizing High-Level Leadership

If IP enforcement is a priority, we must have leadership and an integrated strategy for addressing this complex problem. The Act delivers this in several ways.

1. Chief Intellectual Property Enforcement Officer

The centerpiece of the Act is found in Title III, “Coordination and Strategic Planning of Federal Effort Against Counterfeiting and Piracy.” That Title creates within the Executive Office of the President the “Office of the United States Intellectual Property Enforcement Representative,” headed by the U.S. IP Enforcement Representative.

Title III uses the Office of the United States Trade Representative as a precedent, and the choice is an inspired one. Like international trade agreements, IP enforcement is a function that cuts across the responsibilities of a number of departments and agencies. Like trade, IP enforcement would benefit from designating a high-level government official, backed by a specialized expert staff, to coordinate the efforts of these departments and agencies, and serve as a voice for IP enforcement in the highest circles of the government. Without an orchestra leader, it is difficult to make sure that all the agencies are playing off the same sheet of music in their efforts to protect intellectual property. That point was underscored when the GAO testified before you last month, and noted how many offices in the federal government play an important role in setting and implementing IP enforcement policy.¹¹

There have been two efforts in recent years to ensure that all these agencies are rowing the boat in the same direction: the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, and the Strategy for Targeting Organized Piracy (STOP), initiated by the White House in 2004. As the GAO testimony makes clear, however, “the current coordinating structure for U.S. protection and enforcement of intellectual property rights lacks clear leadership and permanence, hampering its effectiveness and long-term viability.” *Id.* at 13.

The solution proposed by Title III of the Act would cure the weakness in the current structure by providing government leadership on IP enforcement *on a permanent basis and at the highest level*. Moreover, the Act gives the IP Enforcement Representative the right powers and responsibilities. These include: developing a triennial joint strategic plan to ensure all the agencies are working in harmony and on the same priorities; coordinating all U.S. government efforts to help foreign countries act more effectively against counterfeiting and piracy activities that affect our market; advising the President on domestic and international IP enforcement policy, assisting the USTR on IP trade issues; acting as the principal spokesperson of the President on domestic and international IP enforcement matters; and reporting to Congress and the American people. The Act goes on to provide detailed and helpful instructions as to the process and content of the joint strategic plan, and the reporting and oversight that Congress -- and the American taxpayer -- should rightfully expect.

¹¹ Statement of Loren Yager, Director International Affairs and Trade, at pp. 6-7 (<http://www.gao.gov/new.items/d081771.pdf>).

Before moving on, I would make two points:

First, the concept of elevating the leadership on IP to the White House level has been tirelessly championed by Senators Bayh and Voinovich, and I would be remiss not to publicly acknowledge their important contributions to this debate.

Second, I want to stress that our support for this proposal should not be taken as criticism of the current administration's efforts on IP. In fact, we applaud those responsible for devising and carrying out the STOP program, and we recognize the strides that NIPLECC has taken under Chris Israel. Many in the administration deserve great praise for their steadfast devotion to protecting IP, including Secretary Carlos Gutierrez and Ambassador Susan Schwab.

This legislation takes the right approach precisely because it builds on these good efforts, and appropriately raises the bar in light of the increasing scale of the threat we face. We look forward to working with you to enshrine the office of IP Enforcement Representative as a permanent and crucial core of our IP enforcement landscape.

2. The Intellectual Property Enforcement Division at DOJ

Another bold step undertaken in this legislation is found in Title V, Section 501, establishing an "Intellectual Property Enforcement Division," in the Justice Department, headed by the Intellectual Property Enforcement Officer ("IP Officer"). This IP Officer would have the responsibility to coordinate all of DOJ's IP efforts among the many divisions, units and offices whose work is vital to IP enforcement. These include, among others, the FBI, the Criminal Division, the Civil Division, the Executive Office of U.S. Attorneys, and the Antitrust Division. The Division would include the attorneys and other personnel who work on IP enforcement and are presently housed in the Computer Crime and Intellectual Property Section of the Criminal Division.¹²

We applaud this proposal, which would permanently raise IP enforcement to its rightful place as a top priority of the Justice Department, regardless of who occupies the Attorney General's office.

B. Authorizing Dedicated IP Resources

Leadership is vital, but without adequate resources, our generals in the fight against counterfeiting and piracy will have no army to command. According to FBI statistics, in the U.S., all traditionally defined property crimes accounted for \$16 billion in losses in 2005. As we have discussed, however, the best estimates we have for losses from piracy and counterfeiting exceed that number by ten or fifteen times. The law enforcement response needs to be commensurate with the scale of the threat and with the gravity of the injury to our economy and our safety.

¹² It may also make sense to bring into the IP Enforcement Division those attorneys in the Civil Division's Commercial Litigation Branch who specialize in civil IP enforcement.

Right now, the amount of resources dedicated to IP enforcement across our government is miniscule. If IP enforcement is really going to increase, we must have dedicated personnel in key positions, who do not have to juggle IP enforcement along with a host of other duties, but instead whose only responsibility is to enforce the laws against counterfeiting and piracy.

Several provisions of the Act deserve special notice in this regard, adding dedicated resources in federal enforcement, state enforcement, and enforcement overseas.

1. Federal Investigative and Prosecutorial Resources

The DOJ has set up Computer Hacking and Intellectual Property (CHIP) Units within twenty-five U.S. Attorney's offices around the country. Section 512(b)(2) of this Act requires the assignment of at least one more federal prosecutor to each unit, for the specific purpose of bringing piracy and counterfeiting cases. Section 512(b)(1) authorizes at least two additional FBI agents to be assigned to work exclusively on IP crimes within each CHIP unit. And 512(b)(3) would add 10 more CHIP units, so that CHIP units were housed in approximately a third of the US Attorney's Offices across the country.

This is one of the most important provisions of the bill. Rights holders and enforcement officials alike tell us that IP crimes consistently draw the short straw, because the limited investigative resources of the FBI are generally assigned elsewhere. Those computer-savvy agents who have IP in their portfolio are often pulled off IP cases to investigate time-sensitive computer hacking cases, allowing their IP investigations to lie fallow. Without investigative agents to work their IP cases, prosecutors turn their attention to other matters. The Act would help terminate this vicious cycle.

The Act would also assign at least five agents to an operational unit at FBI headquarters, dedicated to working with the Intellectual Property Division on the development, investigation, and coordination of complex, multi-district, and international criminal intellectual property cases. Having operational FBI agents specifically assigned to work with trained IP prosecutors will enable DOJ to have an elite team to investigate highly complex criminal IP cases.

Other provisions within Title V of the Act would upgrade IP enforcement training for investigators both within and outside the CHIP units, and direct the Attorney General to ensure that adequate computer forensic support is available to DOJ personnel in IP criminal cases. Taken together, these changes will make the Department far more effective in the fight against counterfeiting and piracy, and the number of cases investigated and defendants prosecuted should increase accordingly.

2. State and Local Law Enforcement Grants

Even with additional resources, federal law enforcement is spread thin, and can only be expected to focus on the worst offenders and the most complex IP cases. By contrast, in our federal system, the overwhelming majority of law enforcement resources are found at state and local levels. These authorities already play a pivotal role in the fight against counterfeiting and piracy, but unless we devote more resources to improving the ability to carry out enforcement at the state and local level, our nation has little hope of reducing IP theft to a meaningful degree.

The Act addresses this issue in Title V, Section 511, authorizing local law enforcement grants, called IP-TIC grants, “for training, prevention, enforcement and prosecution of intellectual property theft and infringement crimes.” Such grants would have a wide range of potential applications, but would be most useful in supporting the creation of trained units consisting of state and local prosecutors and agents who can focus on local IP crime. Such grants can be used to support task forces, comprised of federal, state and local investigators and prosecutors working together to address the problem strategically in whatever jurisdiction best furthers the case.

We suggest that IP-TIC grants should favor the states and localities that put forth plans to create dedicated prosecutorial and investigative units that work full-time on IP enforcement. As discussed in terms of federal resources, “part-time” IP prosecutors and investigators too often turn out to be ineffective, as their efforts are siphoned off elsewhere and the IP cases are put to the side. Explicit language favoring the creation of dedicated squads would address this very real concern.

3. Dedicated International Resources

Addressing the problem of IP theft in our backyard is essential, but it is not by itself a solution. Counterfeiting and piracy are worldwide problems that require all countries to increase their focus on the issue and to cooperate with one another on trans-border crime.¹³

The Act recognizes this in three ways. DOJ has already placed two “Intellectual Property Law Enforcement Coordinators” (IPLCs) in our Embassies in Budapest and Bangkok, where they work in conjunction with efforts to crack down on counterfeiting and piracy in those regions. The Act (Section 521) builds on this initiative by directing the placement of five more IPLCs in key regions that are the sources of counterfeit and pirate products that enter our marketplace. The IPLCs (which would be part of the new IP Enforcement Division) would liaise with law enforcement agencies in these regions, carry out training activities to improve their enforcement capacities, and coordinate U.S. law enforcement efforts against transnational counterfeiting and piracy syndicates operating in these regions.

¹³ On this note, we welcome the October 23 announcement by USTR that the U.S. and some of its allies would pursue an Anti-counterfeiting Trade Agreement that would raise the bar on the expected level of activities by signatories in this vital arena.

Second, the Act (Section 522) directs the IP specialists in the IP Enforcement Division to provide additional training and technical assistance to foreign governments, especially in priority countries where such training can be carried out most effectively.

Third, the Title IV of the Act builds on a successful initiative of the Patent and Trademark Office to appoint “Intellectual Property Attachés” to serve in key US Embassies around the world. These attachés have already been effective advocates for tougher intellectual property enforcement efforts in China and other countries. Under the Act, ten more attachés would be placed in priority countries, with a broader mission than the Justice Department IPLECs, including serving as in-country resources to advance the interests of US companies attempting to create and protect IP abroad, and coordinating efforts of U.S. Embassies and missions to work with like-minded nations to enhance IP enforcement in the host countries.

For far too long, both here and abroad, counterfeiting and piracy have been perceived as high-profit, low-risk enterprises for organized criminal groups. That has begun to change. By placing dedicated enforcement resources at the federal, state and local levels, and in key markets overseas, this Act will accelerate that change, and increasingly make IP theft a crime that does not pay.

C. Updating the Laws

The Act is also noteworthy for the way it updates the laws in a sensible and uncontroversial manner to respond to changes in technology. A few examples follow:

- Title I, Sections 105 and 106, increasing the availability of treble damages in counterfeiting cases, and doubling statutory damages for counterfeiting, which have remained unchanged since 1996. The vast growth in the scope and profitability of counterfeiting enterprises mandates that penalties keep pace, or they will lose their deterrent value;
- Title I, Sections 107 and 108, outlawing the export of counterfeit or pirate product from the United States, a prohibition that we have long urged our trading partners to enact;
- Title II, Section 201, ensuring that a copyright pirate who has been convicted for violating one provision of the criminal copyright laws is treated as a repeat offender if he violates a different provision of that law;
- Title II, Section 202, harmonizing the inconsistent forfeiture provisions that have emerged among the various IP criminal laws; and
- Title II, Section 204, raising the criminal penalty for acts of counterfeiting that results in death or serious bodily harm.

We must make sure our criminal and civil laws remain adequate to counter the ongoing menace of IP theft. This Act goes a long way toward that goal.

While the Act would not implement all the CACP proposals, we are pleased that it addresses most of the critical needs. For example, while the Act does not empower the Department of Justice to bring civil cases against counterfeiters and pirates for conduct that would also violate the criminal statutes, it does ensure that Justice will put a higher priority on IP enforcement. Furthermore, several provisions of the Act contain compromise versions of CACP proposals. While language consistent with the original CACP proposals would have been preferable, we understand the sponsors' reasons for altering these proposals, and believe they have struck a good balance between the need for stronger IP protection and the concerns of Internet Service Providers, grey marketers, the criminal defense bar, Internet commerce companies, and others.

V. Conclusion

The scope of the challenge posed by counterfeiting and piracy sometimes seems overwhelming. Make no mistake: the problem is vast and there is no simple set of solutions. But we have found that, by banding together in groups like CACP, by devoting serious thought and effort to solutions, and by articulating those solutions in a clear manner, we can make a difference.

Likewise, in crafting this carefully considered and critical legislation on a bipartisan basis, this Committee has given hope to those who struggle against this scourge on a daily basis. The CACP applauds you for your efforts, and we stand ready to do whatever it takes to help you enact this bill into law.

Thank you for this opportunity to testify.

EXHIBIT A**CACP Membership List****Associations**

1. Advanced Medical Technology Association (ADVAMED)
2. American Electronics Association(AeA)
3. Aerospace Industries Association (AIA)
4. Air Conditioning and Refrigeration Institute
5. Alliance of Automobile Manufacturers (AAM)
6. American Apparel & Footwear Association (AAFA)
7. American Association of Exporters and Importers (AAEI)
8. American Chamber of Commerce in Argentina
9. American Chamber of Commerce in Denmark
10. American Chamber of Commerce in France
11. American Chamber of Commerce in Germany
12. American Chamber of Commerce in Guatemala
13. American Chamber of Commerce in Kosovo
14. American Chamber of Commerce in Poland
15. American Chamber of Commerce in Singapore
16. American Chamber of Commerce in Spain
17. American Chamber of Commerce in Sweden
18. American Chamber of Commerce, Kyrgyz Republic
19. American Chamber of Commerce, Norway
20. American Council of Independent Laboratories (ACIL)
21. American Intellectual Property Lawyers Association (AIPLA)
22. American Lebanese Chamber of Commerce
23. American Made Alliance
24. American Petroleum Institute (API)
25. American Society of Association Executives (ASAE)
26. Americans for Tax Reform
27. Art Copyright Coalition
28. Association for Competitive Technology (ACT)
29. Association of Equipment Manufacturers (AEM)
30. Association for Suppliers of Printing, Publishing and Converting Technologies (NPES)
31. Automotive Aftermarket Industry Association (AALA)
32. Brand Protection Alliance (BPA)
33. Business Software Alliance (BSA)
34. Canadian Consulate General
35. Center for Health Transformation (CHT)
36. Coalition Against Organized Retail Crime
37. Computer Technology Industry Association (CompTIA)
38. Consumer Electronics Association (CEA)
39. Cyprus-American Business Association
40. Detroit Regional Chamber
41. Electronic Industries Alliance (EIA)
42. Electronic Resellers Association International, Inc. (ERAI)
43. Entertainment Software Association (ESA)

44. European American Business Council (EABC)
 45. Free Speech Coalition
 46. Food Marketing Institute (FMI)
 47. Friendship Foundation of American Vietnamese (FFAVN)
- sociations (continued)**
48. Gas Appliance Manufacturers Association (GAMA)
 49. Generic Pharmaceutical Association (GPhA)
 50. Global Business Leaders Alliance Against Counterfeiting (GBLAAC)
 51. Greeting Card Association (GCA)
 52. Grocery Manufacturers/Food Products Association (GMA/FPA)
 53. Healthcare Distribution Management Association (HDMA)
 54. Imaging Supplies Coalition (ISC)
 55. Intellectual Property Owners Association (IPO)
 56. International Authentication Association (IAA)
 57. International Anti-Counterfeiting Coalition (IACC)
 58. International Anti-Counterfeiting Coalition Foundation
 59. International Association of Amusement Parks and Attractions (IAAPA)
 60. International Association for Exhibition Management (IAEM)
 61. International Communications Industries Association (ICIA)
 62. International Federation of Phonographic Industries (IFPI)
 63. International Housewares Association (IHA)
 64. International Intellectual Property Institute (IIPI)
 65. International Trademark Association (INTA)
 66. Kenan Institute of Private Enterprise
 67. Kent Chamber of Commerce
 68. Lansing Regional Chamber of Commerce
 69. Los Angeles Area Chamber of Commerce
 70. Magazine Publishers of America (MPA)
 71. Mississippi Manufacturers Association
 72. Motion Picture Association of American (MPAA)
 73. Motor & Equipment Manufacturers Association (MEMA)
 74. Motorcycle Industry Council (MIC)
 75. National Academy of Recording Arts & Sciences
 76. National Association of Manufacturers (NAM)
 77. National Chamber Foundation (NCF)
 78. National Electrical Manufacturers Association (NEMA)
 79. National Electronic Distributors Association (NEDA)
 80. National Foundation for Women Legislators
 81. National Foreign Trade Council
 82. National Marine Manufacturers Association (NMMA)
 83. Outdoor Power Equipment Institute (OPEI)
 84. Pharmaceutical Research and Manufacturers of America (PhRMA)
 85. Precision Metalforming Association (PMA)
 86. Recording Industry Association of America (RIAA)
 87. Rubber Manufacturers Association (RMA)
 88. Russian Chamber of Commerce & Industry in the USA
 89. Santa Monica Chamber of Commerce
 90. Semiconductor Equipment and Materials International (SEMI)
 91. Semiconductor Industry Association
 92. SGS Global Trade Solutions, Incorporated (SGS)
 93. Society of the Plastics Industry, Inc. (SPI)
 94. Software and Information Industry Association (SIIA)
 95. Specialty Equipment Market Association (SEMA)

- 96. Swiss-American Chamber of Commerce
- 97. Toy Industry Association (TIA)
- 98. U.S. Council for International Business (USCIB)
- 99. U.S. Chamber of Commerce
Vision Council of America (VCA)
- 100. XLA Express Delivery and Logistics Association

Businesses

- 1. 3M Company
- 2. A. Louie Associations Corporation
- 3. A-Systems Incorporated
- 4. Abercrombie & Fitch
- 5. Ablebodec Associates
- 6. Accenture
- 7. ACMF-Teleforensics, LLC
- 8. ACCU-BREAK Pharmaceuticals, Inc.
- 9. Activision
- 10. Acucore Inc.
- 11. AIG Consultants, Inc.
- 12. AIM Global
- 13. Alexander Watson Associates
- 14. All to Success
- 15. Alston & Bird LLP
- 16. Alte Biosciences Incorporated
- 17. Altria Group, Inc.
- 18. AMCO Plastic Materials, Inc.
- 19. American Banknote Holographics, Inc.
- 20. American Standard Companies, Inc.
- 21. AmerisourceBergen Corporation
- 22. Amgen Inc.
- 23. Analysis Research Planning Consulting (ARPC)
- 24. Aplicor Inc.
- 25. Applied DNA Sciences
- 26. Aramco Services Company
- 27. Archstone Consulting
- 28. Arent Fox PLLC
- 29. Areva T&D Inc.
- 30. Ark Home Entertainment
- 31. ARmark Authentication Technologies
- 32. Arnold & Porter LLP
- 33. Arxan Technologies
- 34. Ashton-Potter (USA) Ltd.
- 35. ATB Security
- 36. ATL Pharma Security Label Systems (ATI)
- 37. Authentix, Inc.
- 38. Automation Alley
- 39. Baca, Garcia & Gannon, LLP
- 40. Baker & Hostetler LLP
- 41. Baker & McKenzie LLP
- 42. Bandai America Inc.
- 43. Bandai Namco Group
- 44. Baxter Healthcare Corporation
- 45. Bayer Healthcare – Biological Products
- 46. BD Consulting and Investigations, Inc.
- 47. BellSouth Corporation
- 48. Benchmade Knife Company
- 49. Bendix Commercial Vehicle Systems LLC
- 50. Better Health Care Products Corp.
- 51. Biomerieux, Inc.
- 52. Blank Rome Government Relations LLC
- 53. Blazer Investigations
- 54. Bose McKinney & Evans LLP
- 55. Bradley, Andrew, Christopher, & Kaye
- 56. Brady Corporation
- 57. Brand Security Corporation
- 58. Brain League IP Services Private, LTD
- 59. Brand Enforcement UK Ltd.
- 60. Brand Protection Ltd.
- 61. British American Tobacco
- 62. Buchalter Nemer
- 63. Bunco Collection LLC
- 64. Building Blox
- 65. Bullivant Houser Bailey PC
- 66. Burkhalter, Kessler, Goodman, & George
- 67. Business Consulting & Investigations Inc.
- 68. Business Success Strategists, LLC
- 69. buySAFE, Inc.
- 70. BuzzcoPDMA, a division of Dendrite International
- 71. C&M International, LTD
- 72. Call, Jensen, and Ferrell
- 73. Cardinal Law Group
- 74. Cargill & Associates, PLLC
- 75. Carolina Junior Elite Training System (J.F.T.S.)

- 76. Cascade Designs, Inc.
- 77. Center for Medicines in the Public Interest
- 78. Century Bank and Trust
- 79. Chanel, Inc.

Businesses (continued)

- 80. Charles T. Joyner, PLLC
- 81. Charter Technologies, LLC
- 82. ChemImage Corporation
- 83. Cisco Systems
- 84. Click, Inc.
- 85. Cleveland Golf
- 86. Coach, Inc.
- 87. Coats & Bennett, PLLC
- 88. Coffee Bean & Tea Leaf
- 89. Coliant Corporation
- 90. Collection 2000 Cosmetics, Inc.
- 91. Colorcon, Inc.
- 92. Corporate Express Document & Print Management
- 93. CPA North America
- 94. CropLife America
- 95. CropLife International
- 96. CTP, Inc.
- 97. Danaher Motion India
- 98. Dayco Products, LLC
- 99. Deckers Outdoor Corporation
- 100. Definitive Communications
- 101. deKieffer & Horgan
- 102. De La Rue Security Print Inc.
- 103. Democracy Data & Communications (DDC)
- 104. DHL
- 105. Diligence USA, LLC
- 106. DMN Americas Inc.
- 107. Dai Nippon Printing Company
- 108. Discover Hollywood Publications
- 109. Document Security Systems, Inc.
- 110. Dolby Laboratories, Inc.
- 111. Dreier LLP
- 112. Duncan Investigations
- 113. DuPont
- 114. Dwight Law Group
- 115. Eastman Kodak Company
- 116. Eaton Electrical
- 117. eBay Inc.
- 118. Economist Group
- 119. Efficient Research Solutions, Inc.
- 120. Electronic Arts
- 121. Electronic Supply Chain Solutions
- 122. Eli Lilly and Company
- 123. Enertia Building Systems, Inc.
- 124. Engineous Software, Inc.
- 125. E.N. Television
- 126. Ernst & Young
- 127. Everson CIB Inc.
- 128. The Fairfax Group
- 129. Fashion Business Incorporated
- 130. Fashion Institute of Design and Merchandising
- 131. Federal-Mogul Corporation
- 132. Federal Strategy Group
- 133. Federal Express
- 134. First on the Seam
- 135. Flex-a-lite
- 136. Flightline Aviation Wear
- 137. Flowmaster
- 138. Foilflex Products
- 139. Ford Motor Company
- 140. Fox Group
- 141. Frazee Associates LLC
- 142. Fulbright & Jaworski, LLP
- 143. The Gallup Organization
- 144. Gallus Inc.
- 145. Ganum
- 146. Gehrke & Associates, SC
- 147. Genesis Smith-Benton
- 148. GenuOne, Inc.
- 149. General Motors Corporation (GM)
- 150. Gillette
- 151. Glast, Phillips & Murray, P.C.
- 152. Glaxo-SmithKline
- 153. Global Anti-Piracy Agency
- 154. Global Credit Solutions Pty Ltd
- 155. Global IP Counselors, LLP
- 156. Global Risk Solutions Asia Corporation
- 157. Global Validators, Inc.
- 158. Goldman Organization
- 159. Goodrich Aerospace Corporation

160. Google, Inc.
161. Governors America Corporation
162. Grant Thornton LLP
163. Graphic Security Systems Corporation
164. Grayson USA, LLC
165. Gregory J. Ellis, Esq., Ltd.
- Businesses (continued)**
166. Gruman Development & Technologies
167. Guardian Academics
168. Hanes Brand, Inc.
169. Harley-Davidson
170. Hemaya Universal
171. Hofherr Law
172. Holman Moody and Holman Automotive
173. Holmes & Lofstrom, LLP
174. Holomex
175. Honeywell International Inc.
176. Hologram Company Rako, GmbH
177. Honigman Miller Schwartz & Cohn LLP
178. Howard & Howard Attorneys, PC
179. Hunton & Williams LLP
180. Hutchison Law Group
181. H.W. Sands Corporation
182. IBM Corporation
183. IBS Corporation
184. Identco
185. Infineon Technologies Corp.
186. Infragard
187. InfraTrac
188. Inkongruent
189. Institute for Policy Innovation
190. Intellectual Property Technology Law
191. Inter-Lingua
192. Internet Crimes Group, Inc.
193. Internet Law Group
194. IntegriChain
195. Intel Corporation
196. Investigative Consultants
197. I-OnAsia Ltd
198. IP Services Inc.
199. IPCybercrime.com LLC
200. ISISAN
201. IsoCiser Systems, Inc.
202. Jackson Walker, LLP
203. JAG
204. Jet Propulsion Laboratory
205. J. Mark Holland & Associates
206. Johnson & Johnson
207. Jones Day
208. Keats McFarland & Wilson LLP
209. Kent & O'Connor, Incorporated
210. Kelley Drye Collier Shannon
211. Key & Keys LLC
212. Kilpatrick Stockton LLP
213. Knobbe Martens Olson & Bear LLP
214. KREF8IT Video Productions
215. Kurz Transfer Products LP
216. LA County Economic Development Company
217. LA Fashion District
218. Label Technique Southeast
219. Laguna Components, Inc.
220. LaMagna and Associates
221. Jameer Group LLC
222. LaRiviere, Grubman & Payne
223. laSalle Licensing, LLC
224. Lauson & Schewe, LLP
225. Law Offices of Dorie Choderker
226. Law Offices of Francis John Cowhig
227. Law Offices of Mann & Zarpas
228. Levi Strauss & Co.
229. Lexmark International
230. Lockheed Martin Aspen Systems
231. LORD Corporation
232. L'Oreal USA
233. M Capitol Management
234. Major League Baseball Enterprises, Inc.
235. Mann Theatres
236. Mary Kay, Inc.
237. MarkMonitor
238. Mayback & Hoffman, PA
239. Mayo Communications
240. The McGraw-Hill Companies
241. MediaDefender

242. Merck & Company
243. MEMSCAP, Inc.
244. Meyercord Revenue Inc.
245. Microsoft Corporation
246. Milgard Manufacturing, Inc.
247. Miller, Canfield, Paddock and Stone,
P.L.C.
248. Miller Nash LLP
- Businesses (continued)**
249. Molecular Isotope Technologies,
I.I.C
250. The Money Finders, Inc.
251. Monsanto
252. Moore & VanAllen PLLC
253. Manufactures' Qualification and
Validation Program, Inc. (MQVP)
254. MichiganMall.com
255. Mystic Medicines, Inc.
256. Nanofilm Ltd.
257. NanoInk, Inc.
258. National Biopharmaceutical Security
Council (NBSC)
259. National Broadcasting Corporation
(NBC)
260. National Trademark Investigations
261. Nelson Mullins Riley &
Scarborough, LLP
262. Net Enforcers, Inc.
263. New Balance Athletic Shoe, Inc.
264. Newbridge Associates
265. Neweel, Campbell & Roche, LLP
266. New Momentum
267. News Corporation
268. Nike, Inc.
269. Nokia Inc.
270. Northwest Attraction Council
271. Oakley
272. Oblon, Spivak, McClelland, Maier &
Neustadt, PC
273. Olive & Olive, PA
274. OpSec Security, Inc.
275. ORBID Corporation
276. Parker Poe Adams & Bernstein LLP
277. Partners 4 Management GmbH
278. Payne North America
279. Paxar Corporation
280. Peerscent, Inc.
281. Performance Systems
282. Pernod Ricard USA
283. Pfizer, Inc.
284. Plaza Bank
285. Podium Distribution
286. Political Capital, LLC
287. Polo Ralph Lauren
288. Pop! Technology
289. Porter Wright Morris &
Arthur LLP
290. Polyonics Incorporated
291. Precision Pumping Systems,
Inc.
292. Prestige Label Company
293. Prime Business Credit
294. Procter and Gamble
295. Product Safety Letter
296. Professional Electrical
Apparatus Recyclers League
297. Property Rights Alliance
298. Quest Kids Clothing
299. QP Semiconductor Inc.
300. QX Incorporated
301. R² Designs, LLC
302. RAI Corporation
303. Rand Corporation
304. R.E. Holdings International,
Inc.
305. The Reagan Group LLC
306. Reconnaissance International,
Ltd.
307. Reebok International, Ltd.
308. Reed Elsevier Inc.
309. Regent Investigation, Ltd.
310. Resource LabelGroup, LLC
311. RI⁺ Commerce, LLC
312. RFID4U
313. RFID World
314. RMC Associates
315. RM Theatre Corporation
316. Robert Branand International
317. Rock-Tenn Company
318. Rodriguez, O'Donnell, Ross
and Fuerst
319. Rouse and Company
International
320. RR Donnelley
321. SafeMedia Corporation
322. sanofi-aventis
323. Santa Monica Place

- 324. Schreiner Group – GmbH & Co. KG
- 325. Science of Racing
- 326. Seagate Technology, LLC
- 327. Secure Symbolology, Inc.
- 328. Securitas Global
- 329. Security & Risk Management Group, LLC
- 330. Seiter & Co.

Businesses (continued)

- 331. Shang & Associates, LLC
- 332. SICPA Securink Corporation, North America
- 333. Sierra Scientific Instruments
- 334. Signoptic
- 335. Silicon Edge Law Group, LLP
- 336. Silver Lake Jewelers LLC
- 337. Singular ID Pte. Ltd.
- 338. SGS SA
- 339. Smith & Rendon, LLP
- 340. SolarTech Corporation
- 341. SourceCode
- 342. Southwest Research Institute
- 343. SPC Consulting
- 344. Square D Company
- 345. SSC, Inc.
- 346. Staas & Halsey LLP
- 347. Star Financial Resources, LLC
- 348. The Steele Foundation
- 349. ST Microelectronics
- 350. Sun Chemical Corporation
- 351. SureFire, LLC
- 352. Tahitian Noni International
- 353. TASKS Investigations and IP Law Enforcement
- 354. Technical Solutions LLC
- 355. Technicote, Inc.
- 356. Tesa Scribos GmbH
- 357. ThinSpring
- 358. Thumbnail Media
- 359. Tiffany & Co.
- 360. Time-Warner
- 361. Topflight Corporation
- 362. Torys, LLP
- 363. TracTag, LLC
- 364. Trade Innovations, Inc.
- 365. Trane
- 366. Transpro, INC

- 367. Traphagen Law PLLC
- 368. Trenton West
- 369. TROY Group, Inc.
- 370. True Religion Brand Jeans
- 371. TRW Law Group
- 372. TUV Rheinland Group
- 373. UltraDots, Inc.
- 374. Underwriters Laboratories, Incorporated
- 375. Universal Music Group
- 376. Uniweld Products, Inc.
- 377. Unzipped
- 378. UPM Raflatac
- 379. The Upper Deck Company, LLC
- 380. USA For Innovation
- 381. Valor
- 382. Vectra Fitness, Inc.
- 383. Venable LLP
- 384. Verical, Inc.
- 385. VeriSign, Inc.
- 386. Verizon Communications, Inc.
- 387. Viacom Inc.
- 388. Visteon
- 389. VoiceMuffler Corporation
- 390. Walt Disney Company
- 391. Ward and Smith PA
- 392. Warn Industries, Inc.
- 393. Warner Brothers Studios
- 394. Warner Music Group
- 395. WebEyeQ
- 396. Week Days Clothing's
- 397. Weldon, Williams and Lick Inc.
- 398. Wheaton Science Products
- 399. Whitehall Bureau of Canada Limited
- 400. Williams & Jensen
- 401. Wine Stem Company
- 402. Wolf Block Public Strategies
- 403. Womble Carlyle Sandridge & Rice LLC
- 404. Wyeth
- 405. Xerox Corporation
- 406. Yahoo!, Inc.
- 407. Yottamark, Inc.
- 408. Zippo Manufacturing Company

EXHIBIT B**LECG Executive Summary****Executive Summary*****A. The Need to Increase U.S. Government Anti-Counterfeiting and Anti-Piracy Efforts***

The health of the US economy depends on a wide range of industries that rely on intellectual property (IP) to create and produce state-of-the-art products (i.e., IP-intensive industries).¹⁴ Unfortunately, counterfeiting and piracy are robbing these industries of the intellectual property on which their profitability and growth rest and on which the long-run competitiveness of the US economy depends. The industries harmed by counterfeiting and piracy and the industry associations that represent them are devoting substantial amounts of capital and management talent to combat counterfeiting and piracy. But private business efforts to control these problems must be augmented by public efforts by both the U.S. and foreign governments to identify, capture and punish counterfeiters and pirates.

Counterfeiting and piracy are forms of property crimes, and the U.S. government has an important role to play in limiting such crimes on law enforcement grounds alone. Counterfeiting and piracy also both reduce job and income opportunities for Americans and reduce tax revenues at federal, state and local levels by imposing significant losses on the operations of legitimate businesses. Finally, the public interest in controlling counterfeiters and pirates goes beyond considerations of property, jobs, and government revenues to encompass concerns about safety and health. Several recent events have demonstrated that the health and safety of the American public are at risk from inferior,

¹⁴ IP-intensive industries are defined in Appendix A. IP-intensive industries are those that create intellectual property and also those that rely on intellectual property to create state-of-the-art products which often have well-identified brand names. IP-intensive industries include motion pictures, sound recordings, software, fashion, pharmaceuticals, consumer electronics including personal computers, electronic components, automotive, aircraft, aerospace, toys, games, publishing, and numerous other industries.

potentially dangerous counterfeit products. And counterfeiting and piracy pose mounting risks to America's national security as organized crime groups and terrorist organizations play growing roles.

The U.S. government already has substantial anti-counterfeiting and anti-piracy efforts in place. However, according to the U.S. Government Accountability Office (GAO), these efforts could be significantly improved primarily through strong permanent leadership to foster better coordination within and among federal government agencies and between them and state, local and foreign government authorities and private industry. Based on an extensive review, the GAO has also concluded that the U.S. government's anti-counterfeiting and anti-piracy effort needs strong permanent leadership, that more dedicated resources are needed to combat counterfeiting and piracy, and that the government agencies need more efficient and effective anti-piracy and counterfeiting operations (i.e., there is a need to "work smarter.") The OECD reached similar conclusions in its recent review of government efforts to combat counterfeiting and piracy around the world.

The Coalition against Counterfeiting and Piracy (CACP) has recently proposed a broad initiative of actions to be taken by the federal government to enhance its efforts to control piracy and counterfeiting. The measures proposed by the CACP are consistent with the GAO's recommendations. The CACP's call for prompt stronger action by the federal government reflects the fact that the losses to American companies and the dangers to American consumers resulting from piracy and counterfeiting are growing rapidly as technology makes counterfeit products harder to detect and easier and cheaper to produce.

The purpose of this report is to provide an objective evaluation of the CACP initiative by providing estimates of the expected budgetary costs of the actions it proposes and estimates of the expected benefits of these actions. Reflecting limitations on the

availability and reliability of underlying data and studies, we present a range of estimates for both the costs and benefits. In both cases, the estimates we present are conservative - we believe that our estimates of costs are on the high side of the likely range and our estimates of benefits are on the low side of the likely range.

B. *Summary of Major Findings*

Based on our research, we have reached the following conclusions about the costs and benefits of the enactment of the CACP initiative:

1. Measured in present value terms, the CACP initiative would cost between \$0.289 billion and \$0.489 billion during the first three years. We have based our cost estimates on the costs of similar government programs. Most of the costs of the CACP initiative are costs of hiring additional federal government personnel to combat piracy and counterfeiting and training government personnel working in this area. The personnel costs of the CACP proposal include the appointment of a Chief IP Enforcement Officer (CIPEO) in the White House to coordinate the efforts of the federal government and of other U.S. and foreign government agencies responsible for reducing piracy and counterfeiting. Our cost estimates also reflect the provision of resources and legal tools to allow the IPR enforcement agencies to “work smarter.”
2. According to estimates by the FBI and other sources, U.S. companies lose at least \$225 billion each year to piracy and counterfeiting. Measured in present value terms, we estimate that the CACP initiative would reduce these losses by between \$18.4 billion and \$36.8 billion during the first three years. Our estimates assume that enactment of the CACP initiative would reduce these losses by between 5 percent and 10 percent by the third year. These estimates of success appear conservative and reasonable based on the carefully documented success rate achieved in reducing property theft by the CompStat Program of the New York Police Department, which has many similar features to those of the CACP initiative. This success rate is also consistent with the experience under the U.S. Department of Justice’s initiatives to combat computer and intellectual property crime.

3. Even using pessimistic estimates of the reduction in the losses of U.S. business revenues from piracy and counterfeiting, the enactment of the CACP initiative would increase U.S. output by about \$27 billion a year and would increase U.S. employment by about 174,000 a year after three years. Using our optimistic estimates of the reduction in losses from the CACP measures, these figures rise to about \$54 billion in additional U.S. output and about 348,000 in additional employment after three years. These estimates of the overall output and employment benefits to the U.S. economy from enactment of the CACP initiative are based on measures of the direct and indirect effects of piracy and counterfeiting on the U.S. economy from recent studies of the motion picture and recording industries.
4. Measured in present value terms, total federal tax revenues during the first three years of the CACP initiative would increase between \$1.4 billion and \$2.8 billion versus the present value costs over the same period of the CACP initiative of \$0.289 billion to \$0.489 billion. The estimates are based on the additional federal tax revenues that would result from the increases in US output and employment resulting from the enactment of the CACP measures.

C. Conclusions

Overall, our research indicates that the CACP initiative is a sound investment for the federal government. Even under very conservative assumptions, it would produce sizeable reductions in business losses caused by piracy and counterfeiting, it would generate meaningful increases in output and employment levels in the US economy, and it would increase federal government revenues by substantially more than its costs.

For every dollar spent prudently on the CACP initiative, federal tax revenues would increase by at least \$2.9 and by as much as \$9.7 with an intermediate range of \$4.9 to \$5.7.¹⁵ These federal tax revenue increases are due to the increase in U.S. output and

¹⁵ All dollar amounts are stated in present value (2007) terms and are average results over three years.

employment that would occur as a result of implementing the CACP initiative. For every dollar spent on the CACP initiative, U.S. output would increase by at least \$38 and would increase by as much as \$127 with an intermediate range of \$64 to \$75.¹⁶ The increase in output due to implementing the CACP program will result in the creation of between 174,000 and 348,000 new jobs during the third year. Therefore, the return to the federal government and the economy of investing in the CACP initiative is very high. In addition, state and local governments can expect to receive incremental revenues between \$1.25 billion and \$1.50 billion, in present value terms over three years, if the CACP initiative is implemented.

Over time, by enabling the IP-intensive industries to earn a higher return, the CACP measures would encourage more investment and foster faster U.S. economic growth. In addition to these quantifiable benefits, enactment of the CACP initiative would increase the protection of American consumers against the health and safety risks of counterfeited and pirated goods. Finally, more effective policies to combat piracy and counterfeiting are an important complement to policies to combat organized crime and terrorism and to enhance national security.

¹⁶ Id.

Mr. BERMAN. Thank you, Mr. Cotton. In your comments about the revenue impacts of dollars spent on enforcement, I am wondering if we couldn't calculate the benefits of this bill in dealing with our appropriations process in these last days—the creative scoring that frequently has been——

Mr. COTTON. Well, we would ask that Dr. Tyson's study be included in the record and it might help in that respect, Mr. Chairman.

Mr. BERMAN. Good. We will do that.

[The information referred to is available in the Appendix.]

Mr. BERMAN. I will recognize myself for 5 minutes.

Ms. Sohn?

Ms. SOHN. I am ready. [Laughter.]

Mr. BERMAN. You made a number of interesting suggestions and helped set the framework for some of the discussions. I want to focus on the registration issue first.

I agree we have to turn to orphan works and this Committee plans to do this early next year. But I am curious about two aspects of your testimony dealing with your opposition to the provision in this bill on registration. You talk about the orphan works problem, and that it is crucial to require registration before criminal enforcement because you can minimize the orphan works problem that way. If that is the case, and I see your point, would you support a carve-out for registered works from being considered orphaned?

Ms. SOHN. Would I consider a carve-out for registered works?

Mr. BERMAN. In other words, you are concerned about us removing the registration requirement to allow enforcement that creates potential for many more orphan works, and so then I say, is the flip-side true? Once it is registered, then it really isn't orphaned.

Ms. SOHN. That is an interesting idea, but here is the problem. As you well know, photographers who I know have spoken to you and who have the most objection to orphan works, fixing the orphan works problem, it is because the Copyright Office only has a text-based registry. It is almost impossible, even if you do a good-faith search, to find that work. So if I am a photographer and I have a picture of the Statue of Liberty, the way I register it is a picture of the Statue of Liberty in text.

So part of the problem is that the current copyright registry doesn't make it easy to find certain works that are already registered. So in my mind, it would be unfair to punish somebody who wanted to use, let's say for a history book, a picture of the Statue of Liberty, did a good-faith search, but could not find the owner because there is no way to actually right now find a picture. I think there is technology that will allow you to actually scan that picture, but we don't have it right now.

Mr. BERMAN. What if you narrowed the carve-out. I take your point, but there are a lot of works that the act of registration means you know where the owner is, and you don't have the problem that you have just raised in those areas.

Ms. SOHN. That is correct. And at that point, a reasonable search under the last bill we had on orphan works—I am using the language from that—a reasonable search would come up with that. That shouldn't be a problem. The problem is that there are certain

instances, particularly visual arts as you well know, where it is not that easy to find it on the copyright registry.

Mr. BERMAN. One more issue on registration. You talk about the disincentive to register because of the ability to proceed in criminal enforcement cases without a registration. Yet on statutory damages, where a registration is required in order to receive statutory damages or attorney's fees, you talk of the possibility of damages being so draconian that it forces excessive damages or settlement and is enough to stifle innovation.

Wouldn't the possibility of statutory damages and attorney fees be motivation enough for a copyright owner to register their work? Isn't the ability to get those statutory damages and attorney fees far going to exceed the incentive to not register? And wouldn't this change about the requirement of registration to bring a criminal case not have repercussions? I am wondering, given the balance of incentives.

Ms. SOHN. I would agree with you, and that is why I don't understand why this provision is in this bill.

Mr. BERMAN. There are some good reasons and I am going to let—I think rather than go to my next question, I will let Mr. Cotton develop the reason. It is a narrow, but very important situation why the provision is in the bill. My only point was, I can't buy the notion that it is such a huge disincentive for people who would otherwise register their works not to register them, given that they lose the chance for statutory damages and attorney's fees if a registered work is infringed, and they don't have that opportunity if it is not registered.

But Mr. Cotton, why don't you just—

Ms. SOHN. As you know, you can always register after infringement happens. Okay? This eliminates the need to, or might. So if you are not registered and somebody infringes on your work, you have time to basically fix that and then register.

Mr. BERMAN. I think if the infringement—and I am not sure I know what you think I know, because I am not sure that if the infringement comes before the registration, I am not sure if for that infringement you can collect attorney's fees and statutory damages, but we will find that out.

Mr. Cotton?

Mr. COTTON. Mr. Chairman, I would make two points. From a public policy point of view, there is simply no reason to tie the hands of a prosecutor from taking action when there has been a clear action of copyright infringement, whether or not there has been a registration. The question is whether there has been an infringement. In many cases, certainly in the industry that I come from, where there can be a pre-release theft of a very valuable piece of work when in fact the registration cannot have taken place, and there may be very urgent need for the prosecutor and investigators to move quickly. There is no reason to tie their hands.

Secondly, from the point of view of incentive, I would just have to say that I can't conceive that anyone who was interested in preserving and protecting their IP and which would allow them access to statutory damages would make the decision not to register based on the highly uncertain question as to whether a prosecutor might

or might not take up a criminal case to protect their particular work.

So I would say, (A), from a public policy point of view there is no reason not to allow prosecution in serious cases. And secondly, the notion that there is an incentive which would cause a copyright owner not to register because they would be relying on the highly unpredictable notion of whether or not there would be a criminal prosecution is just not in the real world.

Mr. BERMAN. My time has more than expired.

Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman, and I thank the witnesses for appearing this morning.

Ms. Mandelker, it is my belief that IP-related criminal offenses traditionally have not enjoyed a high prosecutorial priority. I do believe, however, that has improved in recent times. With that in mind, what percentage of the department's resources are dedicated exclusively to the investigation and prosecution of IP-related criminal offenses?

Ms. MANDELKER. Mr. Coble, I can't give you a specific percentage, but I can tell you what resources we do have dedicated to this important problem. We have 230 computer hacking and intellectual property prosecutors spread throughout the country in the various U.S. attorneys' offices. Each U.S. attorney's office has at least one prosecutor who is specially trained to work on these types of cases. In addition, within the U.S. attorneys' offices, we have 25 units of CHIP units, prosecutors of two or more who are again specially focused on IP theft.

Within the Criminal Division where I work, we have 40 prosecutors in the computer crimes and intellectual property section, 14 of which are exclusively dedicated to IP theft. Of course, this is an issue that is a priority within the department, and so we have a task force of individuals across the department who are focused on this problem, including myself, including somebody in the Attorney General's office and also in the Deputy Attorney General's office.

Mr. COBLE. Thank you.

Ms. Sohn, let me get your opinion. Do you know whether websites may be considered to be a compilation under the Copyright Act, (A), and if so, do you know whether website owners actually register their sites with the Copyright Office and whether they would be conceivably entitled to statutory damages in the event of infringement?

Ms. SOHN. Certainly, I don't see why a website couldn't be considered a compilation. I don't really know if website owners—I assume some website owners would register their websites with the Copyright Office, sure.

Mr. COBLE. Some critics of section 104 have alleged that it might have the effect of intervening in ongoing copyright litigation. What do you say to that?

Ms. SOHN. Could you repeat the question? I am not quite sure I understand.

Mr. COBLE. I said some critics of section 104 have alleged that this section, if enacted, might have the effect of intervening in ongoing copyright litigation that has been initiated. What is your response to that?

Ms. SOHN. That is entirely possible. I mean, it depends on whether you want to make it retroactive or not. Obviously, Google is being sued in the Google book search case, they are being sued. YouTube is being sued by Viacom. So it is possible it might have an effect.

Mr. COBLE. I was going to ask Mr. Cotton a question. I am having a senior moment. I was going to ask you a question, Mr. Cotton, but I cannot grasp it for the moment. So with that in mind, Mr. Chairman, I will yield back before the red light appears.

Mr. BERMAN. Thank you, Mr. Chairman, Mr. Coble.

Mr. COBLE. Thank you, sir.

Mr. BERMAN. You were Chairman for a long time. [Laughter.]

The great days when you were Chairman, I remember them well.

Mr. COBLE. Thank you, sir.

Mr. BERMAN. Mr. Watt, the gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Chairman, I find myself in much the same position with respect to this bill as I did at the outset of our discussion about the patent reform bill. My sense is that there is a substantial amount of need to reform and do something to address the problems that exist. Yet, the technicalities of what need to be done there is substantial disagreement about.

So I am here really to try to learn more about what those technicalities should be, what the concerns are, and try to get enough basic knowledge before I really start going through the details of the bill to try to figure out where some of those inquiries and concerns might be addressed.

So with that, I think I will yield my time to the chair, who can ask some of those technical questions. He had a long list. I knew he had a long list and needed more time to explore it. So I think I will yield him the balance of my time and I will sit and listen like I intended to when I came in.

Mr. BERMAN. That is very nice of you, and I accept. But I would say the one difference between this and the patent bill is that here I would say 90 percent of the bill is not particularly controversial. I wish I could have said that about the patent bill. [Laughter.]

Mr. WATT. Well, that is what you told me at the outset of the patent bill. [Laughter.]

Mr. BERMAN. It is my line. This one isn't as controversial.

Mr. WATT. The more I looked at it, and the more I talked to people, the less I believed you. [Laughter.]

Mr. BERMAN. And the less I believed myself.

I want to take a little time here on 504. You were kind enough not in your public testimony to argue that which you argued in your written testimony that my approach on damages in copyright is somehow inconsistent with my approach to damages in the patent bill. Other than the hobgoblin argument, I actually don't think they are that inconsistent.

It seems to me section 504 now—that phrase—“for the purposes of this subsection, all parts of compilation or derivative work constitutes one work.” I think that language has a bias in favor of the infringer, rather than the owner. I understand a very different time when technology was very different why it was done. Somebody was infringing the sixth edition of a book, because there were

five other earlier editions in circulation, you shouldn't be charged with infringing all six versions of the book.

But what is the policy reason to distinguish between infringer "A" who takes 20 photos from one site, and infringer "B" who takes 20 photos, one each from 20 Web sites? Under current law, "A" infringer would be liable for a single statutory damage award, as determined by the court, not mandated by this bill, and infringer "B" would be subject to 20 separate statutory damage awards as determined by the court.

There may be objections to the overall level of the statutory damages, but accepting for the moment that we are going to have some statutory damages, how is that disparity justified?

Ms. SOHN. Well, I think the disparity comes from what kind of threats one copyright holder can make to a legitimate user or somebody at least who thought they were using copyright work legitimately, or an innovator. I mean, you talk a lot about the judicial discretion, but the fact of the matter is that most of these cases don't ever go to court. The threat is held over the innovator's head or the user's head, and it never goes anywhere. There is a settlement. The person no longer uses the copyrighted work.

So to me, the judicial discretion doesn't really solve the problem, and it is the same problem in the patent context, is that the threat is enough to stop people from innovating and the threat is enough to get people to settle even though they might have a good case in court. They won't test the bounds of the law.

Mr. BERMAN. All right. Well, we will continue this discussion. But in the patent context you never argued that and you were a great supporter of that legislation—

Ms. SOHN. And I continue to be.

Mr. BERMAN. You never argued that we should, on a counterfeit product that infringed 50 different patents because it was all in one product, consider it as one patent violation. Our goal in the patent bill was simply to give the court the discretion that courts here have to decide on how to calculate the damages. But I think I have used Mr. Watt's time.

And now, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

I wonder if Ms. Mandelker—is that how you pronounce it?

Ms. MANDELKER. Yes.

Mr. GOODLATTE. Would you explain in some more detail some of the concerns you have about the provisions in the bill that require reorganization within several Federal agencies? What are your specific concerns?

Ms. MANDELKER. Yes, thank you for that question.

In particular, I would note that we have a current structure of coordination within the administration that works quite effectively. As it currently stands, we have an IP coordinator who sits in the Department of Commerce, and who regularly ensures that we as an administration convene and coordinate as appropriate.

So for example, I meet personally monthly with my colleagues in the other departments. We coordinate regularly on international programs. We work very closely, for example, with the State Department in the deployment of our intellectual property law enforcement coordinators. We recently put on a conference both with

the Patent and Trademark Office and the State Department in Bangkok, Thailand in which we launched a new regional network. That type of coordination is very important and it is happening at very high levels within the administration.

Our concern with putting an office within the executive office of the President is in particular for the Department of Justice, we are always going to be concerned when you have somebody at the White House who may be in the position of directing our enforcement priorities or directing what cases we should do and what cases we shouldn't do. That would be contrary to the longstanding tradition of the department, making independent decisions when it comes to law enforcement decisions.

In addition, as I noted, what we have right now is actually quite effective. While we don't coordinate with the USTR, for example, on all matters, we do contribute to the section 301 process. We do provide them guidance as necessary when it comes to criminal enforcement policy that they seek to promote overseas, and likewise with the State Department.

But what we have really right now is a flexible coordination process that can adjust to the changing needs of the different departments, and it doesn't impose unnecessary bureaucratic reporting structures.

Mr. GOODLATTE. Thank you.

Mr. Cotton, we have been talking about the compilations, and I wanted to give you an opportunity to explain the rationale for allowing damages for each individual piece of those compilations. I wonder if you might explain the nature of what compilations are and the rationale.

Mr. COTTON. Well, let me just speak carefully here, Mr. Goodlatte. The change in the law was not part of the original CACP proposals, which is the organization I am representing today. We have strongly endorsed the Committee leadership's bill, including 104. In doing so, we really are focused not necessarily on the specifics of that provision, but on the anomaly really that the Chairman reflected, which is it does seem a problem to us in terms of the fact that the current penalties for a compilation, which may include 12 or 16 or many multiples of that in terms of individual works, is the same penalty as for the infringement of a single work. And those works in a compilation may have different owners and different creators.

And so in terms of resolving that anomaly, we do think it is worth the effort to try to find a resolution which does recognize the fact that it is in many circumstances a more extensive violation of copyright in the context of compilation than in the infringement of an individual work.

Mr. GOODLATTE. Ms. Sohn?

Ms. SOHN. Yes, I think I finally have the answer to Mr. Berman's question. I think it will also answer yours.

The reason that a compilation is looked at as one work is because you are looking and differentiating that from engaging 20 different or 10 different acts of infringement, is that you look at the act. You don't want to punish somebody 10 times for one act of infringement. So if I am infringing on 20 separate photographs, I have en-

gaged in 20 different acts of infringement. If I have infringed on one album, I have engaged in only one act of infringement.

It seems to me to be a pretty dangerous tool, again getting back to the answer that I originally gave you, to a copyright holder to all of a sudden turn one act of infringement into 10 or 20 or, you know, depending on how big compilation is even more.

Mr. GOODLATTE. Do you want to respond to that, Mr. Cotton?

Mr. COTTON. Yes. I think the law's tradition has been precisely to make those kinds of tradition. Petty larceny is not viewed the same as grand larceny. So the precise question that gets addressed in a criminal assessment is exactly the extent of the damage and the extent of the criminal act. And certainly one likely, I would say, grounds on which to make that assessment is the number of infringements involved, and therefore the extent of the damage to what, as I say, may be multiple different owners and creators.

Mr. GOODLATTE. Thank you.

Thank you, Mr. Chairman.

Mr. BERMAN. Thank you.

The gentlelady from Texas, Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I thank the witnesses for their testimony. I was detained in another meeting, but in reviewing briefly your statements, I appreciate very much your presence here today.

Mr. Hoffa, you have had a long history of speaking what we call truth to power. As I reviewed your statement, it was provocative because I begin my remarks about the devastating impact that piracy and trademark violation has had in the American economy. I think the mood is very sour in the United States right now in terms of our economy and generating jobs.

I would just like you to pointedly repeat again or to focus on how you think this legislation can be a viable component in saving jobs, in producing jobs, and the impact that you have seen in, for example, certainly we know that your home, Michigan, or your beginnings, was at the top of the heap as many of us grew up. We will never forget that first shiny car coming from, obviously from Detroit, but whatever showroom it was, maybe some of us got a shiny used car, but how proud we were of that vehicle.

And where we are now as it relates to that whole effort, even though we might not attribute that to trademark violation. But what kind of piercing impact has trademark violation and piracy done from your perspective?

Mr. HOFFA. Well, thank you, congresswoman. I think it is all tied together. The idea of unfair trade and the fact that we do not build in strong enough protections in our trade bills are all related. That is why we have fought a number of the trade bills that are before Congress, whether it goes from NAFTA to PNTR to the recent Peru agreement. And we have talked about the fact that we must have ways to, number one, protect our economy.

And when we talk about that, we are talking about copyrights. We are talking about counterfeiting. And we are also talking about the idea that trade should open up markets of countries that we make agreements with. And too many of our agreements are one-sided. They basically open up our economy to a flood of goods from

all over the world, as we see with China and Mexico, and especially India.

So much of that material is counterfeit. We all know that we can go on the streets of New York in Manhattan. We can go over here to Georgetown and we see whole stalls of counterfeit material that looks like something that has been made by a major manufacturer. The answer is, we are not policing and protecting ourselves. Trade has been a major issue of labor talking about how do we protect American jobs. We have seen a hemorrhaging of millions of jobs going to cheaper economies, going to Mexico, going to India.

That is part and parcel of the same problem of copyrights and counterfeiting. That counterfeiting—and what we are talking about is part of the same problem because when you open these economies, whether they come in legally or illegally, they are coming in and just flooding into this economy.

I have testified before Congress about how we don't police what comes into this country. The container—90 percent of what comes in comes in containers. And if you have been to the ports of Port Elizabeth in New Jersey or you have been to Long Beach, you see all these containers coming in.

Ms. JACKSON LEE. Yes.

Mr. HOFFA. Much of this stuff is in that stuff, and they are only protecting and inspecting 1 percent. And if we had better inspection, then we could find out where these counterfeit goods are and confiscate them at the border. The answer is we are not doing that, and that is why there is such a flood of counterfeit goods in this country.

Ms. JACKSON LEE. This legislation moves us in that direction.

Mr. HOFFA. That is right.

Ms. JACKSON LEE. Thank you.

Let me quickly ask questions of the final three witnesses. I want Ms. Sohn to give us the most troubling feature in this legislation from your perspective. Ms. Mandelker, if you would, I mentioned earlier the incident with the Colgate-Palmolive toothpaste, and the impact as it relates to the consumer. Someone injured. We don't know if there was any loss of life, any long-term damage.

My thought was, not from the tort perspective or liability perspective, but the injured party may have, but the enhanced penalties if, for example, it does result in the injury and-or death of an ultimate consumer of that pirated product or that trademark violation product. Why don't you comment on that? And Ms. Sohn, if you could. Let me go to Ms. Mandelker first, please.

Ms. MANDELKER. We agree with you, Congresswoman. In fact, that is why we were so pleased to see enhanced penalties in this bill for instances where there is a knowing or reckless injury, serious bodily injury. So we think it is quite appropriate to have enhanced penalties when our citizens are being harmed by these products.

Ms. JACKSON LEE. And it separates it from a tort action. It triggers under the actual trademark violation, which I think is very important.

Ms. Sohn, what is it that—

Ms. SOHN. Really section 104 is the most troubling. I would note that the other supporters of this bill actually haven't mentioned it

in their written testimony, something that is really important to them. I am also pleased to hear Mr. Coble talk about possible—

Ms. JACKSON LEE. Why don't you just go ahead and say 104, and then how would you fix it or what is your issue with it.

Ms. SOHN. I think it needs to be deleted from the bill. Right now, I mean, hopefully we will have this roundtable. I am not sure how you fix it because it is so core, it is so opposite to what the Copyright Act has been about.

Ms. JACKSON LEE. And you feel that it does what? When I say "does what," does what negatively?

Ms. SOHN. It increases the statutory damages for copyright infringement so much as to place very bad limits, chill innovation and chill legitimate speech.

Ms. JACKSON LEE. So you are thinking that people will be fearful because they might step on someone's toes and therefore deny their own creativity because the penalties are so high.

Ms. SOHN. They already are fearful, but this would make it far worse.

Ms. JACKSON LEE. Well, don't you think the counter-impact that then we would have at least a sanctity around this whole concept of copyright, patent and the lack of trademark infringement?

Ms. SOHN. Well, I think we already do. I don't think anybody is arguing that statutory damages these days are inadequate. You may have heard about the woman in Minnesota who was just fined \$222,000 for 24 songs she had on a peer-to-peer network. That was \$9,250 a song. I don't think anybody is arguing that that is inadequate and that is the law today. So I am not sure that increasing penalties 10-fold or 20-fold does anything other than stop legitimate innovators and legitimate speakers or users of copyrighted works, legitimate creators from creating.

Ms. JACKSON LEE. I thank the gentleman. I just would say, Ms. Sohn, I think it is worthy of consideration of the provision that you have highlighted. I think what we have seen in some of the egregiousness of trademark infringement has moved this Congress to believe that there are larger bodies other than the unfortunate woman in Minnesota and maybe others, that we have to make a very strong statement.

I know Mr. Cotton is shaking his head, and I would ask the Chairman to yield him just a second to comment, because he is the poster child in terms of this issue. If the Chairman would yield him a minute.

Mr. BERMAN. Mr. Cotton for a quick response.

Ms. JACKSON LEE. And I thank the Chairman for his indulgence.

Mr. COTTON. I would just say that I think the emphasis that the congresswoman placed is the fundamental thrust of what the big picture of what this bill is all about, which is what we know right now is that our enforcement regime, both in terms of penalties and in terms of enforcement resources, is not stemming the tide that we face collectively.

What is critical is that we step up. We make the penalties that we create not just a cost of doing business for the counterfeiters and the organized criminal conspiracies that are behind the flood that we face, but that we actually make it a serious deterrent. We apply enforcement across the board. That is the big picture.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. BERMAN. The gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Yes, just some thoughts. And certainly I appreciate the efforts of the Chairman, who has introduced this legislation to help mitigate some of the loss that Americans are undergoing as a result of copyright and trademark infringement. I am fully supportive of efforts to cut that, so that American businesses can prosper.

I am concerned about the fact that the enforcement provisions of this law, of this proposal, both civil and criminal, would go more toward Americans, as opposed to those in other countries who are responsible for the tsunami, if you will, of counterfeit products entering this country and circulating around the world.

So that brings me to my issue of free trade, if you will, and the agreements that this country signs with other countries. There seems to be a lack of strong protections in these trade agreements that would be helpful in stemming the tide of these counterfeit goods coming here and circulating around the world.

Would you comment on that, Mr. Cotton?

Mr. COTTON. I would make three very quick points in response. First, I think the issue that you raise is critically important, but what I would say to you is that in arguing the case internationally for stronger IP protection action by countries internationally, they look to the example of the United States in terms of what they should do and how they respond.

Mr. JOHNSON. Even the Chinese?

Mr. COTTON. Well, ultimately I would say to you yes, that is to the extent that we wind up with counterfeit goods on our streets, and to the extent that we ask countries everywhere from China to many other countries in the world to devote very significant resources to enforcement and to escalate the message, for example in—

Mr. JOHNSON. How do we do that in a free trade agreement? How do you counter the notion that our free trade agreements don't go far enough with respect to strong protections?

Mr. COTTON. I am sorry. I would agree with you that it would be desirable to use every lever that we have available to us. I guess my only point I was making was that, I would agree with you that it would be desirable to have our free trade agreements. It is desirable—

Mr. JOHNSON. It seems that those are the best route to be able to stem this tsunami of counterfeit goods coming over here and circulating around the world, even though I appreciate the stronger enforcement mechanisms that are a part of this legislation and the aspirational aspects of this in so far as international enforcement coordination that is called for under this bill.

But let me shift now to this issue of the registration of copyrights as a prerequisite to criminal prosecution, and then this legislation would remove the registration requirement. I would ask Ms. Mandelker, normally in a criminal case you have a need to prove intent. I would assume that that need to prove intent is a part of the criminal laws, in so far as copyright infringement that exists now. Would that change under this new legislation? And if it does not change, how could you prove intent in a situation where you

could not find where, say, a photograph has copyright protection, but you can't find it due to the technological limitations of the copyright department today. How could you prove intent?

Ms. MANDELKER. Well, let me just say at the outset that we actually see this provision as a clarification of existing law. We think it is important to make it clear in existing law that proof of registration is not a requirement when we bring our criminal cases, but we don't think this is actually something new. It is just, again, a clarification.

Certainly, we need to prove intent, willful intent.

Mr. JOHNSON. How can you do that without registration, without a registration requirement?

Ms. MANDELKER. I might turn to the—if you have an individual, for example, who clearly tried or made a good-faith effort to find out whether or not a particular work was registered, who wanted to——

Mr. JOHNSON. They would have a defense, but it would not protect them from being prosecuted, being hauled off to the jail, fingerprinted, have to make bond, hire an attorney, and then present your defense at some point later.

Ms. MANDELKER. Let me just say that at the department, we are really interested in going after willful infringers.

Mr. JOHNSON. How can you prove willfulness without a prerequisite of registration? How could a prosecutor make that assessment without a requirement that the work be registered?

Ms. MANDELKER. Again, I would note that we don't think that it is currently a requirement for prosecutors.

Mr. JOHNSON. Well, it should be, it would seem to me. It should be.

Ms. MANDELKER. I would also note that in many of our cases, we are dealing with not just one good, but many counterfeited goods. As was noted earlier, it would really slow down the criminal prosecution process to force our prosecutors to go make that determination. Again, at the department we are not going to be focused on the example that Ms. Sohn noted of an individual who took a photograph. We are going to be focused on those large-scale infringers.

Mr. JOHNSON. Yes, well, if the state of the law allows you to go against that small photographer, sometimes it will happen—a renegade prosecutor, if you will. So I am concerned about doing away with the registration requirement. I am concerned about that.

Mr. BERMAN. The time of the gentleman has expired. We will be having a vote soon.

I recognize the gentleman from California, Mr. Sherman.

Mr. SHERMAN. Mr. Chairman, I am one person in this room who supports section 104, and I think we ought to try to emerge with as strong a bill as possible. But I am going to focus my attention on title IV, which deals with the international provisions.

Mr. Hoffa, we have kind of a procedure here under our wonderful free trade agreements. Under this bill, we are going to have 10 new intellectual property attaches for the whole world. It will go something like this. One of these attaches will go talk to the Chinese and yell and beg and point to them where it is their legal obligation, because we are good lawyers and we believe that paper matters. And point to them how they are supposed to enforce intellec-

tual property. Then he or she will leave the room. The Chinese will explode into laughter because they are good enough diplomats to be able to suppress that laughter while we are actually in the room.

Then they will put back on their earnest faces. They will have a press conference. They will announce that they are going to do something. They may actually go out and grab a few counterfeit products and put them in a warehouse until they re-sell them later. And then we repeat the whole process at the beginning of the next year.

I wonder whether you think that we need to instead think of some things that go beyond the text of these free trade agreements and actually, for example, take a boatload or two of goods coming in from China and turn them around in order to demonstrate our concern on this issue.

Mr. HOFFA. Well, I think the problem is that in this country if you find a clear copyright and you buy the counterfeit goods, you can sue. There is a legal system here where you can enforce rights. That isn't really true in China. You are subject to a completely different system. If you do find a copyright infringement in China, you really are in tough shape. Our agreements have not done anything to give you any type of rights to enforce your rights over there.

You might go to the communist government, and they might say, "Okay, we have found 1,000 DVDs," and then they will run a steamroller over them for the TV cameras. Or they will set some DVDs on fire for the video cameras. And that has nothing to do with enforcement.

There isn't really a way to bring lawsuits over there that can be effective to stop this. When there are violations found in China, it isn't the Chinese government that finds them. And I don't want to single out the Chinese because it is true in India and it is true in Mexico. The problem is, it is the industry that finds them. Every major manufacturer has a part of their company that is devoted to finding knockoffs or copyrights. So they go and find these and they show the Chinese or the Indians, "Look what you are doing. What are you going to do about that?"

And then you can bring a lawsuit and then they will shut down two or three factories. But the two or three they shut down, there are 10 more. So somehow we have to have in our trade agreements some way either to reciprocate or some way to protect our products from being copied.

Of course, the best example is the dog food example, where we had that this summer. We went through and the dog food came in and the dogs were dying because it had different products in it. And then we had the issue about the Colgate copyright, with the antifreeze in it. These were dreadful examples of what can happen because there isn't anybody in these countries looking for these violations. Anything goes in these new economies. Unfortunately, they are early economies. Anything to make money goes.

Over here, we don't have that problem. We have consumer safety. We have the Justice Department. We have a lot of enforcement. We have individual lawsuits, and we have damages. You know, if somebody does do this and we identify them, they can be sued for

millions of dollars. You really can't do that in China and you can't do that in India.

So the problem is, how do we put that into a trade agreement? I think until we figure that out, we ought to stop doing trade agreements for awhile and realize the problems that we are losing jobs, and we ought to figure it out.

Mr. SHERMAN. Should we be forcing a renegotiation of the trade agreements we have now, or just leave those on the books the way they are?

Mr. HOFFA. I think that all of them should be. You know, we have talked about renegotiating NAFTA or terminating it and starting over again. People cringe at that. Think about it. All the trade agreements that we have done, have you ever known one that has ever expired or that we have stopped? I mean, once they are on the books, they are like no one can ever stop them.

You talk about, well, why don't we just void that agreement. Every one of these agreements has a provision to end that agreement. You know, it is a 60-day notice.

Mr. SHERMAN. I would also point out that every single one of them has increased our trade deficit with the country involved.

We have talked a little bit about the need to inspect these containers. Should the cost of inspecting these containers fall upon all taxpayers, even the businesses that are in competition with imports? Or should we have at least the fair cost of examining the containers fall upon those who are bringing the containers into the country?

Mr. HOFFA. Well, there are billions of dollars in profits being made by these large shipping companies. I don't think it would be wrong that they pay part of this cost. They are the ones that are bringing in these shiploads of goods in these containers that are coming from the Far East and all over the world. If you have been to the ports, and most of us have, you see how they are piled so high.

The odd thing is, there are shiploads of containers coming in, but when they go out, they go out empty. That is really a story about what is wrong with our trade agreements. It is a one-way deal. They are not buying our products, but we are bringing their products in. So we have talked about the fact that large shippers should pay a small portion, or at least a per-container cost of inspection, rather than have it put on the American taxpayer.

Mr. BERMAN. The time of the gentleman has expired.

Mr. SHERMAN. Thank you.

Mr. BERMAN. I have an idea. We have been doing it with terrorism laws and nonproliferation laws. You and I have been doing it with laws dealing with Iran. We should have extraterritorial application of our copyright and trademark laws. [Laughter.]

Mr. SHERMAN. Mr. Chairman, you surprise me. You are going one step beyond what I thought was already a pretty extreme position.

Mr. BERMAN. The gentleman from North Carolina gave up part of his time earlier. We have had a string of Democrats. So I am now going to recognize him because he did have a question he wanted to ask Mr. Cotton.

Mr. COBLE. Mr. Chairman, I apologize for my ineptness. I misfiled my question. I just wanted to hear from Mr. Cotton. I don't think it has been addressed.

Mr. Cotton, the decision to require dedicated resources at DOJ, the White House and elsewhere is somewhat unusual, and some in the executive branch I think will argue, wrongheaded. They imply that it will create an inflexible and meddlesome bureaucracy. I am not convinced that that would be the case. What do you say in response to that?

Mr. COTTON. I think our experience teaches one lesson very clearly. It is one that has been reported to me from every sector of the coalition that I am involved with, which is that officials that have a general jurisdiction responsibility wind up having other pressures on them to the extent that IP enforcement tends to fall down the to-do list. Until there are both senior policy executives and until there are significant, dedicated, specialized IP enforcement resources, we will not make progress in addressing the issues that are on the table.

Mr. COBLE. Thank you. That is what I wanted to get in.

Mr. Chairman, I thank you for recognizing me.

Mr. BERMAN. I appreciate it. The gentleman yields back.

I recognize another gentleman from California, Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

I join my colleagues in strongly supporting the legislation, and I congratulate the Chairman on all his superb work. I appreciate in particular also inclusions of sections 511 and 512 that we proposed parts of to create the state and local law enforcement grants, as well as strengthen the CHIP units.

I had a couple of questions, some ideas that we have been kicking around. It goes a little shy of what Mr. Sherman and Mr. Berman were just proposing on the international front.

Mr. BERMAN. I was kidding around.

Mr. SCHIFF. I know you were. I have a more modest idea I would like to run by the Committee. Before I do, I just want to make a comment on section 104, which has some surface appeal to me, but I am still wrestling with it. When I think about the analogy, Mr. Cotton, that you mentioned of prosecutors or judges separating out petty larceny from grand larceny, I also think about the fact, though, that when we charge someone for theft of an automobile, we charge them for theft of the automobile, theft of the radio in the automobile, theft of the seats in the automobile, or the theft of a briefcase in the automobile, even though the briefcase might belong to someone different than the automobile belonged to. It would be theft of an automobile.

Just looking at the discretion we are giving to the judge to determine whether distinct works have independent economic value, you could say that also about objects in a car. So I think when you think about it a little more, I haven't reached a conclusion on it. I can see certainly the value to be added by it.

But I wanted to run some other thoughts by you on the international front. For example, one of the thoughts that we were kicking around was the idea of tasking the Commerce Department with posting a list of Web sites that clearly infringe. We know many of the most well known. A lot of them use major credit cards, take

major credit cards. A lot of them have advertisements from major companies. Presumably some of those companies or credit card agencies aren't aware that these are Web sites that are dealing in hundreds of thousands of pirated works every day.

Do you have any feedback on whether you think that kind of idea, whether it be housed in Commerce or the Copyright Office or somewhere else, might have some value to it?

And then a second thing I would like to throw out there, which is I guess more incendiary. We do a favor for some institutions of higher learning, which are also often very problematic from an IP point of view, by giving them a broad safe harbor. Should we require the use of filtering devices if we are going to allow that safe harbor?

So if I could throw those two ideas out there and get your feedback.

Mr. COTTON. I am delighted to make a comment because this entire area is really the second focal point, in addition to governmental action, of the Coalition Against Counterfeiting and Piracy. It is a recognition that there are sectors of the economy that are intermediaries. Frequently, they are actually business partners of many of the brand owners in the sense of working with us.

But the question that you pose is whether perfectly legitimate businesses, but who by virtue of their infrastructure become the means by which counterfeit and pirated goods get into the stream of commerce, have some responsibility to address that issue and to take action to reduce the degree to which their infrastructure is used.

My primary example of this would be the collective judgment that we as a society came to concerning financial institutions and money laundering. Banks are perfectly legitimate and important institutions. We have imposed on them an obligation not simply to take cash and close their eyes as to who brings it to them and what the source of that money was, but to ask questions about their customers and to ask questions about the source of cash that may be deposited with them.

The question is a delicate question and I would cite you the most recent example where I think there was a successful negotiation between brand owners and intermediaries in the case of YouTube-like sites, where a number of user-generated content sites signed a voluntary agreement of principles with content owners committing to adopt by the end of this year filtering technology, which they recognize was commercially available and technologically feasible.

I think the question becomes for other institutions, other sectors such as the ones you referenced—financial intermediaries—I think you could ask the same question about shippers, warehousemen, retailers. The question becomes: When is it reasonable for those sectors? What actions are reasonable for those sectors to take and how can they work collectively with brand owners that from the point of view of protecting the health and safety, in many cases, of consumers and preventing pirates and counterfeiters from using their infrastructure, what actions can they take?

Mr. SCHIFF. Would it be feasible to have a government agency tasked with developing the IP terrorist watch list that at least com-

panies would be on notice? Even if there wasn't a legal prohibition against their doing business, they couldn't very well claim ignorance if they are processing credit card transactions or advertising on clearly piracy-oriented sites.

Ms. SOHN. Yes, I think Mr. Cotton just pointed out what the problem is in doing something like that is that you are just opening up the floodgates to massive litigation against every single company that might have any kind of tangential relationship to copyright infringement. A court in California in a case involving a pornography site had sued MasterCard and Visa claiming that because it had given financial services to other Web sites that had stolen their pornographic pictures, that they were not liable.

I just think that if you open the floodgates in that way, then you are just going to be flooding the courts with people going—copyright trolls, basically patent trolls—copyright trolls going after every single company which might have the most tangential relationship to an infringing Web site.

Mr. SCHIFF. You might be if you enacted some liability for doing business with someone on the list, but if you post the list of piracy sites, how does that expand the liability other than putting people on notice? In other words, if the top 10 Web sites are responsible for 60 percent of all the piracy, and I am just guessing at a big number, and you can identify those and you can stigmatize doing business with those, why does that open floodgates of litigation? If it would deter legitimate companies from doing business with those Web sites, wouldn't that be desirable?

Ms. SOHN. I think that might be a good marketplace solution to the problem. I am not sure government should be involved. But it might be nice, yes, to do a watch list of a hall of shame. I have no problem with that.

Mr. COTTON. If I might make one point. Just to be clear what I said, which was I was referring to negotiated agreements between sectors. That is what the CACP is endeavoring to accomplish before we turn to the question of legal standards or legal questions.

Mr. BERMAN. The time of the gentleman has expired.

I have one short question for Sigal Mandelker. You testified that the department implemented all 31 recommendations from the IP task force report. One of the recommendations was that the FBI should increase the number of agents dedicated to IP investigations. Can you tell me how many FBI agents are dedicated to IP investigations, meaning that is their full-time job?

Ms. MANDELKER. I can't give you a specific number since I am from the Criminal Division, but I am happy to make that inquiry and report back to the Committee. I can tell you that they have increased the number of arrests and indictments, and I am also happy to provide those statistics.

Mr. BERMAN. That is important, good and useful, but I would like just the name and phone number of one FBI agent who has been told "full-time, this is your job." If you could find that out, that would be great for me.

There are a lot of comments I could make, but I think we have a vote coming up. This has been a very useful panel, very inter-

esting, a lot of issues raised, not all of them resolved. I appreciate all of you coming.

With that, unless anybody says something different, I am going to adjourn the hearing.

[Whereupon, at 1:01 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE STEVE COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE, AND MEMBER, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

STATEMENT OF REP. STEVE COHEN
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY
DECEMBER 13, 2007

Our nation's intellectual property is the basis for our economic success and security. Therefore, protecting that intellectual property must be among our highest priorities. In addition to undermining our global economic primacy, counterfeit and pirated products can threaten the health and safety of American consumers, steal income from legitimate businesses, deprive American workers of good jobs, and undermine the necessary incentive for innovation and creativity. It is for these reasons that I am an original cosponsor of H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007." The PRO IP Act will help strengthen enforcement of intellectual property rights domestically and internationally through enhanced criminal and civil penalties, high-level coordination among federal government agencies, and increased resources to domestic and foreign law enforcement authorities. While I understand that some of my colleagues may have some concerns with some provisions of the bill, I hope that we will be able to work out our differences and that they will ultimately come around to supporting this important legislation.

Congress of the United States
Washington D.C., 20515

December 12, 2007

Dear Judiciary Committee Colleague:

We write to express our grave concern about H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007." We share the laudable goals of the authors of this legislation: to prevent piracy and counterfeiting of intellectual property in this country and to provide for effective international enforcement of intellectual property laws. Unfortunately, certain provisions in the bill would not only fail to achieve the intended goals, but will significantly harm technological innovation and economic growth in America.

We are particularly concerned with Section 104 of the bill, which would allow a judge to order a separate award of statutory damages for each work of "independent economic value" included as part of a compilation of works, such as each song on a CD. Current copyright law allows an award of up to \$150,000 for infringement of a compilation. H.R. 4279 would multiply statutory damages on a 10-track CD from the current \$150,000 for the CD to \$150,000 for each work on the CD for a total of \$1.5 million in statutory damages.

As pointed out in the attached letter from some of the leading copyright law professors in the country, Section 104 will do nothing to deter commercial infringers or Internet-based infringement by individuals. The letter further explains that the disproportionate increase in statutory damages will have a chilling effect on legitimate providers of technology products and services. The threat of large damages may not only prevent innovation -- such as the innovation we have seen in the invention of the VCR, TiVo and MP3 devices which enable legal copying -- but also encourage the filing of frivolous lawsuits.

Facing the specter of uncertain and potentially crushing liability, U.S. companies that compete in these industries will likely scale back on innovation. Moreover, most of their foreign competitors face no significant statutory damages under their domestic laws, and none face damages of the magnitude proposed by Section 104. It is unclear how American companies will be able to compete in such an environment.

We do not believe that such harmful results in Section 104 were the intent of the authors of H.R. 4279. We hope to continue to work with Chairmen Conyers and Berman to improve enforcement of anti-piracy and anti-counterfeiting laws.

Sincerely,

/s
Rick Boucher
Member of Congress
Congress

/s
F. James Scnsenbrenner, Jr.
Member of Congress

/s
Zoe Lofgren
Member of



November 13, 2007

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

Re: Enhanced statutory damages

Dear Chairman Conyers:

The undersigned professors at law schools around the United States write to express our concern with Section 104 of the draft Intellectual Property Protection Act of 2007. Section 104 would amend Section 504(c) of the Copyright Act to allow a judge to order a separate award of statutory damages for each work of "independent economic value" contained in a compilation. This amendment will have little impact on commercial piracy or on large-scale copyright infringement over the Internet. But it will have a serious chilling effect on a wide range of lawful uses.

Existing Section 504(c) grants courts the discretion to award statutory damages of \$150,000 per work infringed in cases of willful infringement. However, most commercial piracy occurs overseas – beyond the reach of U.S. law. Moreover, this penalty has a limited deterrent effect on Internet-based copyright infringement by individuals, but not because the penalty is too small. Rather, the existing statutory damages framework does not deter individual infringers (such as college students) because the odds of any particular infringer being detected and sued are small, and for the most part the individual infringers are judgment proof. Thus, an individual infringer's behavior is not likely to change regardless of whether the statutory damages for uploading all the tracks on a CD are \$150,000 or \$1.5 million. Furthermore, individuals already are exposed to enhanced awards of statutory damages, because their transactions usually involve exchanging multiple single tracks rather than entire CD's.

While the proposed amendment will not prevent infringement by either individual infringers in the U.S. or commercial infringers abroad, it will have a negative impact on many lawful uses. When an artist, documentary film producer, or technology company performs a fair use analysis to determine whether a proposed use is permitted under Section 107 of the Copyright Act, the user must at the same time assess the potential damages if his analysis is incorrect. Since the precise boundaries of fair use are uncertain, and statutory damages can reach large sums if a new work includes pieces of many preexisting works, the existing statutory damages framework already dampens fair uses. Authors often decide that the risk of statutory damages is simply too great, and either pay exorbitant license fees or forego the use altogether.

Letter from 25 intellectual property professors
November 13, 2007
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The proposed amendment will make this bad situation even worse. A director creating a documentary about California's Sixties "surf music" scene might already be anxious about including short excerpts of three tracks from a Beach Boys album to illustrate characteristics of the genre. The changes proposed in Section 104 would increase her potential exposure from \$150,000 to \$450,000. Likewise, a reviewer of a book of poetry might want to include a few lines from five different poems to demonstrate his assessment. The proposed amendment would increase his exposure from \$150,000 to \$750,000. We stress that we are not arguing that a court in fact is likely to award damages of this scale. However, the possibility of such large damages will deter some authors from making fair uses. And it will lead other authors who make such uses settle on terms more favorable to the plaintiff in the event litigation ensues.

Finally, proposed section 104 will exacerbate the impact of statutory damages on legitimate providers of technology products and services. Copyright owners claim that technology companies are liable for statutory damages for each work infringed by each of the users of their technology. By increasing the awards available for infringements of compilations, the proposed amendment subjects technology companies to even greater exposure. The risk of a statutory damages award that would bankrupt a company may cause the company to withhold a useful product or service from the market.

With your leadership, the House of Representatives recently adopted patent reform legislation containing provisions relating to apportionment of damages and willful infringement. You and Mr. Berman persuaded the House that the possibility of damages awards grossly disproportionate to any actual harm acted as a tax on innovation. In the same manner, the existing statutory damages framework in the copyright law acts as a tax on fair use and the introduction of innovative technologies. If Congress takes any action on 17 U.S.C. § 504(c), it should be to lessen its Draconian impact, not make it worse.

Respectfully,

Keith Aoki
 University of California – Davis

Ann Bartow
 University of South Carolina

Tom W. Bell
 Chapman University

Dan L. Burk
 University of Minnesota

Michael Carroll
 Villanova University

Letter from 25 intellectual property professors
November 13, 2007
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Julie E. Cohen
Georgetown University

Tom Cotter
University of Minnesota

Susan Crawford
University of Michigan (visiting)

Kenneth Crews
University of Indiana

Christine Farley
American University

Wendy Gordon
Boston University

Paul Heald
University of Georgia

Peter Jaszi
American University

Beryl R. Jones-Woodin
Brooklyn

Dennis S. Karjala
Arizona State University

Mark Lemley
Stanford University

Jessica Litman
University of Michigan

Michael Madison
University of Pittsburgh

William McGeveran
University of Minnesota

Ruth Odekiji
University of Minnesota

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Pamela Samuleson
University of California -- Berkeley

Gerald Tschura
Thomas M. Cooley

Rebecca Tushnet
Georgetown University

Peter Yu
Drake University

Diana Zimmerman
New York University

[Law school affiliations are provided for purposes of identification only]



December 12, 2007

The Honorable Howard L. Berman
Chairman
Committee on the Judiciary,
Subcommittee on Courts, the Internet, and Intellectual Property
U.S. House of Representatives
2221 Rayburn H.O.B.
Washington, DC 20515

The Honorable Howard Coble
Ranking Member
Committee on the Judiciary,
Subcommittee on Courts, the Internet, and Intellectual Property
U.S. House of Representatives
2468 Rayburn H.O.B.
Washington, DC 20515

Rc: Section 104 of H.R. 4729

Dear Chairman Berman and Ranking Member Coble:

The undersigned entities support the stated objectives of the PRO IP Act: preventing counterfeiting and promoting the enforcement of intellectual property rights. We appreciate changes made prior to introduction of the legislation to address concerns that many of us had with respect to civil forfeiture and trademark damages provisions. However, we all strongly oppose section 104 of the Act, expanding statutory damages, because it will inhibit the development of new technologies and encourage frivolous copyright litigation.

Section 104 represents a fundamental change to the Copyright Act. It would dramatically increase the amount of statutory damages courts could award for the infringement of compilations and derivative works. This, in turn, would have a serious chilling effect on innovation.

Many digital products and services involve copying and transmission. Accordingly, before rolling out new products and services, innovators must perform a thorough analysis of complex issues such as the scope of secondary liability or the applicability of the fair use privilege. Because of the lack of legal certainty at the point of impact of copyright and technology, innovators almost inevitably determine that there is some legal risk related to the product or service. By significantly increasing potential statutory damages, section 104 will tip the scale against new technologies.

Similarly, section 104 will increase the risk of using software developed by third parties. If a court has the authority to award separate statutory damages for every module of a

computer program, then a technology company will hesitate to license software from a start-up company for inclusion in its own products. The technology company would be exposed to millions of dollars of statutory damages in the event the software proves to be infringing, and the start-up's promise of indemnification would have little value.

Additionally, section 104 will encourage copyright trolls to manufacture or take advantage of infringements for the purpose of extorting large settlements. Section 104 would create the same incentives for frivolous copyright litigation that this Committee sought to prevent in the patent context with the Patent Reform Act of 2007, H.R. 1908.

We are not aware of any instance where the existing statutory damages framework did not sufficiently compensate a rightsholder. Moreover, the copyright owner always has the ability to seek actual damages if the amount of statutory damages would not adequately compensate for economic loss. Thus, section 104 is an unnecessary amendment that will have adverse consequences that the Committee does not intend.

While some of us may have concerns with other provisions of H.R. 4729, we all stand united in our concerns with section 104. We look forward to meeting with you and other members of the committee to explain our position in greater detail.

Sincerely,

Ask.com
CNET Networks
eBay Inc.
Google
PayPal
RealNetworks
Visa Inc.
Yahoo!
Computer & Communications Industry Association
Consumer Electronics Association
Digital Media Association
NetCoalition

cc: The Honorable John Conyers, Jr.
The Honorable Lamar S. Smith

—

December 13, 2007

Hon. Howard Berman
Chairman
Subcommittee on Intellectual Property
2138 Rayburn House Office Building
Washington, DC 20515

Hon. Howard Coble
Ranking Member
Subcommittee on Intellectual Property
2142 Rayburn House Office Building
Washington, DC 20515

CC: Members of the Committee

Chairman Berman and Ranking Member Coble,

Thank you for holding today's hearing on the Prioritizing Resources and Organization for Intellectual Property Act of 2007. Our nation's intellectual property is the basis for our economic success and security, protecting that intellectual property must therefore be among our highest priorities.

The piracy of intellectual property is not a theoretical threat to me. Every day my property is stolen and distributed online. Not only am I losing revenue because of the theft, but I have had to hire additional people to fight to protect that property.

I have a small company called Vin Di Bona Productions (www.VDBP.com). We are best known for producing "America's Funniest Home Videos" which is the longest running primetime program on ABC. A quick search for "funniest home videos" on Google gets 2,400 matches. Of course this 2,400 doesn't count the clips that have been posted with other tags or that are on other sites and does not include the many thousands more that have been posted on the internet over the past several years.

My staff monitors the internet, our lawyers write letters and often the clips are eventually removed. But they go right back up again and in the meantime people email the videos to each other and around the world, essentially endlessly re-stealing the program. By the time the copyrighted material has been removed from video sharing sites, the damage is done.

There needs to be greater respect for and protection of intellectual property online – and that respect needs to be enforced. Your legislation and this hearing are important steps in the right direction. Please let me know how I can help this critical effort.

Best wishes,



Vin Di Bona
Owner, Vin Di Bona Productions
Executive Producer, "America's Funniest Home Videos"



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**STATEMENT BY ALAN C. DREWSSEN
 EXECUTIVE DIRECTOR, INTERNATIONAL TRADEMARK ASSOCIATION**

**SUBMITTED FOR THE RECORD OF THE U.S. HOUSE OF REPRESENTATIVES
 COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON COURTS, THE
 INTERNET, AND INTELLECTUAL PROPERTY HEARING (DECEMBER 13, 2007)
 ON H.R. 4279, THE "PRIORITIZING RESOURCES AND ORGANIZATION FOR
 INTELLECTUAL PROPERTY ACT OF 2007."**

Mr. Chairman: The International Trademark Association (INTA) appreciates this opportunity to express its views on the bill entitled, "Prioritizing Resources and Organization for Intellectual Property Act of 2007." On behalf of our members, we commend the Chairman for legislation which seeks to improve the protection of intellectual property (IP) and to enhance the capacity for enforcement and coordination activities. Protecting intellectual property is a global challenge. The solution must focus not only on strengthening and streamlining U.S. law and policy, but it should also create new opportunities for enforcement and collaboration on a global level. H.R. 4279 succeeds in achieving these objectives.

The International Trademark Association is a not-for-profit membership association of more than 5,500 trademark owners and professional firms dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA works closely with government and judicial authorities around the world to promote the development and application of trademark law.

Counterfeiting is a growing and insidious threat. It steals the identity of trademark owners and robs consumers of a safe and reliable marketplace. It jeopardizes the health and well-being of consumers throughout the world. For the U.S. economy, it translates into lost jobs and lost tax revenues. Specifically, the cost to the U.S. economy is estimated at \$200 to \$250 billion per year.

That is why H.R. 4279 is crucial. It builds upon the current foundation and takes the fight against trademark counterfeiting to the next level. Specifically, INTA notes its support for the following provisions:

- **Enhanced Civil and Criminal Penalties:** We support the enhancements to the civil and criminal penalties for counterfeiting. Counterfeiters and those who intentionally assist counterfeiters threaten the health and safety of consumers and by their participation in these serious crimes merit the increased forfeiture penalties and longer periods of incarceration set forth in the bill.
- **Export of Counterfeit Products:** We favor Section 107 of the bill, which makes it a violation of the law to *export* counterfeit products, augmenting the current prohibition against imports of counterfeits. This change makes it clear: counterfeit products are

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forbidden and will be subject to seizure and other penalties whether coming into this country or leaving its shores. This provision has particular importance as the U.S. leads by example and participates in global efforts to advocate stronger anticounterfeiting laws in other countries, where the exportation of counterfeits is a significant concern.

- **Transshipments:** INTA recommends additional language to further strengthen Section 107 and provide more seamless enforcement of goods moving in and through our borders. More specifically, in addition to the prohibition of imported and exported counterfeits, we recommend language that explicitly subjects “transshipments” – where goods have arrived in the U.S. but have not been entered into the customs territory of the U.S. for consumption – to the same enforcement provisions as imports and exports. These in-bond goods are neither imports nor exports under the customs laws and, as such, carry the potential for a gap in enforcement. And while transshipments serve a necessary and valuable role for a variety of logistics-related purposes, the law should ensure that they do not also become a shadowy enclave where the enforcement spotlight never shines. It is for this reason that transshipping counterfeits as well as importing and exporting counterfeit products, should be unlawful acts under the intellectual property laws.
- **Collaborative International Enforcement Efforts:** We applaud your initiative to address the issues of nationwide and international coordination of the government’s intellectual property enforcement efforts. From establishing a presence in the White House, to providing IP attachés to work with foreign governments, to authorizing creation of a dedicated IP division within the Department of Justice (DOJ), to making additional resources available to DOJ – all these provisions address the need to demonstrate a strong and united show of force within the U.S. government. From this position of strength, the U.S. can continue its leadership role in cooperation with like-minded countries to develop global strategies for combating intellectual property theft wherever it occurs.

Counterfeiting knows no boundaries. Sophisticated cross-border networks span the globe, allowing counterfeiters to ply their trade, too often beyond the reach of any one nation’s borders. Mr. Chairman, INTA is deeply grateful to you for introducing a bill that reflects this reality. H.R. 4279 emphasizes global coordination and strategic collaboration on enforcement initiatives in a way that responds to the global nature of the threat. At the same time, the legislation fills many of the remaining gaps in U.S. law and provides the tools for strong and effective enforcement here at home, while serving as a model to other countries as they increase their efforts to combat counterfeiting. INTA is pleased to work with you and your staff to gain passage of this legislation.



For Immediate Release
December 6, 2007

Contact: Jennifer Stoltz
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Enforcement Bill Could be the Beginning of Copyright Reform Conversation
Criminal Piracy Enforcement Bill Introduced in House

WASHINGTON D.C. – Legislation introduced in the U.S. House of Representatives today could be a catalyst in the ongoing effort to reform laws governing copyrighted intellectual property in the United States. The Prioritizing Resources and Organization for Intellectual Property Act of 2007, introduced by Chairman John Conyers (D-MI), would clarify language in current copyright law and enhance penalties for infringement and establish an office of U.S. Intellectual Property Enforcement Representative to serve as an adviser to the president. A hearing on this bill has been tentatively scheduled in the House Judiciary Subcommittee on Intellectual Property next week.

"All sides of the copyright debate agree that reform of current copyright law is needed, and any legislation that starts that conversation is welcome," said Maura Corbett of the Digital Freedom Campaign. "But any reform to copyright law must recognize the important balance between the rights of copyright holders to protect their intellectual property and the rights of artists, musicians and filmmakers to innovate, create new works, and make full use of lawfully acquired digital content. As set out in H.R. 1201, the FAIR USE Act, copyright reform must include limits on statutory damages and the codification of the vital principles of fair use. The Digital Freedom Campaign strongly opposes commercial piracy and supports every effort to counter its effects, and we hope this bill will serve as a catalyst to larger, more meaningful reform."

About Digital Freedom: Digital technology enables literally anyone and everyone to be a creator, an innovator or an artist – to produce music, to create cutting-edge videos and photos, and to share their creative work. Digital technology empowers individuals to enjoy these new works when, where, and how they want, and to participate in the artistic process. These are basic freedoms that must be protected and nurtured. The Digital Freedom campaign is dedicated to defending the rights of students, artists, innovators, and consumers to create and make lawful use of new technologies free of unreasonable government restrictions and without fear of costly and abusive lawsuits. www.digitalfreedom.org

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FOR IMMEDIATE RELEASE—December 13, 2007 Contact: Katie Wilson (202) 463-5375

**Business and Labor Join Together in Calling for
White House Anti-Counterfeiting Policy Executive**
"Americans' Health and Safety Threatened Each Day by Counterfeit Products"

WASHINGTON, D.C. – As a result of the steady proliferation of counterfeit and pirated products making their way into the United States, business and labor groups today called on Congress to pass House legislation creating a senior White House anti-counterfeiting executive. The position would be filled by direct Presidential nomination and would be subject to Senate confirmation. The House bill would also double the penalties for counterfeiters whose actions result in injury or death and would increase dramatically resources for enforcement at the U.S. Department of Justice including dedicated FBI agents and dedicated prosecutors in 35 key locations and the U.S.

"Counterfeiting and piracy are a growing threat to health and safety, presenting a very real danger to the public – from counterfeit toothpaste laced with antifreeze, to exploding batteries and dangerous consumer goods, to counterfeit diabetes test strips and pharmaceuticals – fake products being sold as the real thing can seriously injure or even kill unsuspecting consumers," said Richard Cotton, chairman of the Coalition Against Counterfeiting and Piracy (CACAP) and NBC Universal executive vice president and general counsel.

The CACAP, led by the U.S. Chamber of Commerce, is a broad based coalition representing more than 500 associations and businesses. The coalition is committed to increasing the understanding of the negative impact of counterfeiting and piracy and to finding real solutions by working with governments, industry, opinion leaders, the media, and consumers.

Counterfeiting and piracy cost the U.S. economy approximately \$250 billion annually and have led to the loss of more than 750,000 American jobs, leading business and labor leaders to join together in support of the legislation.

"No product and no industry are safe from counterfeiting and piracy. We are talking about large-scale, organized criminal networks that are ripping off American consumers and companies; stealing American jobs; and putting the health and safety of innocent consumers at risk," added Cotton. "The House Judiciary Committee leadership's proposed legislation represents the most far-reaching enhancement of U.S. IP enforcement capabilities in a decade," said Cotton.

According to an economic analysis by Laura Tyson, Ph.D., former national economic adviser to President Bill Clinton, for every dollar invested as a result of this legislation, federal tax revenues would increase by at least three times that much and state and local governments can expect to receive incremental revenues between \$1.25 and \$1.5 billion over three years.

Additionally, the increased economic output which would occur as a result of this investment would lead to the creation of between 174,000 and 348,000 new jobs over a three year period.

H.R.4279, the “Prioritizing Resources and Organization for Intellectual Property Act,” would:

- Designate a U.S. Intellectual Property Enforcement Representative with broad responsibility to oversee all intellectual property enforcement activities across the federal government;
- Double the criminal penalties for counterfeiters who knowingly or recklessly cause serious bodily injury or death;
- Increase resources for enforcement at the federal, state, and local levels – including the creation of a new Division of IP Enforcement at the U.S. Department of Justice to enforce IP laws, with dedicated prosecutors and FBI agents;
- Create a grant program to fund local IP enforcement resources in cities and states; and,
- Increase the personnel at key U.S. embassies abroad dedicated to IP enforcement, and mandate cross-embassy task forces to create systematic country-by-country strategies to enhance IP enforcement.

The legislation is supported by the CACP, which includes more than 500 businesses and trade associations, and a variety of organized labor groups.

www.thecacp.com

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**Economic Analysis of the Proposed
CACP Anti-Counterfeiting and Piracy Initiative**

Prepared for the
Coalition Against
Counterfeiting and Piracy
(CACP)

Prepared by
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November 2007



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Executive Summary

A. The Need to Increase U.S. Government Anti-Counterfeiting and Anti-Piracy Efforts

The health of the US economy depends on a wide range of industries that rely on intellectual property (IP) to create and produce state-of-the-art products (i.e., IP-intensive industries).¹ Unfortunately, counterfeiting and piracy are robbing these industries of the intellectual property on which their profitability and growth rest and on which the long-run competitiveness of the US economy depends. The industries harmed by counterfeiting and piracy and the industry associations that represent them are devoting substantial amounts of capital and management talent to combat counterfeiting and piracy. But private business efforts to control these problems must be augmented by public efforts by both the U.S. and foreign governments to identify, capture and punish counterfeiters and pirates.

Counterfeiting and piracy are forms of property crimes, and the U.S. government has an important role to play in limiting such crimes on law enforcement grounds alone. Counterfeiting and piracy also both reduce job and income opportunities for Americans and reduce tax revenues at federal, state and local levels by imposing significant losses on the operations of legitimate businesses. Finally, the public interest in controlling counterfeiters and pirates goes beyond considerations of property, jobs, and government revenues to encompass concerns about safety and health. Several recent events have demonstrated that the health and safety of the American public are at risk from inferior, potentially dangerous counterfeit products. And counterfeiting and piracy pose mounting risks to America's national security as organized crime groups and terrorist organizations play growing roles.

The U.S. government already has substantial anti-counterfeiting and anti-piracy efforts in place. However, according to the U.S. Government Accountability Office (GAO), these efforts could be significantly improved primarily through strong permanent leadership to foster better coordination within and among federal government agencies and between them and state, local and foreign government authorities and private industry. Based on an extensive review, the GAO has also concluded that the U.S. government's anti-counterfeiting and anti-piracy effort needs strong permanent leadership, that more dedicated resources are needed to combat counterfeiting and piracy, and that the government agencies need more efficient and effective anti-piracy and counterfeiting operations (i.e., there is a need to "work smarter.") The OECD reached similar

¹ IP-intensive industries are defined in Appendix A. IP-intensive industries are those that create intellectual property and also those that rely on intellectual property to create state-of-the-art products which often have well-identified brand names. IP-intensive industries include motion pictures, sound recordings, software, fashion, pharmaceuticals, consumer electronics including personal computers, electronic components, automotive, aircraft, aerospace, toys, games, publishing, and numerous other industries.



conclusions in its recent review of government efforts to combat counterfeiting and piracy around the world.

The Coalition against Counterfeiting and Piracy (CACP) has recently proposed a broad initiative of actions to be taken by the federal government to enhance its efforts to control piracy and counterfeiting. The measures proposed by the CACP are consistent with the GAO's recommendations. The CACP's call for prompt stronger action by the federal government reflects the fact that the losses to American companies and the dangers to American consumers resulting from piracy and counterfeiting are growing rapidly as technology makes counterfeit products harder to detect and easier and cheaper to produce.

The purpose of this report is to provide an objective evaluation of the CACP initiative by providing estimates of the expected budgetary costs of the actions it proposes and estimates of the expected benefits of these actions. Reflecting limitations on the availability and reliability of underlying data and studies, we present a range of estimates for both the costs and benefits. In both cases, the estimates we present are conservative—we believe that our estimates of costs are on the high side of the likely range and our estimates of benefits are on the low side of the likely range.

B. Summary of Major Findings

Based on our research, we have reached the following conclusions about the costs and benefits of the enactment of the CACP initiative:

1. Measured in present value terms, the CACP initiative would cost between \$0.289 billion and \$0.489 billion during the first three years. We have based our cost estimates on the costs of similar government programs. Most of the costs of the CACP initiative are costs of hiring additional federal government personnel to combat piracy and counterfeiting and training government personnel working in this area. The personnel costs of the CACP proposal include the appointment of a Chief IP Enforcement Officer (CIPEO) in the White House to coordinate the efforts of the federal government and of other U.S. and foreign government agencies responsible for reducing piracy and counterfeiting. Our cost estimates also reflect the provision of resources and legal tools to allow the IPR enforcement agencies to "work smarter."
2. According to estimates by the FBI and other sources, U.S. companies lose at least \$225 billion each year to piracy and counterfeiting. Measured in present value terms, we estimate that the CACP initiative would reduce these losses by between \$18.4 billion and \$36.8 billion during the first three years. Our estimates assume that enactment of the CACP initiative would reduce these losses by between 5 percent and 10 percent by the

third year. These estimates of success appear conservative and reasonable based on the carefully documented success rate achieved in reducing property theft by the CompStat Program of the New York Police Department, which has many similar features to those of the CACP initiative. This success rate is also consistent with the experience under the U.S. Department of Justice's initiatives to combat computer and intellectual property crime.

3. Even using pessimistic estimates of the reduction in the losses of U.S. business revenues from piracy and counterfeiting, the enactment of the CACP initiative would increase U.S. output by about \$27 billion a year and would increase U.S. employment by about 174,000 a year after three years. Using our optimistic estimates of the reduction in losses from the CACP measures, these figures rise to about \$54 billion in additional U.S. output and about 348,000 in additional employment after three years. These estimates of the overall output and employment benefits to the U.S. economy from enactment of the CACP initiative are based on measures of the direct and indirect effects of piracy and counterfeiting on the U.S. economy from recent studies of the motion picture and recording industries.
4. Measured in present value terms, total federal tax revenues during the first three years of the CACP initiative would increase between \$1.4 billion and \$2.8 billion versus the present value costs over the same period of the CACP initiative of \$0.289 billion to \$0.489 billion. The estimates are based on the additional federal tax revenues that would result from the increases in US output and employment resulting from the enactment of the CACP measures.

C. Conclusions

Overall, our research indicates that the CACP initiative is a sound investment for the federal government. Even under very conservative assumptions, it would produce sizeable reductions in business losses caused by piracy and counterfeiting, it would generate meaningful increases in output and employment levels in the US economy, and it would increase federal government revenues by substantially more than its costs.

For every dollar spent prudently on the CACP initiative, federal tax revenues would increase by at least \$2.9 and by as much as \$9.7 with an intermediate range of \$4.9 to \$5.7.² These federal tax revenue increases are due to the increase in U.S. output and employment that would occur as a result of implementing the CACP initiative. For every dollar spent on the CACP initiative, U.S. output

² All dollar amounts are stated in present value (2007) terms and are average results over three years.

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would increase by at least \$38 and would increase by as much as \$127 with an intermediate range of \$64 to \$75.³ The increase in output due to implementing the CACP program will result in the creation of between 174,000 and 348,000 new jobs during the third year. Therefore, the return to the federal government and the economy of investing in the CACP initiative is very high. In addition, state and local governments can expect to receive incremental revenues between \$1.25 billion and \$1.50 billion, in present value terms over three years, if the CACP initiative is implemented.

Over time, by enabling the IP-intensive industries to earn a higher return, the CACP measures would encourage more investment and foster faster U.S. economic growth. In addition to these quantifiable benefits, enactment of the CACP initiative would increase the protection of American consumers against the health and safety risks of counterfeited and pirated goods. Finally, more effective policies to combat piracy and counterfeiting are an important complement to policies to combat organized crime and terrorism and to enhance national security.

³ *Id.*

I. Introduction

A. Counterfeiting and Piracy Are Major Problems Throughout the World⁴

Counterfeiters and pirates steal about \$225 billion in revenues from U.S. businesses each year. The products produced by IP-intensive industries are particularly vulnerable to counterfeiting and piracy. These IP-intensive industries are a major source of U.S. economic growth and of U.S. export earnings. Therefore, counterfeiting and piracy threaten the health of the U.S. economy. Counterfeiting and piracy also have direct adverse effects on the public and the U.S. government. Counterfeited products are often inferior and can be dangerous, especially counterfeit pharmaceuticals, consumer goods (such as anti-freeze laced counterfeit toothpastes), auto parts, and even airplane parts. Counterfeiting and piracy also take jobs and income away from the public and reduce the tax revenues of federal, state, and local governments.

Counterfeiting and piracy are global problems. Worldwide, counterfeiters and pirates are estimated to steal about \$600 billion in revenues from legitimate businesses. Most of the IP-intensive U.S. businesses sell worldwide, making their products vulnerable to counterfeiters and pirates in every country. In addition, many of the counterfeit products sold in the U.S. are produced overseas. China is the largest exporter of counterfeit and pirated products, and illicit Chinese goods account for about 87 percent of all illicit goods seized by U.S. Customs.

B. The Need to Improve Existing Government Efforts to Combat Counterfeiting and Piracy

As a recent OECD study concluded, effectively combating counterfeiting and piracy requires coordinated, focused, and creative efforts by law enforcement agencies throughout the world. A recent U.S. Government Accountability Office (GAO) study of the counterfeiting and piracy problem reached the same conclusions and called for strong leadership of the U.S. anti-counterfeiting and anti-piracy efforts. The GAO also recognized the need to coordinate the efforts of federal, state, and local law enforcement agencies within the U.S.

⁴ Appendix A presents a definition of terms including definitions of IP rights and the distinctions between counterfeiting and piracy.



C. The CACP's Proposed Initiative to Improve U.S. Efforts to Combat Counterfeiting and Piracy

The Coalition Against Counterfeiting and Piracy ("CACP") has proposed an initiative with six specific objectives designed to enhance and expand the current U.S. government efforts to combat counterfeiting and piracy. The six specific objectives are:

- Improve the coordination of federal government intellectual property enforcement resources.
- Better protect our borders against counterfeiting and piracy by improving enforcement practices.
- Strengthen criminal enforcement against intellectual property theft by expanding the resources and tools available for law enforcement at the federal, state, and local levels.
- Attack counterfeiting and piracy beyond our borders through improved enforcement training and technical assistance programs with foreign governments.
- Strengthen ability of rights holders to protect their intellectual property by civil and judicial reforms.
- Decrease demand for illegal products by educating consumers about the harms of counterfeiting and piracy.

D. Organization of This Study

Section II describes the worldwide dimensions of counterfeiting and piracy. In addition, Section II documents the large worldwide business revenue losses due to counterfeiting and piracy and also estimates the revenue losses of U.S. business. Section III presents evidence that the existing U.S. government anti-counterfeiting and anti-piracy efforts are inadequate (e.g., the GAO and OECD studies). Section III then describes the CACP initiative and how it addresses the inadequacies of the existing U.S. government efforts. On the basis of the similarities between the CACP initiative and other similar highly successful law enforcement initiatives, Section III develops estimates of the potential reductions in the losses of U.S. business revenues to counterfeiters and pirates that would result from the implementation of the CACP initiative. Section IV provides cost estimates for implementing the CACP initiative, and Section V provides estimates of its expected economic benefits including the reductions in U.S. business losses, the increases in U.S. output, earnings and employment, and the increases in the revenues of the federal government.

II. Dimensions of the Counterfeiting and Piracy Problem

A. Characteristics of Markets Vulnerable to Counterfeiting and Piracy

Intellectual property theft through counterfeiting and piracy has increased dramatically throughout the world during the last two decades.⁵ Counterfeiters and pirates focus on products with high unit profitability, which typically are popular brand name products. Counterfeiting and piracy have been relatively low risk, high return criminal activities. As a consequence, the level of activity of counterfeiters and pirates has increased dramatically. The size (scale) of the organizations engaged in counterfeiting and piracy also has increased, and organized crime groups and terrorist groups have been enticed to enter the counterfeiting and piracy arena.⁶

The growth of counterfeiting and piracy has been facilitated by the easy and widespread access to technology advances such as computers, copiers, and scanners, and especially the Internet. These tools have made almost all products, corporations, and consumers vulnerable to the activities of counterfeiting.⁷ These new technologies make it easy to exactly duplicate the labels, packaging, documentation, authentication devices, and symbols/logos of virtually every product.⁸ The Internet provides a means for sellers to link the witting and unwitting buyers of counterfeit goods, through websites, search engines, and auction sites.

The popular image of counterfeiters and pirates is one where street vendors are selling cheap and often defective copies of legitimate goods. The types of goods sold by such street vendors tend to be luxury, apparel, and other relatively high-margin goods (e.g., music CDs, movie DVDs, software, sunglasses, T-shirts, hats, cosmetics, cell phone covers, handbags, and watches, all with well known brand names and logos). The new technologies and entry of new larger groups have expanded the scope of counterfeiting to many additional products including razor blades, shampoos, pharmaceuticals, foods, hand tools, auto parts, airline parts, film, shaving lotions, laundry detergent, band-aids, insecticides, batteries, cigarettes, children's toys, dog food, and practically anything else that has a brand name or logo that consumers recognize. The new technologies and the increasing sophistication of the criminal groups engaged in counterfeiting and piracy have resulted in counterfeited goods that appear to be legitimate that are being fed into the wholesale supply chain of

⁵ International Anticounterfeiting Coalition (IACC) White Paper, "The Negative Consequences of International Intellectual Property Theft: Economic Harm, Threats to the Public Health and Safety, and Links to Organized Crime and Terrorist Organizations", January 2005 (hereinafter "The IACC White Paper") p 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*



legitimate retailers. The retail outlets may be selling counterfeit goods without knowing the goods are counterfeits.

B. The Harm Caused by Counterfeiting and Piracy

Counterfeiting and piracy impose substantial costs on the directly affected industries, as well as on the business community as a whole, on the public, and on the government. The manufacture, distribution and sale of counterfeit goods robs legitimate business of revenues, slows business innovation and growth, causes the public to lose jobs and income, reduces government tax revenues, requires additional outlays by the government on social programs in response to the job and income losses, and provides an environment where criminal networks can thrive.⁹

The revenue loss to U.S. and foreign businesses due to counterfeiting and piracy is large.¹⁰ U.S. Customs and Border Protection (U.S. CBP) estimated, in 2002, that counterfeiting and piracy caused U.S. "businesses and industries to lose about \$200 billion a year in revenue and 750,000 jobs."¹¹ Similarly, the U.S. Federal Bureau of Investigation (FBI) estimated, in 2002, that counterfeiting and piracy caused U.S. businesses to lose between \$200 and \$250 billion in revenues each year.¹² Given that counterfeiting and piracy by all reports escalated significantly since 2002, the mid-point of this range (\$225 billion) is a conservative current estimate of lost U.S. business revenues due to counterfeiting and piracy.¹³

Globally, the lost annual business revenues due to counterfeiting and piracy have been estimated to be over \$600 billion.¹⁴ The estimates range upward to \$650 billion.¹⁵ The sum of available individual country estimates of counterfeit and piracy market size produces an estimate of lost global business

⁹ For example, see OECD, *The Economic Impact of Counterfeiting and Piracy*, Part IV, Executive Summary, JT03228347, June 4, 2007, http://www.oecd.org/documents/35/0,3343,en_2649_201185_38702947_1_1_1_00.html, (hereinafter "OECD 2007 Piracy Report"), pages 2, 4, and 12-18.

¹⁰ The IACC White paper provides a good summary discussion of the economic impacts of counterfeiting and piracy. See pages 3-6.

¹¹ U.S. Customs and Border Protection, (U.S. CBP), Press Release, "U.S. Customs Announces International Counterfeit Case Involving Caterpillar Heavy Equipment," May 29, 2002, http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/legacy/2002/52002/05292002.xml

¹² FBI Press Release, July 17, 2002, <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>

¹³ The IACC White Paper, pages 2 and 3.

¹⁴ The World Customs Organization (WCO) and Interpol are credited with this estimate. See Coalition for Intellectual Property Rights (CIPR), "First Global Congress on Combating Counterfeiting," Brussels, Belgium, May 25-26, 2004, http://www.cipr.org/activities/seminars/brussel_250504/index.htm.

¹⁵ International Chamber of Commerce (ICC), "Putin assures ICC that global business concerns will be on G8 agenda," July 5, 2006, <http://www.iccwbo.org/policy/economic/icc/aei/index.html>

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revenues due to counterfeiting and piracy of \$522 billion.¹⁶ These results suggest that \$600 billion is a reasonable estimate of the lost global business revenues due to counterfeiting and piracy.

In a recent study the OECD concluded "international trade in counterfeit and pirated products could have been up to USD 200 billion in 2005."¹⁷ This total excludes domestically produced and consumed counterfeit and pirated products and the pirated digital products being distributed via the Internet.¹⁸ The OECD conjectured that if these items were included that the total global magnitude of counterfeiting and piracy could be several hundred million dollars more.¹⁹ Assuming that total lost global business revenues due to counterfeiting and piracy are \$600 billion, international trade in counterfeited and pirated goods accounts for about 1/4 of the total.

Counterfeiting and piracy also harm the public and the government by substituting inferior and often dangerous counterfeit goods for legitimate high quality goods. If the counterfeit goods are sold through legitimate (or apparently legitimate) retail channels, the public and the government may pay for a high quality legitimate good and receive a low quality and potentially dangerous counterfeit good. Lower priced counterfeit goods purchased from anonymous retailers over the Internet or from obscure remote retailers over the phone, through street vendors, or through transitory physical retail outlets (e.g. the back of a truck) are even more likely to be of inferior quality and potentially dangerous.²⁰

Finally there is also evidence that organized crime groups and terrorist organizations are entering the counterfeiting and piracy arena. The entrance of organized crime will increase the scale of counterfeiting and piracy operations and make these operations more difficult to detect because of the sophistication of the organized crime groups. In addition, terrorist organizations engaging in counterfeiting and piracy will be given a source of funds for their terrorist activities.²¹

¹⁶ Havocscope, <http://www.havocscope.com/>

¹⁷ OECD, *The Economic Impact of Counterfeiting and Piracy: Part IV, Executive Summary*, JT03228347, June 4, 2007, http://www.oecd.org/document/35/0,3343,en_2649_201185_38702947_1_1_1_1_00.html (hereinafter "OECD 2007 Piracy Report"), p. 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The IACC White paper provides a good overview discussion of the health and safety concerns related to counterfeited goods. See pages 7-14.

²¹ The IACC White Paper provides a good discussion of organized crime syndicates activities related to counterfeiting and piracy. (see pages 14-20) The IACC also addresses the activities of terrorist organizations in the counterfeiting and piracy arena (See pages 20-35).

C. Analysis of U.S. Imports of Counterfeit and Pirated Goods

There is no direct measure of imports of counterfeit and pirated goods into the United States (or to any other country). The objective of the counterfeiters and pirates is to bring their illicit goods into the U.S. (and other countries) without detection. The only measure of the relative magnitude of U.S. imports of counterfeit and pirated products are seizures by U.S. Customs and Border Protection (U.S. CBP). Table II-1 presents total seizures in FY2006 and FY2001 identifying the major countries of origin for these illegal imports. All countries with a share of illegal imports of one percent or more are shown in Table II-1.

Table II – 1

U.S. Customs and Border Protection Seizures By Country					
FY 2006 and FY 2001					
Country	Percent Change:	Fiscal Year 2006		Fiscal Year 2001	
	2001 to 2006 (%)	(Dollars)	(%) Share	(Dollars)	(%) Share
China	374%	\$125,595,844	81%	\$26,471,834	46%
Hong Kong	62%	\$9,389,464	6%	\$5,810,311	10%
Taiwan	-15%	\$1,843,764	1%	\$2,161,387	4%
Pakistan	99%	\$1,838,815	1%	\$922,767	2%
Korea	-36%	\$1,810,140	1%	\$2,845,538	5%
Singapore	-56%	\$1,198,735	1%	\$2,751,582	5%
All Other Countries	-17%	\$13,692,474	9%	\$16,475,261	29%
Total	170%	\$155,369,236	100%	\$57,438,680	100%
Addendum:					
China and Hong Kong	318%	\$134,985,308	87%	\$32,282,145	56%
All Other Countries	-19%	\$20,383,928	13%	\$25,156,535	44%

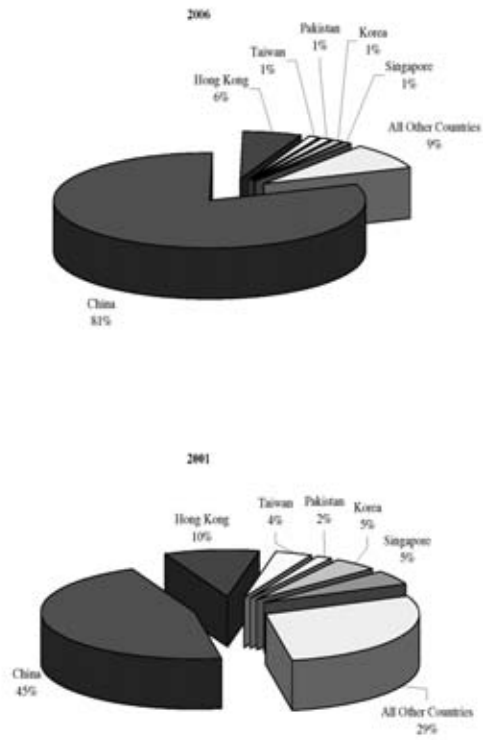
Source: U.S. Customs and Border Protection, http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipi/seizure/trading/

The dramatic change in the share of total seizures of illegal goods originating in China between FY2001 and FY2006 is illustrated in Figure II-1.

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Figure II-1

Percentage of U.S. Customs and Border Protection Seizures By Country
FY 2006 and FY 2001



Source: U.S. Customs and Border Protection, http://www.cbp.gov/hq/govt/govt/import/commercial_informations/policies/trading/

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The International Anticounterfeiting Coalition (IACC), in a 2007 submission to the United States Trade Representative (USTR), recommended that China be reclassified from a priority watch country to a priority foreign country for monitoring because of serious intellectual property right (IPR) issues.²² The IACC noted that Department of Homeland Security (DHS) statistics on 2006 U.S. Customs seizures showed that 81 percent were from China and that, if seizures from Hong Kong were added (because Hong Kong is normally just a transshipment point for goods from China), then 87 percent of all illegal goods seized would have been from China.²³ (See Table II-3 above.) The counterfeit goods seized from China included electronics, pharmaceuticals, household appliances, computer peripherals, auto parts, lighters, optical media, toys, apparel, footwear, luxury accessories (including handbags, jewelry, watches, and eyewear), and cigarettes.²⁴ Piracy of optical disks (DVDs) and online piracy also are major problems in China.²⁵ Finally, software piracy is an extreme problem in China. The IACC estimates that over 86 percent of the software used in China is pirated.²⁶ The countries on the IACC's proposed priority watch list were Brazil, Canada, Costa Rica, Czech Republic, Paraguay, Russia and Vietnam.²⁷

The International Intellectual Property Alliance (IIPA) identified China and Russia as key problem countries in its 2007 submission to the USTR.²⁸ The IIPA stated that "China and Russia are again this year the two countries that are of the greatest concern to copyright industries, as they were in 2006. While there have been developments in both these key markets over the year, the bottom line is that piracy levels have not come down at all or only marginally, and some problems have grown worse."²⁹ The IIPA criticized China for being "extremely reluctant to bring criminal cases for copyright piracy."³⁰ The IIPA's concern with Russia was whether Russia was honoring its commitments under the 2006 U.S.-Russia IPR Bilateral Agreement to take action against counterfeiting and piracy.³¹ The

²² The International Anticounterfeiting Coalition (IACC), *Submission of Special 301 Recommendations to the United States Trade Representative*, February 12, 2007 (hereinafter "IACC 2007 Special 301 Recommendations"), p. 4 and pp. 10-34. A priority foreign country would be subject to heightened investigation and possibly immediate sanctions. A priority watch country is the focus of increased bilateral talks to amend that country's laws and practices.

²³ IACC 2007 Special 301 Recommendations, p. 12.

²⁴ IACC 2007 Special 301 Recommendations, p. 15.

²⁵ IACC 2007 Special 301 Recommendations, pp. 30-32.

²⁶ IACC 2007 Special 301 Recommendations, p. 32.

²⁷ IACC 2007 Special 301 Recommendations, p. 4 and pp. 35-70.

²⁸ The IIPA submitted its report to the USTR on February 12, 2007. See <http://www.iipa.com>

²⁹ Comments of IIPA's Eric Smith. *Id.*

³⁰ IIPA Submission on China, *Id.*

³¹ IIPA submission on Russia, *Id.*

IIPA noted that "Russia's current copyright piracy problem remains one of the worst of any country in the world, resulting in losses of over \$2 billion in 2006."³²

In its 2007 Special 301 Report, the United States Trade Representative (USTR) did not reclassify China as a priority foreign country as requested by the IACC, but did put China and Russia at the top of its priority watch list as the IIPA had requested.³³ The USTR noted that "[d]espite the anti-piracy campaign in China and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high."³⁴ The USTR stated that U.S. copyright industries had estimated "that 85 percent to 95 percent of all copyrighted material sold in China were pirated, indicating no improvement over 2005."³⁵ The USTR further stated "Chinese counterfeits include many products, such as pharmaceuticals, electronics, batteries, auto parts, industrial equipment, toys, and many other products that pose a direct threat to the health and safety of consumers in the United States, China, and elsewhere."³⁶ The USTR listed Russia as the second country on its priority watch list. The USTR noted that "[p]oor enforcement of IPR in Russia is a pervasive problem."³⁷ The other countries on the USTR's priority watch list, in the order presented by the USTR, are Argentina, Chile, Egypt, India, Israel, Lebanon, Thailand, Turkey, Ukraine, and Venezuela.³⁸

D. Analysis of Counterfeit Goods By Product

The OECD, in a recent study on piracy, provided an illustrative list of products subject to IP infringement. See Appendix Table B.1. This list is extensive but incomplete. For example, counterfeit aircraft parts are a substantial problem and are not included in the list in Appendix Table B.1.³⁹ Estimates of lost global business revenues due to counterfeiting and piracy have been

³² *Id.*

³³ Office of the United States Trade Representative (USTR), 2007 Special 301 Report, 2007, http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_Special_301_Review/asset_upload_file230_11122.pdf, page 18.

³⁴ *Id.*, page 18.

³⁵ *Id.*, page 18.

³⁶ *Id.*, page 18.

³⁷ *Id.*, page 23.

³⁸ *Id.*, page 23-28.

³⁹ FAA estimates indicate that 2 percent of parts installed on aircraft are counterfeit. <http://www.jcc-ccs.co.uk/bascap/article.php?articleid=610>



developed by various parties for some of the products identified by the OECD. See Appendix Table B.2.⁴⁰ These individual product estimates developed by others are combined into 9 categories in Appendix Table B.3. These 9 categories are sorted in descending order by lost global business revenues due to counterfeiting and piracy. The categories are taken from the OECD list in Appendix Table B.1. The specific products in each category for which estimates are available in Appendix Table B.2 are listed in the bullet under each category. The total lost global business revenues for all identified products are \$301 billion. There are many products for which no estimates of lost global business revenues are available, which accounts for the difference between the estimate of total lost global business revenues by country (about \$600 billion) and the estimate of total lost global business revenues by product (\$301 billion).

E. Lost U.S. Business Revenues Due to Counterfeiting and Piracy

The total annual lost revenues of all U.S. business due to counterfeiting and piracy is estimated to \$225 billion.⁴¹ Annual U.S. business revenue losses due to counterfeiting and piracy also have been developed for selected industries. These lost U.S. business revenue estimates may occur in the U.S. or internationally, and many of the U.S. IP-related companies are major international players. As a consequence, U.S. firms in the IP-related markets can suffer substantial damage due to counterfeiting and piracy throughout the world.

Below, short discussions of the effects of counterfeiting and piracy on five major IP-based industries are presented: (1) Motion Pictures; (2) Sound Recordings; (3) Software; (4) Auto parts; and (5) Fashion and apparel. In addition, a brief discussion is presented of the estimated impacts of counterfeiting and piracy on Los Angeles.

1. The Effects of Counterfeiting and Piracy on the Motion Picture Industry

In 2007, the Motion Picture Association (MPA) and L.E.K. published a study on the 2005 revenue losses caused by piracy in the movie industry.⁴² As shown in Table II-2, the estimated total global

⁴⁰ We have not attempted to assess the accuracy of the estimates of the global lost business revenues by product presented in Appendix Table B.2. Some of these estimates are based on substantial studies and others are reported in press articles with citations to industry sources. We have checked the sources provided by Havocscope and have found that Havocscope accurately records the reported amounts. The estimates of lost global business revenues by product shown in Appendix Table B.2 are not used in our calculations of the likely effects of the CACP initiative on the U.S. economy that are presented in Section V below.

⁴¹ This is the mid-point of the FBI range estimate of \$200 to \$250 billion. FBI Press Release, July 17, 2002, <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>

⁴² MPA and L.E.K., *The Cost of Movie Piracy*, an analysis prepared by L.E.K. for the Motion Picture Association, May 2006, <http://www.mpa.org/researchStatistics.asp>. (hereinafter "MPA/L.E.K. Piracy Study").

cost of counterfeiting and piracy to the movie industry in 2005 was \$18.2 billion.⁴³ Most of this piracy occurs outside the U.S.; only \$2.7 billion is estimated to occur in the U.S. However, the U.S. motion picture studios are estimated to have lost \$6.1 billion of revenue globally in 2005 due to counterfeiting and piracy. Of these losses, \$3.8 billion were due to counterfeiting of physical devices (e.g., DVDs) and \$2.3 billion were estimated to be due to Internet (digital) theft. Movie piracy rates are highest in China (90% of the market is lost to piracy), Russia (79%), and Thailand (79%).⁴⁴ The piracy rate in the U.S. is 7%.⁴⁵

Table II-2
Cost of Piracy to the Movie Industry in 2005
(Billions of Dollars)

Segment	Global Market	U.S. Market
Motion Picture Industry	\$18.2	\$2.7
Physical	\$11.1	\$1.8
Internet (Digital)	\$ 7.1	\$0.9
	\$ 6.1	\$1.3
U.S. Motion Picture Studios		
Physical	\$ 3.8	\$0.9
Internet (Digital)	\$ 2.3	\$0.4

Source: MPA and L.E.K., *The Cost of Movie Piracy*, An analysis prepared by L.E.K. for the Motion Picture Association, May 2006, <http://www.mpa.org/researchStatistics.asp>.

Note: The motion picture industry includes foreign and domestic producers, distributors, theaters, video stores, and pay-per-view operators.

In a study prepared for the Institute for Policy Innovation (IPI), the economy-wide effects of the estimated \$6.1 billion revenue loss by the U.S. motion picture studios due to counterfeiting and piracy were calculated.⁴⁶ The IPI Study also included the effects of counterfeiting and piracy on the U.S. theatrical exhibit industry and on the U.S. retail trade sector, which increased the total estimated

⁴³ MPA/L.E.K. Piracy Study, p. 4. The movie industry is defined to include foreign and domestic producers, distributors, theaters, video stores, and pay-per-view operators.

⁴⁴ MPA/L.E.K. Piracy Study, p. 6.

⁴⁵ *Ibid.*

⁴⁶ Stephen E. Sieek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 186, September 2006 (hereinafter "IPI Movie Piracy Study").

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direct lost business revenues due to counterfeiting and piracy of movies of U.S. firms in 2005 to \$7.3 billion.⁴⁷ The total economy-wide business revenues lost due to these lost motion picture related revenues was calculated to be \$20.5 billion.⁴⁸ The total number of jobs lost in the U.S. economy was estimated to be 141,030 due to counterfeiting and piracy in the movie industry.⁴⁹ Finally, U.S. state, and local governments were estimated to lose at least \$0.8 billion in tax revenues due to counterfeiting and piracy in the movie industry.⁵⁰

2. The Effects of Counterfeiting and Piracy on the Sound Recording Industry

Piracy and counterfeiting are very serious problems for the sound recording industry. The International Federation of the Phonographic Industry (IFPI) estimated that the loss in music industry global revenues in 2005 due to counterfeiting and piracy was \$4.5 billion.⁵¹ The IFPI reported that "37 percent of all CDs purchased [globally] in 2005 were pirate – 1.2 billion pirate CDs in total."⁵² Further, the IFPI stated that "[p]irate CD sales outnumbered legitimate sales in 2005 in a total of 30 markets."⁵³ Assuming a \$10 wholesale price for a CD, the 1.2 billion pirated CDs, if sold by the recording industry, would have a wholesale value of \$12 billion. At pirate prices, the IFPI estimates that the 1.2 billion CDs sold by pirates had a value of \$4.5 billion.⁵⁴ The IFPI estimated that "national enforcement authorities around the globe seized a record amount of discs in 2005 – some 80 million."⁵⁵

Internet piracy of music also is a very large problem. The IFPI estimated "that almost 20 billion songs were illegally downloaded in 2005."⁵⁶ Assuming that a song download has a retail price of \$1, the downloads sold by legitimate vendors would have a market value of \$20 billion. In comparison, "Apple Inc.'s iTunes Music Store, which has more than 70 percent of legal digital music sales in the United States, has sold only a bit more than 2 billion songs since its launch in 2003 [through 2006]."⁵⁷

⁴⁷ IFPI Movie Piracy Study, pages 5 and 7.

⁴⁸ IFPI Movie Piracy Study, pp. 9-13.

⁴⁹ *Id.*, pp. 9 and 13.

⁵⁰ *Id.*, pp. 11-13.

⁵¹ International Federation of the Phonographic Industry ("IFPI"), *The Recording Industry 2006 Piracy Report: Protecting Creativity in Music*, July 2006; (hereinafter "IFPI 2006 Piracy report"), <http://www.ifpi.org/content/library/piracy-report2006.pdf>, page 4.

⁵² *Id.*, page 4.

⁵³ *Id.*, page 4.

⁵⁴ *Id.*, page 4.

⁵⁵ *Id.*, page 4.

⁵⁶ *Id.*, page 4.

⁵⁷ *Id.*, page 4.

In 2006, revenues from legitimate global digital music sales almost doubled from 2005 levels reaching about \$2 billion.⁵⁸ However, the \$2 billion of legitimate downloads in 2005 is only 10% of the illegal \$20 billion illegal downloads.

In a study prepared for the Institute for Policy Innovation (IPI), the total annual global revenue losses of the music recording industry due to counterfeiting and piracy were estimated to be \$5.3 billion.⁵⁹ The IPI study also estimated the related annual business revenue losses in the retail trade sector, which increased the total estimated annual business revenue losses to \$6.4 billion. The IPI study calculated the total economy-wide annual business revenue losses due to recorded music counterfeiting and piracy to be \$12.5 billion.⁶⁰ The total number of jobs lost in the U.S. economy was estimated to be 71,060.⁶¹ Finally, the U.S., state, and local governments were estimated to lose at least \$0.4 billion annually in tax revenues due to counterfeiting and piracy in the recorded music industry.⁶²

3. The Effects of Counterfeiting and Piracy on the Software Industry

The Business Software Alliance (BSA) and IDC performed a study of the impacts of piracy on the IT sector, which includes hardware, software, and IT services.⁶³ The BSA/IDC study concluded that global software piracy in 2006 amounted to \$39.6 billion, which was about 35 percent of the value of total software installed.⁶⁴ The BSA/IDC study estimated that the percentage of total software installed that was pirated ranged across countries from 21 percent to 95 percent.⁶⁵ An earlier BSA/IDC study estimated that reducing the global average software piracy rate from 35 percent to 25 percent, over four years, could add 2.5 million IT jobs, add more than \$400 billion to the global economy, and add \$67 billion to worldwide government tax receipts.⁶⁶ This earlier BSA/IDC study also concluded that

⁵⁸ International Federation of the Phonographic Industry (IFPI), *IFPI: 07 Digital Music Report*, July 2007, http://www.ifpi.org/content/section_resources/digital-music-report.html, page 5.

⁵⁹ Stephen Swiek, *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007 (hereinafter *IPI Music Piracy Study*), p. 5.

⁶⁰ *Id.*, pp. 11 and 14.

⁶¹ *Id.*, pp. 11 and 15.

⁶² *Id.*, pp. 14-15.

⁶³ Business Software Alliance (BSA) and IDC, *2006 Piracy Study*, <http://w3.bsa.org/globalstudy/> (hereinafter *BSA/IDC 2006 Piracy Study*), p. 12.

⁶⁴ *BSA/IDC 2006 Piracy Study*, p. 4.

⁶⁵ *Id.*, pp. 10-12.

⁶⁶ Business Software Alliance (BSA) and IDC, *Expanding the Frontiers of our Digital Future: Reducing Software Piracy to Accelerate Global IT Benefits*, December 2005, (hereinafter *BSA/IDC 2005 IT Sector Piracy Study*), p. 6.

the countries with the highest current software piracy rates (e.g., China, Russia, Indonesia, Vietnam, Kazakhstan, and Ukraine) would obtain the greatest benefit from reducing software piracy.⁶⁷

4. The Effects of Counterfeiting and Piracy on the Auto Parts Industry

Counterfeiting in the automobile and auto parts business has become a major problem in recent years, because of widespread access to computers, copiers, and scanners. It has become much easier to re-engineer products and duplicate labels, logos, and warranty claims. Currently the global auto parts industry is estimated to have \$500 billion in annual revenues, with the North American business revenues estimated to be \$191 billion.⁶⁸ According to a 2004 estimate, worldwide counterfeit parts reduce revenues of the automotive industry by \$12 billion.⁶⁹ In the U.S. auto parts industry, counterfeit auto parts drain nearly \$3 billion a year from revenues.⁷⁰ In terms of lost jobs the Department of Commerce estimates that the U.S. auto industry could hire 200,000 additional workers in the absence of counterfeited parts.⁷¹

In addition, counterfeit and gray market auto parts account for 3.2% of the global counterfeit trade, with annual lost revenues amounting to nearly \$16 billion for the auto companies. Estimates by the European Union (EU) suggest that 5-10% of all replacement auto parts are counterfeit. A recent study by the Commercial Times reports that more than 56% of autos in China have counterfeit parts installed.

5. The Effects of Counterfeiting and Piracy on the Fashion and Apparel Industry

The total production of the fashion and apparel industry in 2006 amounted to about \$350 billion. While digital technology has made the fashion industry much more efficient and has facilitated creativity, this same technology also has facilitated counterfeiting and piracy. The lost revenues due to counterfeiting and piracy of the apparel and fashion industry are estimated to be about \$12 billion annually.⁷²

⁶⁷ BSA/IDC 2005 IT Sector Piracy Study, pp. 6-7.

⁶⁸ Jeffrey McCracken, Battered Auto-parts Makers Could Face More Pain, Wall Street Journal, August 13, 2007.

⁶⁹ Tom Nash, Counterfeit Parts: A Poor Fit for Your Shop, Motor Magazine, January 2004.

⁷⁰ Thomas J. Donahue, Counterfeiting and Theft of tangible Intellectual Property: Challenges & Solutions, March 23, 2004.

⁷¹ Tom Nash, Counterfeit Parts: A Poor Fit for Your Shop, Motor Magazine, January 2004.

⁷² Robin Moody, Logo Cops fight Apparel Knockoffs, Portland Business Journal, April 9, 2004.
http://www.intellectualsecurity.com/2004/04/logo_cops_fight_apparel_knocko.html

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The estimated \$12 billion in fashion industry revenue loss, however, may not fully reflect the amount of actual counterfeit goods that hit the market. Numerous law enforcement officials report that labels are often imported separately from garments and bags. As a result, and because the U.S. only outlaws counterfeit goods, not pirated designs, border enforcement and customs officials can neither confiscate the goods that will later be sold as counterfeits, nor arrest those purveying the goods. No goods confiscated means no goods counted. Similarly, since the labels are often kept separately from the bags and garments in U.S. warehouses, and, in fact, are often even affixed after the sale, New York law enforcement officials report⁷³ they are often thwarted from making arrests and seizures on Canal Street and in the garment district, the two largest counterfeit centers in the United States.⁷⁴ Apparel without the label is design piracy which is legal; counterfeiting is not.

The public, unfortunately, has shown little reluctance in buying counterfeit fashions. For example, counterfeit handbags, one of the most widely infringed products, are so easily available that many people perceive them to be legal.⁷⁵ Coach Inc. of New York has seen a 368% increase in the number of fake bags seized in the last two years.⁷⁶ A recent study commissioned by Chemise Lacoste that explored brand devaluation related to counterfeits concluded that 76% of the respondents believed that the growing abundance of forged items and logos made buying the original item far less attractive.⁷⁷

6. The Effects of Counterfeiting and Piracy on Los Angeles

Worldwide piracy hurts Los Angeles County substantially because the region produces most movies and many music recordings. A recent study determined that counterfeiting and piracy caused Los Angeles County firms in 2005 to lose \$5.2 billion in revenue.⁷⁸ The hardest hit firms were in the motion picture industry (\$2.7 billion in lost revenues), sound recording (\$0.851 billion), apparel, accessories, and footwear (\$0.617 billion), and software publishing (\$0.355 billion).⁷⁹ In addition, the study concluded that local retailers lost at least \$2 billion to black market sales of such products.⁸⁰ Job losses in Los Angeles County were estimated to be 706,000 implying a loss in wages of \$5.1

⁷³ Press Office, New York City Comptroller.

⁷⁴ Phillips, Tim. *Knockoff: The Deadly Trade in Counterfeit Goods*, London, PA 2006.

⁷⁵ Tina Cassidy, *Bagging the knockoffs: There is nothing like the real Thing*, Boston Globe, Dec 26, 2002.

⁷⁶ Laura Amendolara, *Knocking Knock-Offs*, *Fordham Intellectual Property Media and Entertainment Law Journal*, Vol. 15:789, 2006.

⁷⁷ Kate Betts, *The Purse Party Blues*, *Time Magazine*, July 29, 2004.

⁷⁸ Gregory Freeman, Nancy D. Sidhu, and Michael Montoya, *A False Bargain: The Los Angeles County Economic Consequences of Counterfeit Products*, Los Angeles County Economic Development Corporation, February 2007 (hereinafter "LA County Study"), page i.

⁷⁹ *Id.*, page i.

⁸⁰ *Id.*, page i.

billion.⁸¹ Finally, the study estimated that state and local governments lost at least \$0.483 billion in tax revenues in 2005 due to the effects of counterfeiting and piracy.⁸²

7. The Contribution of IP-Intensive Industries to U.S. Economic Growth

Counterfeiting and piracy have a large negative impact on the IP-intensive industries such as motion pictures, sound recordings, software, fashion, consumer electronics including personal computers, electronic components, the auto and aircraft industries, and pharmaceuticals. Globally, these product categories account for about 94 percent of the \$301 billion of lost product revenues due to counterfeiting and piracy (see Appendix B, Table B.4) and about 54 percent of the \$522 billion of lost business revenues due to counterfeiting and piracy for all reporting countries (see Appendix B, Table B.1).⁸³

A 2005 study evaluated the contributions of U.S. IP-intensive industries to the overall growth of the U.S. economy.⁸⁴ This study documents that the IP-intensive and related industries accounted for about 33 percent of U.S. economic growth in 2003, while the output of the IP-intensive and related industries only accounted for about 17 percent of total U.S. industry output.⁸⁵ Further, IP-intensive and related industries accounted for 58 percent of the growth in U.S. exportable high-value-added products and services.⁸⁶ Protecting the IP-intensive industries from counterfeiting and piracy could have a big payoff in terms of the U.S. economic growth and the ability of the U.S. to increase its exports and improve its trade balance.

⁸¹ *Id.*, page ii.

⁸² *Id.*, page ii.

⁸³ The lost IP-intensive industry production revenues due to counterfeiting and piracy amount to about \$284 billion. This amount includes the lost business revenues due to counterfeiting and piracy for the following product categories in Table B.3 in Appendix B: (1) Technology Products; (2) Web Videos; (3) Pharmaceutical Drugs; (4) Software; (5) Movies; (6) Auto Parts; (7) Music; (8) Mobile Phone Entertainment; (9) Video Games; (10) Airline Parts; (11) Cable TV; and (12) Books. The sum of global lost business revenues, due to counterfeiting and piracy for these products is \$284.33 billion.

⁸⁴ Stephen E. Siwek, *Engines of Growth: Economic Contributions of the U.S. Intellectual Property Industries*, Prepared for NBC Universal, 2005, http://www.nbcuni.com/About_NBC_Universal/Intellectual_Property/pdf/Engines_of_Growth.pdf, (hereinafter "Engines of Growth Study").

⁸⁵ Engines of Growth Study, page 15.

⁸⁶ Engines of Growth Study, page 18-19.

III. The Proposed CACP Initiative

A. Introduction

Counterfeiting and piracy economically harm U.S. businesses. Further, because many of the counterfeit goods are of inferior quality and may be dangerous, the public and the government also suffer. Finally, the lost U.S. business revenues due to counterfeiting and piracy lead to reduced innovation and slower growth, fewer jobs, less income, lower government tax revenues, and higher government outlays, which further impact the public and the government.

There have been studies by the U.S. Government Accountability Office (GAO) and the OECD that have documented the shortcomings in the efforts by the U.S. and all other countries to combat counterfeiting and piracy.⁸⁷ The CACP proposal addresses many of these shortcomings. Key objectives of the CACP initiative include coordinating the efforts of various U.S. and foreign agencies, more effectively using existing resources, and making strategic targeted increases in the levels of effort by selected agencies. This approach is similar to the highly successful CompStat initiative began by the New York Police Department and subsequently adopted by other major city police forces.⁸⁸

B. Issues With Current Government Anti-Counterfeiting and Anti-Piracy Efforts

The GAO has evaluated the performance of U.S. Customs and Border Protection (U.S. CBP) and of the overall U.S. government efforts to combat counterfeiting and piracy. In its 2007 evaluation of the U.S. CBP, the GAO noted that the "CBP lacks an integrated approach across key offices for further improving border enforcement outcomes, causing it to focus on certain efforts that have produced limited results while not taking initiative to understand and address variations among ports' enforcement outcomes."⁸⁹ On the basis of its analysis, the GAO concluded that the "CBP's approach to improving IP enforcement lacks integration and has produced limited results."⁹⁰ The GAO further

⁸⁷ GAO, Intellectual Property: National Enforcement Strategy Needs Stronger Leadership and More Accountability, Statement of Loren Yager, GAO's Director of International Affairs and Trade to the Committee on Banking, Housing and Urban Affairs, Subcommittee on Security and International Trade and Finance, United States Senate, GAO-07-710T, April 12, 2007; GAO, Intellectual Property: Strategy Targeting Organized Piracy (STOPI) Requires Changes for Longer-term Success, GAO-07-74, July 26, 2006 (hereinafter GAO, Intellectual Property: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts, GAO-07-735, April 2007 (hereinafter "GAO 2007 Report on CBP Improvement"); OECD, The Economic Impact of Counterfeiting and Piracy, Part IV, Executive Summary, JT03228347, June 4, 2007.

⁸⁸ See NYPD website, <http://www.nyc.gov/html/nypd/html/crdbdept/CompStat.html>; see also LAPD website, http://www.lapdonline.org/inside_the_lapd/content_basic_view/6354, and Philadelphia Police Department website, http://www.ppdonline.org/hq_CompStat.php.

⁸⁹ GAO, Intellectual Property: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts, GAO-07-735, April 2007 (hereinafter "GAO 2007 Report on CBP Improvement"), p. 4.

⁹⁰ GAO 2007 Report on CBP Improvement, p. 32.

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concluded "CBP's strategic plan lacks performance measures for IP enforcement."⁹¹ Finally, the GAO concluded that the "CBP has not analyzed variations in port enforcement outcomes."⁹² Such analyses, concluded the GAO, could allow the CBP to improve its overall performance.⁹³

The GAO, in 2006, also conducted a broader evaluation of the coordination, organization, and effectiveness of the U.S. government's overall anti-counterfeiting and anti-piracy efforts.⁹⁴ The GAO, in testimony before congress by Loren Yager, GAO's Director of International Affairs and Trade, summarized the results of the 2006 study.⁹⁵

Regarding the coordination of the U.S. government's efforts, the GAO concluded that "[t]he current coordinating structure that has evolved for protecting and enforcing U.S. intellectual property rights lacks leadership and permanence, presenting challenges for effective and viable coordination for the long term."⁹⁶ The current coordination structure was formed in 1999, when Congress created the interagency National Intellectual Property Rights Law Enforcement Coordination Council (NIPLECC) "to serve as the central coordinating structure for IP enforcement across federal agencies."⁹⁷ The GAO has concluded "NIPLECC has struggled to define its purpose, retains an image of inactivity within the private sector, and continues to have leadership problems."⁹⁸

In October 2004, the Bush administration initiated the Strategy Targeting Organized Piracy (STOP), which is led by the National Security Council.⁹⁹ According to the GAO, STOP "has a positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current [Bush] administration leaves office."¹⁰⁰ Further, the GAO stated that "STOP is a first step toward an integrated national strategy to protect and enforce U.S. intellectual property rights, and it

⁹¹ GAO 2007 Report on CBP Improvement, p. 33.

⁹² GAO 2007 Report on CBP Improvement, p. 38.

⁹³ GAO 2007 Report on CBP Improvement, p. 38.

⁹⁴ GAO, Intellectual Property: Strategy Targeting Organized Piracy (STOP) Requires Changes for Longer-term Success, GAO-07-74, July 26, 2006 (hereinafter "GAO 2006 STOP Report").

⁹⁵ GAO, Intellectual Property: National Enforcement Strategy Needs Stronger Leadership and More Accountability, Statement of Loren Yager, GAO's Director of International Affairs and Trade to the Committee on Banking, Housing and Urban Affairs, Subcommittee on Security and International Trade and Finance, United States Senate, GAO-07-710T, April 12, 2007 (hereinafter "GAO 2007 Testimony").

⁹⁶ GAO 2007 Testimony, Executive Summary.

⁹⁷ GAO, 2007 testimony, p. 3.

⁹⁸ GAO 2007 Testimony, p. 3.

⁹⁹ GAO 2007 Testimony, pages 1 and 3.

¹⁰⁰ GAO 2007 Testimony, p. 3.

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has energized agency efforts.¹⁰¹ However, the GAO concludes "that STOP's potential as a national strategy is limited because it does not fully address important characteristics of a national strategy."¹⁰²

The GAO emphasized the critical importance of improving the U.S. government's existing anti-counterfeiting and anti-piracy efforts. The GAO states that "U.S. government efforts to protect and enforce intellectual property rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights holders and addressing health and safety risks resulting from the trade in counterfeited and pirated goods."¹⁰³ The GAO further states that "[i]ntellectual property is an important component of the U.S. economy, and the United States is an acknowledged global leader in its creation."¹⁰⁴

In terms of the growth of counterfeiting and piracy and its dangers, the GAO stated that "[t]echnology has facilitated the manufacture and distribution of counterfeit and pirated products, resulting in a global illicit market that competes with genuine products and complicates detection and actions against violations."¹⁰⁵ The GAO further stated that "[h]igh profits and low risk have drawn in organized criminal networks, with possible links to terrorist financing."¹⁰⁶ Further, the GAO stated that "[c]ounterfeit products raise serious public health and safety concerns, and the annual losses that companies face from IP violations are substantial."

The GAO emphasized the need for a sustained (permanent) and coordinated effort to combat counterfeiting and piracy. The GAO concluded that "[t]he challenges of IP piracy are enormous and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry representatives to be successful."¹⁰⁷ The GAO also stated that the coordinated effort would have to be global, because "IP protection and enforcement cut across a wide range of U.S. agencies and functions, as well as those of foreign governments, making coordination among all parties essential."¹⁰⁸ The GAO also emphasized the need to enlist the cooperation of foreign government agencies and to help the agencies in other countries improve their anti-counterfeiting and anti-piracy

¹⁰¹ GAO 2007 Testimony, pp. 3-4.

¹⁰² GAO 2007 Testimony, p. 4.

¹⁰³ GAO 2007, Testimony, p. 1.

¹⁰⁴ GAO 2007 Testimony, p. 5.

¹⁰⁵ GAO 2007 Testimony, p. 5.

¹⁰⁶ GAO 2007 Testimony, p. 3.

¹⁰⁷ GAO 2007, Testimony, p. 17.

¹⁰⁸ GAO 2007 Testimony, p. 1.

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efforts, because “[t]he legal protection of intellectual property varies greatly around the world, and several countries are havens for the production of counterfeit and pirated goods.”¹⁰⁹

The OECD recently (June 2007) completed a study of global counterfeiting and piracy, and the OECD reached conclusions that were consistent with those of the GAO.¹¹⁰ The OECD emphasized the seriousness of the criminal activities associated with counterfeiting and piracy, which the OECD characterizes as “illicit business in which criminal networks thrive.”¹¹¹ The OECD noted that the counterfeit goods were “often substandard and can even be dangerous, posing health and safety risks that range from mild to life-threatening.”¹¹² The OECD stated that counterfeiting and piracy “undermine innovations, which is the key to economic growth.”¹¹³ The OECD concluded that “[t]he magnitude and effects of counterfeiting and piracy are of such significance that they compel strong and sustained action from governments, business and consumers. More effective enforcement is critical in this regard, as is the need to build public support to combat the counterfeiting and piracy. Increased co-operation between governments, and with industry, would be beneficial, as would better data collection.”¹¹⁴

C. Description of the CACP Initiative

The Coalition Against Counterfeiting and Piracy (CACP) has proposed a broad initiative for combating counterfeiting. There are three primary aspects of the proposed CACP initiative: (1) establish strong and permanent leadership; (2) provide incremental dedicated and focused resources for IPR enforcement; (3) “work smarter” through coordination among the federal agencies plus with state, local, and foreign agencies, training on IPR enforcement, better technological and data analysis support, and changes in the law to facilitate IPR enforcement. The CACP Intellectual Property Enforcement Initiative is composed of the following six specific objectives:

- Improve the coordination of federal government intellectual property enforcement resources
- Better protect our borders against counterfeiting and piracy by expanding authorities and improving enforcement practices
- Strengthen criminal enforcement against intellectual property theft by expanding the resources and tools available for law enforcement at the federal, state, and local levels.

¹⁰⁹ GAO 2007 Testimony, p. 5.

¹¹⁰ OECD, *The Economic Impact of Counterfeiting and Piracy, Part IV, Executive Summary*, JT03228347, June 4, 2007 (hereinafter “OECD 2007 Piracy Report”).

¹¹¹ OECD 2007 Piracy Report, p. 2.

¹¹² OECD 2007 Piracy Report, p. 2.

¹¹³ OECD 2007 Piracy Report, p. 2.

¹¹⁴ OECD Piracy Report, p. 2.

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- Attack counterfeiting and piracy beyond our borders through improved enforcement training and technical assistance programs with foreign governments
- Strengthen the ability of the rights holders to protect their intellectual property by civil and judicial reform
- Decrease demand by educating consumers about the harms of counterfeiting and piracy

These objectives are discussed briefly below, and a full description of these objectives is presented in Appendix C.

1. Objective 1: Improve the coordination of federal government intellectual property enforcement resources

This CACP objective is consistent with the GAO's objective of creating strong permanent leadership for the U.S. government's intellectual property rights (IPR) enforcement efforts, with a focus on improving the coordination and effectiveness of the enforcement efforts of a wide range of agencies. To accomplish this objective, the CACP proposes that a presidentially appointed Chief Intellectual Property Enforcement Officer (CIPEO) position should be established in the White House. The CIPEO would be responsible for coordinating IPR enforcement throughout the Federal Government and to oversee development and effectiveness of implementation of a joint strategic plan by the individual enforcement agencies. The CIPEO would interact with the two lead federal government enforcement agencies – The Department of Justice (DOJ) and the Department of Homeland Security (DHS). The DOJ and DHS should designate senior officials as Directors of IPR Enforcement at each agency. The two main bureaus at DHS that would be involved are Customs and Border Protection (CBP) and Immigration Customs Enforcement (ICE).

2. Objective 2: Better protect our borders against counterfeiting and piracy by expanding authorities and improving enforcement practices

Border security is the responsibility of the two bureaus at DHS: CBP and ICE. The CACP objective calls for incremental dedicated resources at the CBP and ICE whose sole focus would be IPR enforcement. Also, this initiative calls for having senior CBP and ICE officials being tasked with overseeing IPR efforts at these bureaus, developing new efficient strategies being provided with more legal tools, and providing increased IPR enforcement training. This objective also calls for implementing enhanced technology and undertaking efforts to make CBP and ICE operate more efficiently.



3. Objective 3: Strengthen criminal enforcement against intellectual property theft by expanding the resources and tools available for law enforcement at the federal, state, and local levels.

This objective focuses on improving the efficiency and effectiveness of domestic IPR enforcement efforts by the DOJ as well as by state and local law enforcement agencies. This CACP objective calls for new resources at the DOJ for the attorneys and the FBI agents that are assigned full time to IPR enforcement matters. Specifically, this objective calls for more Computer Hacking and Intellectual Property (CHIP) units in the U.S. Attorneys' offices, with dedicated FBI agents and prosecutors in each unit. Further, this effort involves implementing new technologies and more IPR enforcement specific training. This objective also involves IPR enforcement training of state and local police, coordination of federal, state, and local enforcement efforts, and other enhancements. Finally, this objective calls for strengthening the federal anti-counterfeiting and anti-piracy laws.

4. Objective 4: Attack counterfeiting and piracy beyond our borders through improved enforcement training and technical assistance programs with foreign governments

This objective involves working with enforcement agencies in foreign countries to improve foreign IPR enforcement. The effort includes training of staff of U.S. embassies, increased funding of IPR enforcement and technical assistance at the U.S. State Department, direct training of foreign enforcement agents, and increased coordination with foreign IPR enforcement efforts. In addition, this objective calls for additional intellectual property attaches at U.S. embassies and increased funding for Intellectual Property Law Enforcement Coordinators (IPLECs) internationally.

5. Objective 5: Strengthen the ability of the rights holders to protect their intellectual property by civil and judicial reform

This CACP objective is intended to increase the civil remedies available to protect IPR holders, to authorize federal civil enforcement against pirates and counterfeiters, and to improve the judicial systems' knowledge of IPR enforcement issues.

6. Objective 6: Decrease demand by educating consumers about the harms of counterfeiting and piracy

This CACP objective involves increasing public awareness of the costs and dangers of counterfeiting and piracy through advertising. This objective also calls for working with universities to better secure campus networks against transmission of pirated materials and to fund research on how to implement such secure networks.



D. The Potential Impact of CACP Initiative on the U.S. Counterfeiting and Piracy Rate

1. Bases for Estimating the Potential Effectiveness of the CACP Initiative

The overall objective of the CACP initiative is to improve the effectiveness of the U.S. efforts to combat counterfeiting and piracy. To estimate what effects the CACP initiative might have in improving the effectiveness of the U.S. efforts, LECG investigated whether there had been generally similar efforts to improve the effectiveness of law enforcement against property crimes in other areas.

We do not believe that these other efforts need to be limited to efforts to combat counterfeiting and piracy because the CACP approach is hardly unique to addressing a large problem in either government or business. The CACP approach calls for high-level leadership to raise the priority of the issue within the organization. It would add dedicated resources – boots on the ground – that would focus exclusively on this issue at the key agencies. And it would provide legal and technological tools to allow those investigating IP offenses and protecting our borders to work smarter and more effectively to accomplish their objectives.

Whenever business or other organizations identify an important objective – whether it is developing a new product or entering a new market – they engage in these same, common-sense approaches: adding leadership, resources and tools to attain their objective. Of course, these are no guarantees of success. The fact that these elements are part of every successful organization's approach to addressing a problem or opportunity, however, suggests that the CACP's approach is reasonable. Moreover, the fact that the GAO recommended precisely this type of approach for dealing with this issue suggests that the CACP proposals would have an impact on the rates of counterfeiting and piracy.

There are clear precedents that show that such an approach works. In New York City (NYC), for example, the NYPD CompStat process contains many of these same elements to address what seemed to many to be the entirely intractable problem of property crime in NYC. Another precedent is the U.S. Department of Justice's (U.S. DOJ's) response to the growth of computer and intellectual property crime over the last decade. The NYPD CompStat and U.S. DOJ's efforts are discussed below.

2. The NYPD CompStat Process

According to a recent paper, the CompStat process adopted by the New York Police Department (NYPD) dramatically increased the efficiency and success of the NYPD in controlling crime.¹¹⁵ CompStat "is a management process through which the NYPD identifies problems and measures the results of its problem-solving activities."¹¹⁶ The CompStat process has "six core elements – a clear mission, internal accountability, geographical organization of operational command, organizational flexibility, and a reliance on data and innovative problem-solving tactics."¹¹⁷ The specific strategies and tactics adopted by the NYPD during the period when CompStat was in place include: (1) hiring more officers; (2) re-directing police patrols to combat public disorder; (3) developing closer relationships with the community; (4) strictly enforcing gun laws to reduce firearm crimes; (5) vigorously enforcing drug laws; (6) practicing strict law enforcement generally ("a zero tolerance policy"); and (7) concentrating police resources on problem places and persons.¹¹⁸ CompStat's effectiveness within the NYPD has been enhanced by strong political support from and coordination with other Criminal Justice agencies in New York City and also strong political support from New York's mayor.¹¹⁹ Under the CompStat process, the property crime rate in New York City was reduced dramatically as shown in Table III-1.¹²⁰

¹¹⁵ Dr. Vincent E. Henry, "CompStat Management in the NYPD: Reducing Crime and Improving Quality of Life in New York City," Presented at 129th International Senior Seminar, Resource Material Series No. 68, 2005 (hereinafter "NYPD CompStat Process"), pages 100-104. See also Patrick A. Langan, Ph.D., Matthew R. Durose, Statisticians, "The Remarkable Drop in Crime in New York City," Bureau of Justice Statistics, U.S. Department of Justice, October 21, 2004, (hereinafter "Bureau of Justice Paper").

¹¹⁶ *Id.*, page 103.

¹¹⁷ Sewell Chan, "Why Did Crime Fall in New York City?", *The New York Times*, August 13, 2007.

¹¹⁸ Bureau of Justice Paper, page 7.

¹¹⁹ NYPD CompStat Process, page 103 and 104.

¹²⁰ *Id.*, page 114.

Table III-1
Percentage Change in the Property Crime Rate
Since 1993: New York City Versus United States

Year	Year After 1993	New York City (%)	United States (%)	Difference: The "CompStat Effect" (%)
1994	1	-11.8%	-1.7%	-10.1%
1995	2	-26.0%	-3.2%	-22.8%
1996	3	-36.4%	-6.1%	-30.3%
1997	4	-40.9%	-8.9%	-32.0%
:	:	:	:	:
:	:	:	:	:
2001	8	-59.9%	-22.8%	-37.1%
:	:	:	:	:
:	:	:	:	:
2005	12	-67.1%	-27.6%	-39.4%

Source: FBI, *Crime in the United States*.

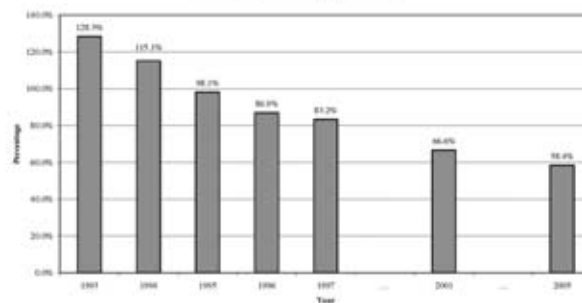
Table III-1 shows the percentage change in the New York City (NYC) property crime rate in the years following 1993 because CompStat was introduced in 1994. Table III-1 also shows the percentage change in the U.S. property crime rate in the years following 1993 to identify any changes in the crime rate statistics due to U.S.-wide changes in police procedures or other U.S.-wide factors. The U.S. property crime rate also declines after 1993 suggesting that some of the NYC property crime rate decline may be due to factors other than the introduction of CompStat and the specific related changes in police strategy and tactics. Table III-1 calculates the difference between the percentage change since 1993 in the NYC and U.S. property crime rates. This difference is labeled the "CompStat Effect" and reflects NYC-specific changes in police procedures (i.e., it adjusts the percentage reduction in the NYC property crime rate to remove U.S.-wide effects). Even after this adjustment, the incremental reduction in the NYC property reduction rate, relative to its 1993 level, is about 10% in the first, second, and third years of CompStat's existence. In addition, the NYC property crime rate continues to improve relative to the U.S. property crime rate through 2005.

As shown in Figure III-1, the property crime rate in New York City was 128.3 percent of the U.S. rate in 1993. By 1995, the second year of the CompStat program, the New York City property crime rate

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had fallen to 98 percent of the U.S. rate. In 2005, the New York City property crime rate had fallen to 58.4 percent of the U.S. rate. In addition, New York City's felony crime rate was the lowest among the largest ten cities in the U.S.¹²¹

Figure III-1
New York City Property Crime Rate As
A Percentage Of U.S. Property Crime Rate



Source: FBI, *Crime in the United States*.

The CompStat process can provide guidance for improving the effectiveness of U.S. efforts to combat counterfeiting and piracy. Counterfeiting and piracy are property crimes, and, like the property crime rate in New York City in 1993, the U.S. counterfeiting and piracy crime rate is too high today. The CACP initiative has many elements that are similar to those in CompStat, and the success of CompStat is encouraging for the CACP initiative.

3. The U.S. DOJ's Initiatives to Combat Computer and IP Crime

In 1996, the U.S. DOJ set up experts to provide leadership in combating computer and IP crime through the formation of the Computer Crime and Intellectual Property Section in the Criminal Division. The leadership of this effort was augmented by the Intellectual Property Task Force run out of the Office of the Deputy Attorney General in 2004, bringing together all parts of DOJ that have a role in protecting IP. Also, Computer Hacking and Intellectual Property (CHIPs) units were created by the U.S. DOJ in key U.S. Attorney's offices around the country. There currently are about 25 CHIP units. These units are dedicated to prosecuting computer and IP-related crimes. As a result, IP prosecutions have steadily increased. Indeed, between 2004 and 2005 (the first year after the U.S.

¹²¹ *Id.*, pages 100-101.



DOJ integrated all its computer and IP crime fights efforts) the number of defendants charged increased by 98 percent.¹²²

4. Estimate of the Effectiveness of the CACP Initiative

The precedents discussed above suggest that it would be unrealistic to assume that taking the bold steps suggested by the CACP proposals would have no impact on the piracy and counterfeiting problem. Indeed, given the notable success of the NYPD CompStat process and the strong positive results of the U.S. Department of Justice's efforts, one could project that adopting the CACP proposals could result in a dramatic reduction in piracy and counterfeiting over time.

We have chosen to make much more modest assumptions. In our view, it would be somewhat optimistic to project a 10 percent reduction over three years (2 percent the first year and an additional 4 percent in the second and third years). It would be somewhat pessimistic to project a 5 percent reduction over three years (1 percent the first year and 2 percent the second and third years). Even the optimistic formulation implies that the CACP proposals would only be one-third as effective in reducing IP crime as was the NYPD's CompStat process in reducing property crime in New York City. Consequently, our assumptions certainly seem reasonable and indeed conservative.

¹²² U.S. Department of Justice, See Progress Report of the Department of Justice's Task Force on Intellectual Property, pages 18-25, [http://www.cybercrime.gov/2006/PTFProgressReport\(6-19-06\).pdf](http://www.cybercrime.gov/2006/PTFProgressReport(6-19-06).pdf)

IV. Cost Estimates for the CACP Initiative

Table IV-1 below presents our estimates of the costs for the six CACP objectives. For each objective, a low and high cost estimate is provided. These low and high estimates reflect both differences in the estimated cost of given activities and different levels of activities. In many cases, the CACP initiative called for increasing staffing at relevant agencies by at least a given amount. Typically, this minimum estimate corresponds to the low estimate. The high estimate involves twice the minimum number of new hires. In some cases, the CACP initiative is not specific in terms of the level of effort required for a task under an objective. In such cases, we investigated other similar efforts and used our judgment to produce reasonable estimates. The details of cost estimates for all six objectives of the CACP initiative are provided in Appendix D. As shown in Table IV-1, the total estimated cost for all objectives for the low case is \$103 million and for the high case is \$174 million.

Table IV-1
Summary of Low and High Cost Estimates
For Each of the Six CACP Objectives

Objective	Low Estimate	High Estimate
1. Improve Coordination of Government IP Enforcement Resources by Establishing a GIPEO within the White House	\$ 6,144,208	\$ 8,065,820
2. Expand Authorities and Improve Enforcement Practices	\$ 58,477,860	\$ 105,139,040
3. Strengthen Criminal Enforcement	\$ 18,885,625	\$ 25,988,497
4. Attack Counterfeiting and Piracy Beyond U.S. Borders	\$ 10,800,000	\$ 21,600,000
5. Institute Civil and Judicial Reforms to Protect IP Holders	\$ 1,477,000	\$ 2,954,000
6. Coordinate and Conduct Public Education Campaigns	\$ 7,500,000	\$ 10,750,000
Totals	\$ 103,284,693	\$ 174,497,357

Sources: Appendix Tables D.1 - D.6.

V. Benefits Analysis of the CACP Initiative

A. The Reduction in U.S. Business Revenue Losses due to Counterfeiting and Piracy As A Consequence of Implementing the CACP Initiative

Total annual lost U.S. business revenues due to counterfeiting and piracy are estimated to be \$225 million.¹²³ As discussed in Section III.E above, assuming that the CACP initiative is implemented essentially as proposed, it would be reasonable to assume that annual U.S. business losses due to counterfeiting and piracy could be reduced by between 5 percent and 10 percent during the first three years the CACP initiative was implemented. The pessimistic case assumes incremental reductions of 1 percent, 2 percent, and 2 percent during the first three years, and the optimistic case assumes incremental reductions of 2 percent, 4 percent, and 4 percent during the first three years. Table V-1 shows the reduction in the annual amount of U.S. business revenue losses due to counterfeiting and piracy during the first three years that the CACP initiative is implemented.

Table V-1
Alternative Reductions in U.S. Business Revenue
Losses Due to Counterfeiting and Piracy
As A Consequence of Implementing the CACP Initiative
(Billions of Dollars)

Years Implemented	Reduction in U.S. Business Revenue Losses	
	Pessimistic Case	Optimistic Case
1	\$ 2.25	\$ 4.50
2	\$ 6.75	\$13.50
3	\$11.25	\$22.50

Source: LECG Calculation.

¹²³ This is the mid-point of the FBI range estimate of \$200 to \$250 billion. FBI Press Release, July 17, 2002, <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>

B. The Effects on U.S. Output, Earnings, and Employment As A Consequence of Reducing the U.S. Business Revenue Losses

The impacts of piracy in the motion picture and sound recording industries on U.S. output, earnings, and employment were estimated in recent studies published by IPI.¹²⁴ We have calculated the relationship between the combined business revenue losses for these two industries due to piracy and the combined resulting effects of this piracy on U.S. output, earnings (income), and employment (jobs).¹²⁵ See Appendix E, Table E.1. We have used this "average" relationship for the motion picture and sound recording industries to calculate the effects on U.S. output, earnings, and employment (jobs) of the reduction in U.S. business revenue losses due to implementing the CACP initiative as shown in Table V-1 above.¹²⁶ See Appendix E, Tables E.2 and E.4. These calculations are conceptually identical to those performed in the IPI studies for the motion picture and sound recording industries.¹²⁷

The results of these calculations are summarized in Table V-2 below. The increases in output, earnings, and employment shown in Table V-2 that are expected as a consequence of implementing the CACP initiative are substantial even in the pessimistic case. After three years under the pessimistic case, annual U.S. output is increased by \$27.09 billion, annual U.S. earnings (income) are increased by \$6.76 billion, and U.S. employment is increased by 174,149.

¹²⁴ Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 186, September 2006 (hereinafter "IPI Movie Piracy Study"); *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007 (hereinafter "IPI Music Piracy Study"), p. 5.

¹²⁵ The term "jobs" should be interpreted as being the same as full-time equivalent employees.

¹²⁶ This calculation implicitly assumes that the movie and sound recording industries are "representative" of a "typical" IP-intensive industry. Further, research could produce a direct estimate of the relationships for a "typical" IP-intensive industry (i.e., for the IP-intensive industries as a group).

¹²⁷ Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 186, September 2006 (hereinafter "IPI Movie Piracy Study"); *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007 (hereinafter "IPI Music Piracy Study"), p. 5. We have reviewed a draft version of an upcoming study by Mr. Siwek that examines the combined effects of piracy in motion pictures, sound recordings, business software, and entertainment software on the U.S. economy. The multipliers used in Mr. Siwek's upcoming study are similar to the ones used in this study.

Table V-2

**Increases in U.S. Output, Earnings, and Employment
As A Consequence of Implementing the CACP Initiative**

I. Increases in U.S. Output (Billions of Dollars)

<u>Years Implemented</u>	<u>Pessimistic Case</u>	<u>Optimistic Case</u>
1	\$ 5.42	\$10.83
2	\$16.25	\$32.50
3	\$27.09	\$54.17

II. Increases in U.S. Earnings (Billions of Dollars)

<u>Years Implemented</u>	<u>Pessimistic Case</u>	<u>Optimistic Case</u>
1	\$1.35	\$ 2.71
2	\$4.06	\$ 8.12
3	\$6.76	\$13.53

III. Increases in U.S. Employment (Number)

<u>Years Implemented</u>	<u>Pessimistic Case</u>	<u>Optimistic Case</u>
1	34,830	69,660
2	104,489	208,979
3	174,149	348,298

Source: Appendix E, Table E.4

C. The Effects on U.S. Federal Government Tax Receipts As A Consequence of Reducing the U.S. Business Revenue Losses

We have calculated the expected increases in federal tax revenues that would result from the output, earnings, and employment increases shown in Table V-2. In doing these calculations, we used a procedure similar to that used in the IPI studies of the impacts of piracy on the motion picture and sound recording industry.¹²⁸ The methodology used to calculate federal tax revenues is described in Appendix E, Table E.3. The results of these calculations are presented in Appendix E, Table E.4 and are summarized in Table V-3 below.¹²⁹

Table V-3

The Increases in Federal Tax Revenues Due to the Reductions in Business Revenue Losses Resulting From the Implementation of the CACP Initiative
(Billions of Dollars)

Years Implemented	Pessimistic Case	Optimistic Case
1	\$0.172	\$0.344
2	\$0.516	\$1.031
3	\$0.859	\$1.719
Discounted Present Value (7% Discount Rate)	\$1.404	\$2.809
<i>Addendum:</i>		
Cost estimates to implementing the CACP initiative (Billions of Dollars)		
	Annual Value	Discounted Present Value Over Three Years
Low Estimate 1:	\$0.103	\$0.289
High Estimate 2:	\$0.174	\$0.489

Sources: (1) Appendix E, Table E.4; and (2) Table IV-1 above.

The increases in federal tax revenues shown in Table V-3 that are expected as a consequence of implementing the CACP initiative are substantial even in the pessimistic case. After three years

¹²⁸ Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 186, September 2006 (hereinafter "IPI Movie Piracy Study"); *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007 (hereinafter "IPI Music Piracy Study"), p. 5.

¹²⁹ In Appendix D, Table D.4, separate calculations are presented for federal personal income taxes, federal corporate income taxes, and federal protection and import subsidies. Only the total of these tax revenues is presented in Table V-3.



under the pessimistic case, annual federal tax revenues are increased by \$0.859 billion. Table V-3 also presents the discounted present value of the increase in total federal tax revenues over the three-year period for the three cases.¹³⁰ In the pessimistic case, the discounted present value of the increase in total federal tax revenues over the three-year period following implementation of the CACP initiatives is \$1.404 billion. In the optimistic case the discounted present values of the increased federal tax revenues over the three-year period is \$2.809 billion. Even for the pessimistic case the discounted present value of the increased federal tax revenues over the three years following the implementation of the CACP initiative (\$1.404 billion) substantially exceeds the discounted present value over the three-year period of even the high estimate for the cost of the CACP initiative (\$0.489 billion). The discounted present value of the benefits to the federal government due to implementing the CACP initiative exceeds the discounted present value of its costs.

For every dollar spent prudently on the CACP initiative, federal tax revenues would increase by at least \$2.9 and by as much as \$9.7 with an intermediate range of \$4.9 to \$5.7.¹³¹ These federal tax revenue increases are due to the increase in U.S. output and employment that would occur as a result of implementing the CACP initiative. For every dollar spent on the CACP initiative, U.S. output would increase by at least \$38 and would increase by as much as \$127 with an intermediate range of \$64 to \$75.¹³² The increase in output due to implementing the CACP program will result in the creation of between 174,000 and 348,000 new jobs during the third year. Therefore, the return to the federal government and the economy of investing in the CACP initiative is very high.

¹³⁰ The amounts in years 2 and 3 and discounted back to year 1 using a 7.0 percent discount rate. See Appendix E, Table E.4.

¹³¹ All dollar amounts are stated in present value (2007) terms and are average results over three years.

¹³² *Id.*

D. The Effects on State and Local Government Revenues of Reducing U.S. Business Revenue Losses

As shown in Table V-4 below, state and local government revenues also would increase significantly as a result of reducing the losses of U.S. business revenues to counterfeiting and piracy.

Table V-4

**The Increases in State and Local Tax Revenues
Due to the Reduction in Business Revenue Losses
Resulting From the Implementation of the CACP Initiative
(Billions of Dollars)**

Years Implemented	Pessimistic Case	Optimistic Case
1	\$0.153	\$0.306
2	\$0.459	\$0.917
3	\$0.764	\$1.529
Discounted Present Value (7% Discount Rate)	\$1.249	\$2.498

State and local governments can expect to receive incremental revenues of between \$1.25 billion and \$2.50 billion, in present value terms over three years, if the CACP initiative is implemented.

Appendix A

Definition of Terms

Definition of Counterfeiting and Piracy

Counterfeiting and piracy are terms used to describe a range of illicit activities that are related to intellectual property (IP) rights violation. They describe a whole array of activities that include infringement of copyrights, patents, trademarks and designer rights.

Difference between Piracy and Counterfeiting

Counterfeiting describes the process of intentionally making, selling and/or distributing unauthorized copies of IP-protected products (i.e. fake goods).

Piracy describes the act of reproducing or distributing, without authorization, movies, music, books or other copyrighted works.

Definition of IP Rights

Here are brief definitions of each of the IP rights:

- **Copyrights:** Authors of creative works such as music, movies, software and written work are given ownership of rights to these creations via a *copyright*.
- **Patents:** A *patent* is a legal instrument that makes it possible for the holder to exclude unauthorized parties from making, using, selling, or importing a protected product.
- **Trademarks:** Companies use *trademarks* to differentiate their products from those produced by competing businesses. Consumers use trademarks to evaluate different products. Illicit use of a trademark destroys or undermines the value of the product to consumers as well as producers.
- **Design Rights:** *Design rights* refer to the aesthetic and ornamental aspects of an article.

Infringement of IP rights undermines the holder's ability to recover their investments as well as reap the benefits of their innovative and creative work.

Definition of IP-intensive industries

IP-intensive industries include those that create intellectual property and those whose operations are dependent on copyrights, patents, trademarks, and design rights for their operation. IP-intensive industries also include those that are knowledge- or technology-based where the knowledge and technology may or may not be subject to copyright, patent, or design right protection. Examples of IP-intensive industries include motion pictures, sound recordings, software, fashion, pharmaceuticals, consumer electronics including personal computers, electronic components, automotive, aircraft, aerospace, toys, games, publishing, and numerous other industries.

APPENDIX B
Lost Business Revenues Due to Counterfeiting and Piracy By Country, Region, and Product

Appendix Table	Table Description
B.1	An Illustrative List of Products Subject to IP Infringement
B.2	Estimated Global Lost Business Revenues Due to Counterfeiting and Piracy By Type of Product
B.3	Estimated Global Lost Business Revenues Due to Counterfeiting and Piracy By Product Group (Billions of Dollars)

Note: It is difficult to develop estimates of lost business revenues due to counterfeiting and piracy because of the clandestine nature of these illegal activities. As a consequence, while the estimates provided in this appendix are the best available information, the reader should view these estimates as indicative of the size of lost business revenues due to counterfeiting and piracy by country and by product.

Appendix Table B.1

An illustrative list of products subject to IP infringement

Industry sector	Examples of products subject to IP infringement
Apparel, footwear and designer clothing	T-shirts, hats, jerseys, trousers, footwear, caps, socks
Audio-visual, literary and related copyrighted work	Music, motion pictures, TV programmes, (CDs/DVDs), software, books, computer/video games
Automotive	Scooters, engines, engine parts, body panels, air bags, windcreens, tires, bearings, shock absorbers, suspension and steering components, automatic belt tensioners, spark plugs, disc brake pads, clutch plates, oil filters, oil pumps, water pumps, chassis parts, engine components, lighting products, belts, hoses, wiper blades, grilles, gasket materials, rings, interior trim, brake fluid, sealing products, wheels, hubs, anti-freeze, windshield wiper fluid
Chemicals/pesticides	Insecticides, herbicides, fungicides, non-slick coatings
Consumer electronics	Computer components (monitors, casing, hard drives), computer equipment, webcams, remote control devices, mobile phones, TVs, CD and DVD players, loudspeakers, cameras, headsets, USB adapters, shavers, hair dryers, irons, mixers, blenders, pressure cookers, kettles, deep fryers, lighting appliances, smoke detectors, clocks
Electrical components	Components used in power distribution and transformers, switchgears, motors and generators, gas, and hydraulic turbines and turbine generator sets, relays, contacts, timers, circuit breakers, fuses, switchgears, distribution boards and wiring accessories, batteries
Food, drink and agricultural products	Fruit (krais), conserved vegetables, milk powder, butter, ghee, baby food, instant coffee, alcohol, drinks, candy/sweets, hi-breed corn seeds
Personal accessories	Watches, jewellery, glasses, luggage, handbags, leather articles
Pharmaceuticals	Medicines used for treating cancer, HIV, malaria, osteoporosis, diabetes, hypertension, cholesterol, cardiovascular disease, obesity, infectious diseases, Alzheimer's disease, prostate disease, erectile dysfunction, asthma and fungal infections; antibiotics, anti-psychotic products, steroids, anti-inflammatory tablets, pain killers, cough medicines, hormones, and vitamins; treatments for hair and weight loss.
Tobacco	Cigarettes, cigars, and snuff
Toiletry and other household products	Home and personal care products, including shampoos, detergents, fine fragrances, perfumes, feminine protection products, skin care products, deodorants, toothpaste, dental care products, shaving systems, razor blades; shoe polish; non-prescription medicine
Other	Toys, games, furniture, sporting goods (such as basket balls and golf clubs), stickers, dyed and printed exotic fabrics, belt buckles, decals, flags, lighters, tabletops, fowers, plant cuttings, qualification certificates, abrasive tools, sanitary products (bath tubs, wash basins, toilets), tableware (plates, bowls, cups)

Source: OECD, http://www.oecd.org/document/35/0,3343,en_2649_201185_38702947_1_1_1_1,00.html

Appendix Table B.2
Estimated Global Lost Business Revenues Due to
Counterfeiting and Piracy By Type of Product

Ranking	Counterfeit and Pirated Product	Market Value (Dollars)
1	Technology Products	\$100 Billion
2	Web Videos	\$60 Billion
3	Pharmaceutical Drugs	\$40 Billion
4	Software	\$39.5 Billion
5	Movies	\$18.2 Billion
6	Auto Parts	\$12 Billion
7	Clothing	\$5.04 Billion
8	Music	\$4.5 Billion
9	Mobile Phone Entertainment	\$3.4 Billion
10	Cosmetics	\$3.0 Billion
10	Video Games	\$3.0 Billion
12	Cigarettes	\$2.95 Billion

Appendix Table B.2 (Cont.)
Estimated Global Lost Business Revenues Due to
Counterfeiting and Piracy By Type of Product

Ranking	Counterfeit and Pirated Product	Market Value (Dollars)
13	Airline Parts	\$2 Billion
14	Small Arms	\$1.8 Billion
15	Cable	\$1.13 Billion
16	Shoes	\$920 Million
17	Watches	\$655 Million
18	Pesticides	\$650 Million
19	Books	\$600 Million
20	Sports Memorabilia	\$500 Million
21	Alcohol	\$300 Million
22	Toys	\$131 Million
23	Cuban Cigars	\$100 Million
24	Purses	\$70 Million

Appendix Table B.2 (Cont.)
Estimated Global Lost Business Revenues Due to
Counterfeiting and Piracy By Type of Product

Ranking	Counterfeit and Pirated Product	Market Value (Dollars)
25	Dollars	\$61 Million
26	Lighters	\$42 Million
27	Batteries	\$23 Million
28	Money Orders	\$3.7 Million
Total		\$301 Billion

Source: Havocscope, <http://www.havocscope.com/Counterfeit/cgproductrank.htm>

Appendix Table B.3

**Estimated Global Lost Business Revenues Due to
Counterfeiting and Piracy By Product Group
(Billions of Dollars)**

Product Groups	Lost Global Business Revenues (Billions \$)
1. Audio visual, literary, and related copyrighted work <ul style="list-style-type: none"> • Music, movies, web videos, mobile phone, entertainment, video games, cable TV, books, and software 	\$130.33
2. Consumer electronics and electrical components <ul style="list-style-type: none"> • Technology products: Computers, consumer audio and video equipment, computer components, etc. 	\$ 100.0
3. Pharmaceuticals	\$ 40.0
4. Automotive and aircraft <ul style="list-style-type: none"> • Automobile and aircraft parts 	\$ 14.0
5. Apparel, footwear, designer clothing, and personal accessories <ul style="list-style-type: none"> • Clothing, shoes, watches, purses, and lighters 	\$ 6.73
6. Food, drink, agricultural products, and tobacco <ul style="list-style-type: none"> • Cigarettes, alcohol, cigars 	\$ 3.32
7. Toiletries and other household products <ul style="list-style-type: none"> • Cosmetics 	\$ 3.0
8. Chemicals/pesticides <ul style="list-style-type: none"> • Pesticides 	\$ 0.65
9. Other items <ul style="list-style-type: none"> • Small arms, sports memorabilia, toys, batteries, currency, and money orders 	\$ 2.52
Total	\$ 301

Sources: (1) Havocscope, <http://www.havocscope.com/Counterfeit/cgproductrank.htm>
(2) Appendix Table B.2.

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Appendix C

**CACP Intellectual Property Enforcement
Initiative: Summary of Key Elements**



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Appendix C

CACP Intellectual Property Enforcement Initiative: Summary of Key Elements

I. Objective 1: Improve the coordination of federal government intellectual property enforcement resources

While the Federal Government has increased resources to enforce its copyright and trademark laws, these resources have not always been expended effectively and efficiently, and the issue has not been a top priority. The current administration's STOPf Program is a good first step, but much more must be done to elevate the profile of IPR (intellectual property rights) enforcement across the federal government, with a focus on improving the coordination and execution of the enforcement efforts of a wide range of agencies.

To accomplish this, a presidentially appointed Chief Intellectual Property Enforcement Officer (CIPEO) position should be established within the White House. The CIPEO would be responsible to coordinate IPR enforcement efforts throughout the Federal Government, and to oversee the development and effective implementation of a joint strategic plan and priorities for enforcement activities (without, however, intruding upon investigative or prosecutorial powers traditionally reserved to the Department of Justice). The CIPEO should report directly to Congress on the implementation of these plans and priorities. The Office should serve as a government-wide advocate for moving IPR enforcement higher on the agenda of all relevant agencies.

The IPR enforcement portfolio must also be appropriately elevated in all relevant federal departments, in particular the two lead enforcement agencies - the Department of Justice and the Department Homeland Security. The Attorney General and the Secretary of Homeland Security should designate senior officials, reporting directly to the Deputy Attorney General and to the Deputy Secretary respectively, to lead the efforts of each department in combating counterfeiting and piracy. The new Director of IPR Enforcement at DHS should coordinate the intellectual property enforcement activities of the two major DHS bureaus - Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) - and implement a department-wide strategic plan that includes specific performance measures of progress. The corresponding position at Justice would institutionalize leadership of the DOJ Intellectual Property Task Force, first created in 2004.

II. Objective II: Better protect our borders against counterfeiting and piracy by expanding authorities and improving enforcement practices

A. Enhancing Our IPR Enforcement Efforts At Our Borders

The majority of pirate and counterfeit products enter our marketplace from abroad. The Department of Homeland Security mans our first line of defense against these fakes. DHS needs an improved strategy, new legal tools, and more resources in order to respond effectively to this challenge.

Both CBP and ICE have key responsibilities in combating international trade in counterfeit and pirated products. Both bureaus are under-resourced. They require targeted resource enhancements and expanded legal authority if they are to step up their efforts.



An effective IPR enforcement strategy at our borders must include:

- A DHS-wide IPR enforcement plan that specifically measures the effectiveness of all current enforcement tools - targeting, examination, seizures, post-entry audits, penalty actions - and that prioritizes the most effective tools throughout the agency. As recent GAO reports demonstrate, the track records of different ports vary widely; the plan must identify best practices and move toward implementing them department-wide.
- Designating a senior official within both CBP and ICE, reporting directly to the head of the respective bureau, tasked to implement the DHS enforcement plan, coordinate the intellectual property enforcement efforts within each bureau, and help direct the activities of the agents dedicated to anti-counterfeiting and piracy.
- Training and deploying a new cadre of CBP enforcement agents whose primary responsibility is to protect against illegal importation and smuggling of counterfeit and pirate goods. At least five such agents would be deployed at each of the most significant ports of entry in the United States including at US Postal Service facilities and those operated by major international courier services. DHS should evaluate whether the Strategic Trade Center approach, where enforcement agents monitor specific targets for IPR violations and coordinate reporting and training efforts, is effective, and if so should establish IPR-focused centers at the top five ports.
- Training and deploying (at headquarters and in the field) at least 25 ICE agents dedicated to IPR enforcement, and improving the effectiveness of the National Intellectual Property Rights Coordination Center.
- Increasing funding for CBP's Fines, Penalties and Forfeitures office (FPF), as well as making the needed regulatory and statutory reforms described below, with the goal of significantly improving CBP's track record in collecting civil fines it imposes on the importers of shipments of intercepted counterfeit product.
- Funding IPR enforcement training at all 52 ICE attaché offices around the world.

The DHS strategy must build capacity to deal with the increasing volume of pirate and counterfeit goods entering the U.S. through postal and courier services. It must also address goods in transit through U.S. ports, and counterfeit or pirate goods in the export channel. If we are to persuade our trading partners to adopt best practices to stop the export of illicit product to market, we must show that we are implementing these practices ourselves.

B. "Working Smarter" at Ports of Entry

Outdated enforcement practices at our nation's ports of entries impede the development of effective public-private cooperation to stop the import of illicit products. CBP must make the needed regulatory and policy changes to lower these barriers and improve the effectiveness of border controls to keep pace with evolving methods for importing and exporting counterfeit and pirate goods. These changes include:

- Disclosing to copyright and trademark owners more information about detained shipments of suspected pirate or counterfeit product, including identities of importers, exporters, declarants and other parties; shipping documentation; and countries of origin and destination, as well as facilitating obtaining samples of detained products for analysis;
- Working with the private sector so that CBP agents are effectively trained in the use of cost-effective new technological means for the identification of pirate or counterfeit product (e.g., authentication technologies). CBP should be authorized to accept donations of hardware or software and similar equipment or technologies, and related support services, for screening imports using these new technological means;

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- Accelerating efforts to apply risk assessment modeling techniques to border enforcement against counterfeiting and piracy. CBP should report on its pilot project in this area, which should be expanded to include Automated Targeting System data. The goal is to develop, test, evaluate and continuously improve these techniques, and to deploy them at key points of entry as soon as possible;
- Improving the efficiency of CBP's recordation process for trademarks and copyrights, including by giving registrants the option of simultaneously recording with CBP at the time their marks or works are first registered with the Patent and Trademark Office or the Copyright Office, and ensuring that CBP's reliance on the recordation process is not impeding the rapid seizure of clearly infringing goods;
- Identifying low-risk shippers that have taken specific measures to strengthen and protect their supply chains to prevent the infiltration of counterfeits.

CBP should also work with industry representatives to develop criteria for implementing a "Special Scrutiny" database of importers, exporters, shippers, freight forwarders and other participants in the import/export and transit process that have been previously identified as participating in the trade in pirate or counterfeit products. (The Law Enforcement Retail Partnership Network recently announced by FBI provides a model.) The database would be developed using both CBP and legitimate private sector information sources, and would be available, in real time and for intelligence purposes, only to qualified CBP agents, enabling them to readily flag and divert for enhanced scrutiny shipments associated with entities listed in the database. Imports from overseas "free ports" and free trade zones that have been the source of piratical or counterfeit imports should also be targeted for special scrutiny.

C. Legal Tools for Border Enforcement

Besides the more effective enforcement of current laws, DHS needs new legal tools to fight back against counterfeit and pirate imports. These include:

- Prohibiting the importation of any quantity of counterfeit products, and repealing provisions of current laws and regulations that permit importation of limited quantities of counterfeit product for personal use. The prohibition should be backed by appropriate sanctions (including civil penalties);
- Requiring the declaration of all counterfeit or pirated goods in the possession or luggage of any person entering the United States, or entering the U.S. via postal or courier services, and punishing a false declaration in this regard in the same manner as other false declarations made upon entry of a person's goods or luggage into the United States. The introduction of these new legal tools would be coordinated with the public education campaign at entry and departure points, as discussed under Objective VI;
- Providing new legal tools for the imposition and collection of fines for imports of counterfeit or pirate product, both to enhance the credibility of the agency's enforcement efforts, as well as to offset some of the costs of enforcement enhancements. CBP should be directed to revise its guidelines to reduce the scope of fine mitigation or outright dismissal, and to move more aggressively to extract fines from violators, including through mandatory impoundment of property acquired with the ill-gotten gains of violations; imposition of liens on personal real estate of violators; use of bonds to secure full payment of fines; and clearer authority to "pierce the veil" of shell corporations created primarily for trafficking in infringing goods. Consideration should also be given to empowering trademark owners to pursue and collect fines imposed for importation of counterfeits of their products, retaining part of the proceeds, and even to turning the collection process over to the private sector;

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- Giving CBP enhanced legal authority to assess fines, under appropriate circumstances, on importers, exporters, or other parties who provide services that materially facilitate the unlawful entry of counterfeit or pirate goods into the U.S. market, without prejudice to other means of enforcement.

III. Objective III: Strengthen criminal enforcement against intellectual property theft by expanding the resources and tools available for law enforcement at the federal, state, and local levels

The recommended strategy is to make carefully targeted increases in criminal enforcement activities - at the global, federal, and state/local levels. If done strategically, relatively modest expansions of effort can have big payoffs.

A. Federal Law Enforcement

While the Department of Justice has taken significant steps to improve its anti-counterfeiting and anti-piracy efforts, more resources are needed, better cooperation with the private sector should be encouraged, and adequate prosecutorial and investigative personnel should be assigned exclusively to this critical fight. Goals include:

- Increasing the number of CHIP (computer hacking/intellectual property) units within US Attorneys' offices, and ensuring that all CHIP units are fully staffed, with at least one federal prosecutor within each unit dedicated to intellectual property enforcement cases;
- Assigning full time to each CHIP unit at least two FBI agents, who are dedicated exclusively to intellectual property enforcement cases;
- Directing each CHIP unit to coordinate its activities with IP enforcement resources of state or local jurisdictions within the federal judicial district in question, including operational coordination and intelligence sharing as appropriate;
- Allocating additional funding to computer forensic support needed to efficiently prosecute piracy and counterfeiting cases;
- Increasing transparency of federal prosecutorial decisions on which cases of IPR violations are actionable, and adopting more flexible threshold standards that will encourage the prosecution of more IPR theft cases; and
- Funding semi-annual training conferences for federal prosecutors and law enforcement agents, participated in by trademark and copyright industry enforcement experts

B. State and Local Initiatives

State and local law enforcement agencies, and state courts, play a critical role in the fight against counterfeiting and piracy. These activities violate not only federal law, but numerous state laws as well and the majority of investigations and prosecutions take place in the state law enforcement and judicial systems. State governments also have a strong interest in combating counterfeiting and piracy because they adversely affect a variety of important state interests -reducing state tax revenues, undermining efforts to protect consumers, and supporting organized crime and others involved in illegal activities. Thus, any comprehensive effort to improve the effectiveness of our national IPR enforcement system must devote significant resources to improving the training, expertise, and efficiency of state law enforcement and judicial personnel to establish and evaluate pilot projects in five states, localities or metropolitan areas, under which specialized intellectual property enforcement units would be established, trained, and resourced. These units would be dedicated to, and would target, manufacturing and distribution of counterfeit and pirated goods. Dedicated prosecutors would also be assigned to these units, and designated judges of the courts in which the resulting prosecutions would be brought would receive specialized training in intellectual



property enforcement cases. The specialized enforcement units would coordinate their activities with the CHIP units in the corresponding federal judicial districts.

C. Updating Federal Criminal Laws

Federal criminal liability under current law extends only to “trafficking” in counterfeit goods. The production, possession or importation of counterfeit products is a crime only if it can be proven that these activities are carried out with the intent to transport, transfer, or otherwise dispose of them to another, for purposes of commercial advantage or private financial gain. To more comprehensively discourage and punish participation in the entire distribution chain of counterfeit goods, knowingly making or manufacturing counterfeit products should be outlawed in all circumstances. The harm inflicted may not be purely economic, but also physical — in some cases, literally a matter of life or death. Today, criminal penalties for trademark counterfeiting do not reflect this harsh reality. To provide punishment commensurate with the crime, and to increase deterrence, the maximum penalty for criminal counterfeiting violations that result in serious bodily injury should be doubled to 20 years, and a life sentence should be authorized for intentional or reckless counterfeiting conduct that results in death.

The civil and criminal forfeiture provisions of current intellectual property offenses lack uniformity both as to substance and process. Harmonizing these statutes would provide law enforcement and victims of intellectual property crimes with a uniform set of standards applicable to the seizure and forfeiture of the tools and proceeds of trade in counterfeit and pirate goods, as well as confiscation of the contraband goods themselves.

IV. Objective IV: Attack counterfeiting and piracy beyond our borders through improved enforcement training and technical assistance programs with foreign governments

Enforcement against intellectual property crimes will not effectively protect our markets unless there is a corresponding effort overseas. It is critical that we extend our enforcement efforts beyond our borders, by ramping up our work with our trading partners to train and provide technical assistance to law enforcement agencies, prosecutors, and courts in the key source countries. By improving enforcement capabilities in these countries, they can more effectively protect American intellectual property in their own markets, and prevent counterfeit or pirate products from reaching our borders. We must also bring greater cohesion to international enforcement efforts across the Federal Government, and strengthen and make better use of trade tools that encourage stronger IPR enforcement by our trading partners. As in other areas, we need to do more, but we also need to minimize overlap, duplication, and the sending of inconsistent messages to other governments.

The CIPEO should be tasked with coordinating the relevant agencies - including the Departments of State, Commerce, Justice and Homeland Security, and the Office of the U.S. Trade Representative - in developing and implementing an annual strategic plan. The goal: to ensure that federal training and technical assistance resources are spent efficiently, with greater consistency and cohesion, and in a way that is most effective in enhancing the ability of our trading partners to improve and enforce their laws against piracy and counterfeiting. The plan should set priorities for these activities, and, guided by the Special 301 report issued by the Office of the U.S. Trade Representative, identify those countries where these programs can be carried out most effectively, and will have the greatest impact on the U.S. market and American right holders. This plan should also reflect input from enforcement experts in the private sector, and should include metrics by which to evaluate the effectiveness of our international efforts to improve enforcement against IPR crimes. The CIPEO should report to Congress annually on development and implementation of the strategic plan.

Acting on the basis of this unified strategic plan, additional resources need to be targeted to international outreach and technical assistance that will strengthen the capabilities of foreign



governments to crack down on trade in counterfeit and pirated products. Funding enhancements are needed for:

- Designation, training and assignment of 10 additional Commerce Department IP attaches at key U.S. embassies and other diplomatic missions. The goal is to promote enforcement cooperation with foreign governments; to provide a valuable resource to U.S. companies faced with counterfeiting and piracy problems in the host country market; and generally to elevate the profile of IPR enforcement in bilateral and multilateral fora. At each mission where they serve, these attaches should chair an IP protection task force comprised of all relevant sections of the mission, and should build working coalitions with their counterparts at other embassies to share information, deliver joint messages to the host country government and otherwise cooperate to improve IP enforcement in that market.
- Increased funding for IPR enforcement training and technical assistance carried out by the State Department and elsewhere in the U.S. government, with safeguards against the duplicative or inconsistent efforts that have too often plagued these programs in the past, and with an emphasis on public-private training partnerships that draw on the enforcement expertise of U.S. businesses;
- Additional direct funding for attorneys in the Justice Department's Computer Crime and Intellectual Property Section (CCIPS) to train law enforcement counterparts overseas in prosecuting IPR cases;
- Establishing DOJ Intellectual Property Law Enforcement Coordinators (IPLC) positions in additional regions of the world, and reporting on activities and progress of currently placed IPLCs.

Preferential trade programs such as the Generalized System of Preferences (GSP) and regional preference programs allow certain products from specified less developed countries to enter the U.S. duty-free. These programs, which are also important for many U.S. industries, already condition benefits of duty-free entry on compliance with IPR enforcement benchmarks. But these conditions are vaguely phrased and are often given short shrift in decisions on program eligibility. As a result, an effective tool for encouraging trading partners to upgrade their IPR enforcement efforts is not realizing its full potential. GSP and the other programs should be re-authorized for adequate periods, and their IPR-related criteria should be made more specific and given greater attention.

V. Objective V: Strengthen ability of rights holders to protect their intellectual property by civil and judicial reform

An effective strategy against counterfeiting and piracy requires that we strengthen the ability of right holders to protect their intellectual property and obtain strong remedies for infringement. To do this, we must amend existing laws to close loopholes, toughen penalties, and upgrade the capacity of the federal government to bring, and of federal courts to decide, civil IPR enforcement cases.

A. Upgrade Civil Remedies

Current law provides enhanced remedies against those civilly liable for counterfeiting activities, including treble damages and court-awarded attorney's fees in most such cases. However, these enhanced remedies are available only against parties who are found to have acted intentionally and with knowledge that the items in question were counterfeit. To provide adequate incentives for responsible behavior, it is necessary to expand the class of defendants who are routinely exposed to these remedies, to include those who are liable for intentionally assisting infringement in situations involving counterfeit goods. The trademark law should be amended to make clear that treble damages and attorney's fees would be assessed, as a matter of course, against parties who intentionally induce another to engage in an act that violates the anti-counterfeiting prohibitions of the

Lanham Act, or who continue to supply goods or services to a party that they know or have reason to know is engaging in counterfeiting.

As an alternative civil remedy for counterfeiting, a trademark owner can choose an award of statutory damages set by the court. Under current law, such awards can range up to \$100,000 per mark infringed, or up to \$1 million per mark infringed in the case of a willful violation. Awards as low as \$500 per mark are also authorized. These amounts have remained unchanged since enactment of the statutory damages remedy in 1996. In order to maintain their deterrent effect in an environment in which the value of commercially successful trademarks has skyrocketed, with a concomitant increase in the incentive to counterfeit them, these statutory damage levels should be at least doubled.

B. Authorize Federal Civil Enforcement Against Pirates and Counterfeiters

Even after federal investigators have amassed strong evidence of counterfeiting or piracy activities that violates the federal criminal laws, a federal criminal prosecution may not be brought because of the need to prove guilt beyond a reasonable doubt and other demands on prosecutorial resources. Enabling the federal government to bring a civil lawsuit in these circumstances would enhance the efficiency of the enforcement effort, ensure that counterfeiters and pirates are exposed to the risk of substantial financial penalties, and bring to bear the moral weight of the United States government in the civil enforcement arena. Building on the PIRATE Act, which the Senate passed in the 108th Congress, Congress should authorize the Justice Department to bring civil actions against those whose counterfeiting or piracy conduct constitutes a criminal offense under current law, and should fund training of federal lawyers handle these cases. Once liability is established in these cases by a preponderance of the evidence, the defendant could be ordered both to pay restitution to the injured right holder, and to pay a significant civil penalty to the government.

C. Building Judicial Expertise

Intellectual property enforcement efforts will be significantly aided by upgrading the expertise of the federal judiciary in the specialized legal and technical issues these cases present. Since the U.S. routinely recommends such specialization to foreign governments; we should not be afraid to experiment with it here.

Building on H.R. 34, passed by the House earlier this year, pilot programs should be established in five United States District Courts under which counterfeiting or piracy cases could be assigned or reassigned to judges volunteering for them and who receive special training in such cases. In those courts participating in the pilot program, cases randomly assigned to non-participating judges could, at the assigned judge's option, be reassigned to those judges participating in the pilot.

The Administrative Office of the U.S. Courts should be directed to sponsor annual training sessions on handling counterfeiting and piracy cases, and to make this training available to selected state judges as well as those on the federal bench.

VI. Objective VI: Decrease demand by educating consumers about the harms of counterfeiting and piracy

Ultimately, the business of counterfeiting and piracy depends for its success upon an uninformed and indifferent public. While increased and more visible enforcement is an important component of public education, the Federal Government can also provide a "bully pulpit" from which a clear message can be disseminated to the public: that counterfeiting costs American jobs, undermines American competitiveness in global markets, and threatens public health and safety.

The CIPEO should coordinate public education efforts to disseminate this message nationwide through appropriate channels, including television, radio, print, and the Internet. (One model for the campaign envisioned here is the national youth anti-drug media campaign carried out by the Office of National Drug Control Policy in collaboration with the Partnership for a Drug-Free America.) In

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carrying out this campaign, the CIPEO should leverage limited federal funding by utilizing, to the greatest extent possible, corporate sponsorships and donations from the private sector for expenditures such as the purchase of media time and space, advertising production costs, and creative and talent costs. Partnerships with professional, civic and business groups, community-based and consumer organizations, and state, local and tribal governments, are also encouraged as primary channels for dissemination of the educational message while minimizing costs to the federal government. An industry-led commission should be convened to advise on the campaign. The educational campaign should also be independently evaluated for its effectiveness in increasing awareness about the threats posed by counterfeiting and piracy, and annual reports should be provided to Congress.

Educational initiatives directed to more targeted audiences are also essential. For example, there is disturbing but incontrovertible evidence that much of the US market for counterfeit and pirate products is to be found on college campuses, especially with regard to pirate entertainment products delivered online. While some universities, in cooperation with copyright owners, have taken steps to prevent their computer and networking resources from being abused for piracy, and have worked to educate their students on this issue, much more needs to be done. The CIPEO should work with the major federal agencies that support higher education (including the National Science Foundation and NIST as well as Education) to initiate a process for developing, approving and publishing voluntary best practices for prevention of intellectual property infringements in higher education, without imposing specific technological mandates. The implementation of these best practices, once promulgated, should be used as a factor in grant decisions under the various federal higher education funding programs these agencies operate. Finally, the Department of Education should require each applicant for a federally supported student loan to acknowledge the need to refrain from using the computing, networking or information resources of institutions of higher education for infringing activities.

Border crossings by U.S.-based travelers should also be seized upon as "teachable moments" in the campaign against counterfeiting and piracy. Funding should be provided to DHS for a marketing campaign at all Customs departure and entry points, informing travelers about the impact of counterfeiting and piracy on the economy and on consumer health and safety, and warning them against acquiring counterfeit or pirate products abroad, or importing them into the United States in violation of the law.

Appendix D

Discussion of Cost Assumptions for the CACP Initiative

I. Summary of Cost Assumptions

In this appendix, we present the details underlying the low and high cost estimates for the six objectives contained in the CACP initiative. This appendix explains and documents the assumptions that went into each cost estimate for each sub-objective or task. In order to make specific cost estimates, we used comparisons to similar programs, initiatives and personnel costs whenever comparable data was available. In some cases we assumed details of an objective's implementation in terms of the number of personnel hired, number of locations for a campaign, etc. These are noted – changes in these assumptions will affect the overall budget for the CACP initiative.

There are numerous references in these objectives to hiring new personnel or reallocating existing personnel. The salaries for new hires are based on the federal salary schedule as of January 1, 2007. The cost estimates for new hires include a benefits burden rate (40%) on direct salaries and an estimate of the other costs associated with new hires (e.g., office space, computers, furniture, special equipment, computers, supplies, travel, etc.). These other costs are estimated to be 70 percent of personnel costs (direct salaries plus benefits) for non-law enforcement new hires and 85 percent of personnel costs for law enforcement new hires.¹²² There are also numerous references to training programs. We have noted the basis for our estimated costs where appropriate. Ancillary costs for the use of specialized training facilities, special equipment, etc., are not included in these estimates.

II. Assumptions and Calculations By Objective

A. Objective 1: Improve Coordination of Government IP Enforcement Resources

The costs associated with this objective are related to creating and staffing the Office of the Chief IP Enforcement Office (CIPEO) within the White House. The low and high estimated costs for this effort are shown in Appendix Table D.1.

¹²² The 70 percent rate is based on the relationship between total personnel costs and total costs for the judicial and legislative branches of the federal government. See, Office of Management and Budget (OMB), Budget of the United States Government Fiscal Year 2008, Federal Employment and Compensation By Agency, Table 24.1 Full Time Equivalent Employment By Agency, Table 24.2 Total Federal Employment, and Table 24.4 Employee Compensation by Agency (<http://www.whitehouse.gov/omb/budget/fy2008/empl.html>); OMB, Historical Tables: Budget of the United States Government, Fiscal Year 2008, Table 4.1, p.78 and Table 17.3, p.327 (<http://www.whitehouse.gov/omb/budget/fy2008/>). The 85 percent rate is based on the relationship between total personnel costs and total costs for the FBI. See, Office of Management and Budget (OMB), Budget of the United States Government Fiscal Year 2008, Federal Employment and Compensation By Agency, Table 24.1 Full Time Equivalent Employment By Agency, Table 24.2 Total Federal Employment, and Table 24.4 Employee Compensation by Agency (<http://www.whitehouse.gov/omb/budget/fy2008/empl.html>); OMB, Department of Justice (<http://www.whitehouse.gov/omb/budget/fy2007/justice.html>); Statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation, before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Science, State, Justice, Commerce, and Related Agencies, March 28, 2006 (<http://www.fbi.gov/congress/congress06/mueller032806.htm>).

Appendix Table D.1
Low and High Cost Estimates for Objective #1:
The Office of the Chief Enforcement Officer Within the White House

Description of Cost Item	Salary	Low Estimate		High Estimate	
		Number of Employees	Amount (\$)	Number of Employees	Amount (\$)
Personnel Costs					
Direct Salaries					
Chief IP Enforcement Officer	—	1	\$ 154,600	1	\$ 168,000
Senior Staff (GS-15, Step 9 to 10)	\$ 118,000	6	\$ 708,000	8	\$ 944,000
Support Staff (GS-12 to 14, Step 6)	\$ 78,000	12	\$ 936,000	16	\$ 1,248,000
Executive Assistants (GS-9, Step 6) (2 for CIPEC and rest shared)	\$ 45,000	7	\$ 315,000	9	\$ 405,000
Other Support Staff or IT, Legal, Contracts, Budgets, Etc. (GS-13, Step 6)	\$ 78,000	6	\$ 468,000	8	\$ 624,000
Total Direct Salaries		32	\$ 2,581,600	42	\$ 3,389,000
Benefits (40% of Total Direct Salaries)			\$ 1,032,640		\$ 1,355,600
Total Personnel Costs			\$ 3,614,240		\$ 4,744,600
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (70% of Total Personnel Costs)			\$ 2,529,968		\$ 3,321,220
Total Costs			\$ 6,144,208		\$ 8,065,820

Sources:

(1) U.S. Office of Personnel Management, <http://www.opm.gov/oca/07tables/>

(2) U.S. Office of Management and Budget, <http://www.whitehouse.gov/omb/budget/fy2008/spreadsheets.html>

(3) Other costs are set at 70% of total personnel costs based on the relationship between total personnel costs and total costs for the judicial and legislative branches of the federal government (Office of Management and Budget (OMB), Budget of the United States Government Fiscal Year 2008, Federal Employment and Compensation By Agency, Table 24.1 Full Time Equivalent Employment By Agency, Table 24.2 Total Federal Employment, and Table 24.4 Employee Compensation by Agency (<http://www.whitehouse.gov/omb/budget/fy2008/empl.html>); OMB, Historical Tables: Budget of the United States Government, Fiscal Year 2008, Table 4.1, p.78 and Table 17.3, p.327 (<http://www.whitehouse.gov/omb/budget/fy2008/>)).

The Office of the CIPEO would be charged with a wide range of tasks described throughout the CACP Initiative. These tasks are summarized below by objective:

Objective 1:

- "Coordinating IPR enforcement activities throughout the government"
- "Overseeing the development and effective implementation of a joint strategic plan and priorities for enforcement activities"
- "Elevating the IPR enforcement portfolio" in "all relevant federal departments, in particular the two lead enforcement agencies - the Department of Justice and the Department Homeland Security."
- Working with "designated senior officials" at DOJ and DHS to develop and "implement department-wide strategic plans that includes specific performance measures of progress."

Objective 2:

- Working with the DHS to draft "a DHS-wide IPR enforcement plan that specifically measures the effectiveness of all current enforcement tools - targeting, examination, seizures, post-

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entry audits, penalty actions - and that prioritizes the most effective tools throughout the agency."

Objective 4:

- "Coordinating the relevant agencies - including the Departments of State, Commerce, Justice and Homeland Security, and the Office of the U.S. Trade Representative - in developing and implementing an annual strategic plan" for attacking counterfeiting and piracy beyond U.S. borders.

Objective 6:

- "Coordinating public education efforts to disseminate [the anti-counterfeiting and piracy] message nationwide through appropriate channels, including television, radio, print, and the Internet."
- Convening an industry-led commission to guide the development and implementation of the public education campaign and to secure "sponsorships and donations from the private sector" for the campaign.
- "Evaluating the effectiveness of the public education campaign "in increasing awareness about the threats posed by counterfeiting and piracy, and annual reports should be provided to Congress."

B. Objective 2: Expand Authorities and Improve Enforcement Practices

Objective 2 calls for adding additional personnel to expand and improve our country's ability to enforce IPR laws. In addition to increasing the number of agents and officers in the field, this objective also calls for additional IP-related training programs and new tools for IPR enforcement.

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Appendix Table D.2 - Page 1 of 3
 Low and High Cost Estimates for Objective #2:
 Expand Authorities and Improve Enforcement Practices

Description of Cost Item	Salary	Low Estimate		High Estimate	
		Number of Employees/ Trainees/ Sessions	Amount (\$)	Number of Employees/ Trainees/ Sessions	Amount (\$)
Task 2.1: New IPR Officials within CBP and ICE					
Personnel Costs					
Direct Salaries					
Senior Staff (GS-15, Step 9 to 10)	\$ 118,000	2	\$ 236,000	2	\$ 236,000
Support Staff (GS-13, Step 6)	\$ 78,000	1	\$ 78,000	2	\$ 156,000
Executive Assistants (GS-9, Step 6)	\$ 45,000	2	\$ 90,000	4	\$ 180,000
Total Direct Salaries		5	\$ 404,000	8	\$ 572,000
Benefits (40% of Total Direct Salaries)			\$ 161,600		\$ 228,800
Total Personnel Costs			\$ 565,600		\$ 800,800
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (70% of Total Personnel Costs)			\$ 395,920		\$ 560,560
Task 2.1 Total Costs			\$961,520		\$1,361,360
Task 2.2: New CBP Agents at Ports of Entry (Low Estimate Based on Increased Staffing at 34 Ports and Higher Estimate Based on Increased Support at 68 Ports)					
Personnel Costs					
Direct Salaries					
Agents (GS-10, Step 6)	\$ 50,000	170	\$ 8,500,000	340	\$ 17,000,000
Supervisors (GS-13, Step 6)	\$ 78,000	17	\$ 1,326,000	34	\$ 2,652,000
Total Direct Salaries		187	\$ 9,826,000	374	\$ 19,652,000
Benefits (40% of Total Direct Salaries)			\$ 3,930,400		\$ 7,860,800
Total Personnel Costs			\$ 13,756,400		\$ 27,512,800
Training Costs (\$14,700 per Agent)		170	\$ 2,499,000	340	\$ 4,998,000
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (85% of Total Personnel Costs)			\$ 11,692,940		\$ 23,385,880
Task 2.2 Total Costs			\$ 27,948,340		\$ 55,896,680
Task 2.3: Training ICE Agents					
Training Costs (\$5,000 per Agent)		26	\$ 130,000	51	\$ 255,000
Task 2.3 Total Costs			\$ 130,000		\$ 255,000
Task 2.4: Improving the Effectiveness of the NPRCC Total Costs (Cost is Covered Under Objective 1)					
			—		—

Appendix Table D.2 - Page 2 of 3
 Low and High Cost Estimates for Objective #2:
 Expand Authorities and Improve Enforcement Practices

Description of Cost Item	Low Estimate		High Estimate		
	Salary	Number of Employees/ Trainees/ Sessions	Amount (\$)	Number of Employees/ Trainees/ Sessions	Amount (\$)
Task 2.5: Increasing Funding for the CBP Fines, Penalties and Forfeitures Office					
Personnel Costs					
Direct Salaries					
Agents (GS-10, Step 6)	\$50,000	10	\$ 500,000	20	\$ 1,000,000
Executive Assistants (GS-9, Step 6)	\$45,000	20	\$ 900,000	40	\$ 1,800,000
Total Direct Salaries		30	\$ 1,400,000	60	\$ 2,800,000
Benefits (40% of Total Direct Salaries)			\$ 560,000		\$ 1,120,000
Total Personnel Costs			\$ 1,960,000		\$ 3,920,000
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (85% of Total Personnel Costs)			\$ 1,666,000		\$ 3,332,000
Training Costs (\$14,700 per Agent)		10	\$ 147,000	20	\$ 294,000
Task 2.5 Total Costs			\$ 3,773,000		\$ 7,546,000
Task 2.6: Providing IP Enforcement Training at ICE Offices Worldwide					
Training Costs (\$18,000 per Session)		5	\$ 90,000	10	\$ 180,000
Travel Costs (\$15,000 per Session; Ten Trips at \$1,500 Each)		5	\$ 75,000	10	\$ 150,000
Task 2.6 Total Costs			\$ 165,000		\$ 330,000
Task 2.7: Training CBP Agents in the Use of New Technologies (10% of Agents Trained in Low Case and 20% in High Case)					
Training Costs (\$5,000 per Agent)		1,900	\$ 9,500,000	3,800	\$ 19,000,000
Task 2.7 Total Costs			\$ 9,500,000		\$ 19,000,000
Task 2.8: Develop and Implement a "Special Scrutiny" Database Total Costs					
			\$ 15,000,000		\$ 18,750,000
Task 2.9: Create New Legal Tools for Border Enforcement Total Costs					
			\$ 1,000,000		\$ 2,000,000
Task 2: Total Costs			\$ 68,477,860		\$ 106,139,040

Appendix Table D.2 - Page 3 of 3
 Low and High Cost Estimates for Objective #2:
 Expand Authorities and Improve Enforcement Practices

Sources:

- (1) U.S. Office of Personnel Management, <http://www.opm.gov/oca/07Tables/>
- (2) Tasks 2.2 and 2.5 Training Cost of \$14,700: Government Accountability Office, "Border Patrol, Costs and Challenges Related to Training New Agents," GAO-07-997T (<http://www.gao.gov/new.items/07997t.pdf>).
- (3) Tasks 2.3 and 2.7 Training Cost of \$5,000: Approximately one third of \$14,700 training cost.
- (4) Task 2.6 Training Cost per Session: Estimate is six times attorney/judge training.
- (5) Task 2.6 Travel Cost per Session: The \$1,500 per trip estimated is based on flight costs for a trip about two-thirds the distance cross country (San Francisco to Pittsburgh) plus per diem for two days.
- (6) Task 2.8 Database Cost: Estimate based on the cost of a comparable system (the FDA's FACTS system) intended to "coordinate risk management efforts within USDA and between federal, state, and local food safety authorities" by providing "timely, up-to-the-minute data on in-plant inspection and performance" with respect to food processing inspections throughout the country. The FSIS Automated Corporate Technology Suite (FACTS) was budgeted at \$14.5 million in 2003 (http://www.fsis.usda.gov/oa/congress/2002/test_murano031402.htm).
- (7) Other costs are set at 70% of total personnel costs in Task 2.1 based on the relationship between total personnel costs and total costs for the judicial and legislative branches of the federal government (Office of Management and Budget (OMB), Budget of the United States Government Fiscal Year 2006, Federal Employment and Compensation By Agency, Table 24.1 Full Time Equivalent Employment By Agency, Table 24.2 Total Federal Employment, and Table 24.4 Employee Compensation by Agency (<http://www.whitehouse.gov/omb/budget/fy2006/empl.html>); OMB, Historical Tables: Budget of the United States Government, Fiscal Year 2006, Table 4.1, p.78 and Table 17.3, p.327 (<http://www.whitehouse.gov/omb/budget/fy2006/>)). Other costs are set at 85% of total personnel costs in Tasks 2.2 and 2.5 based on the relationship between total personnel costs and total costs for the FBI (Office of Management and Budget (OMB), Budget of the United States Government Fiscal Year 2006, Federal Employment and Compensation By Agency, Table 24.1 Full Time Equivalent Employment By Agency, Table 24.2 Total Federal Employment, and Table 24.4 Employee Compensation by Agency (<http://www.whitehouse.gov/omb/budget/fy2006/empl.html>); OMB, Department of Justice (<http://www.whitehouse.gov/omb/budget/fy2007/justice.html>); Statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation, before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Science, State, Justice, Commerce, and Related Agencies, March 28, 2006 (<http://www.fbi.gov/congress/congress06/mueller032806.htm>)).

References:

- (1) Department of Energy, FY 2006 (<http://www.orsu.gov/odd/2006ATR/Section%202%20Major%20Accomplishments.pdf>).
- (2) Government Accountability Office, *Costs and Challenges Related to Training New Agents*, Highlights of GAO-07-997T, June 19, 2007.
- (3) U.S. Department of Agriculture, Food Safety and Inspection Service (http://www.fsis.usda.gov/oa/congress/2002/test_murano031402.htm).
- (4) White House, Office of the Press Secretary, Dec. 28, 1999 (<http://www.fda.gov/oc/buyonline/onlineasp.html>).

C. Objective 3: Strengthening Criminal Enforcement

Objective 3 calls for strengthening federal C&P law enforcement via three primary strategies: 1) increasing federal C&P law enforcement, 2) supporting state and local initiatives, and 3) updating federal criminal law.

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Appendix Table D.3 - Page 1 of 3
Low and High Cost Estimates for Objective #3:
Strengthen Criminal Enforcement

			Low Estimate	High Estimate	
Description of Cost Item	Salary	Number of Employees / Trainees/ Sessions	Amount (\$)	Number of Employees / Trainees/ Sessions	Amount (\$)
Task 3.1: Establishing Five New CHIP Units					
Personnel Costs					
Direct Salaries - Average (2001 Value Times 1.16755 Which is 2007, GS-9, Step 6 Divided by 2001, GS-9, Step 6)	\$ 55,429	30	\$1,662,870	50	\$2,771,450
<u>Benefits (40% of Total Direct Salaries)</u>			\$ 665,148		\$1,108,580
Total Personnel Costs			\$2,328,018		\$3,880,030
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (85% of Total Personnel Costs)			\$1,978,815		\$3,298,026
Task 3.1 Total Costs			\$4,306,833		\$7,178,056
Task 3.2: Assigning New FBI Agents to CHIP Units					
Personnel Costs					
Direct Salaries Total Direct Salaries of Agents (GS-10, Step 6)	\$ 63,804	60	\$3,828,240	60	\$3,828,240
<u>Benefits (40% of Total Direct Salaries)</u>			\$1,531,296		\$1,531,296
Total Personnel Costs			\$5,359,536		\$5,359,536
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (85% of Total Personnel Costs)			\$4,555,606		\$4,555,606
Task 3.2 Total Costs			\$9,915,142		\$9,915,142
Task 3.3: Additional Funding for Computer Forensics Total Costs			\$ 750,000		\$1,500,000
Task 3.4: Semi-Annual Trainings for Federal Prosecutors					
Training Costs (\$3,000 per Trainee per Session)		96	\$ 268,000	96	\$ 268,000
Travel Costs (\$1,500 per Trainee per Session)		96	\$ 144,000	96	\$ 144,000
Task 3.4 Total Costs			\$ 432,000		\$ 432,000

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Appendix Table D.3 - Page 2 of 3
 Low and High Cost Estimates for Objective #3:
 To Strengthen Criminal Enforcement

Description of Cost Item	Low Estimate			High Estimate	
	Salary	Number of Employees / Trainees / Sessions	Amount (\$)	Number of Employees / Trainees / Sessions	Amount (\$)
Task 3.5: - Establish and Operate New "Specialized IP Enforcement" Units					
Personnel Costs					
Direct Salaries					
SIPE Attorneys (Equivalent to GS-13, Step 6)	\$ 78,000	5	\$ 390,000	10	\$ 780,000
Prosecutors (Equivalent to GS-14, Step 6)	\$ 92,000	5	\$ 460,000	10	\$ 920,000
Total Direct Salaries		10	\$ 850,000	20	\$ 1,700,000
Benefits (40% of Total Direct Salaries)			\$ 340,000		\$ 680,000
Total Personnel Costs			\$ 1,190,000		\$ 2,380,000
Other Costs (Includes Office Space, Furniture, Computers, Supplies, Travel, Etc.) (85% of Total Personnel Costs)			\$ 1,011,500		\$ 2,023,000
Grant Administrative Costs (10% of Above Costs)			\$ 220,150		\$ 440,300
Task 3.5 Total Costs			\$ 2,421,650		\$ 4,843,300
Task 3.6: Training Designating Judges					
Training Costs (\$6,000 per Trainee per Session)		10	\$60,000	20	\$120,000
Task 3.7: Updating Federal Criminal Laws Total Costs			\$ 1,000,000		\$ 2,000,000
Task 3: Total Costs			\$ 10,885,625		\$ 25,908,497

Appendix Table D.3 - Page 3 of 3
Low and High Cost Estimates for Objective #3:
To Strengthen Criminal Enforcement

Sources:

- (1) U.S. Office of Personnel Management, <http://www.opm.gov/oca/07/tables/>
- (2) Task 3.4 Training Cost per Trainee per Session: The \$3,000 per person per seminar cost is based on the cost of a Patent and Trademark Office seminar assuming 15 participants per session.
- (3) Task 3.4 Travel Cost per Trainee per Session: The \$1,500 per trip estimated is based on flight costs for a trip about two-thirds the distance cross country (San Francisco to Pittsburgh) plus per diem for two days.
- (4) Task 3.6 Training Cost per Trainee per Session: The \$6,000 per person per seminar cost is based on the cost of a Patent and Trademark Office seminar assuming about eight participants per session.
- (5) Other costs are set at 85% of total personnel costs based on the relationship between total personnel costs and total costs for the FBI (Office of Management and Budget (OMB), Budget of the United States Government Fiscal Year 2008, Federal Employment and Compensation By Agency, Table 24.1 Full Time Equivalent Employment By Agency, Table 24.2 Total Federal Employment, and Table 24.4 Employee Compensation by Agency (<http://www.whitehouse.gov/omb/budget/fy2008/empl.html>); OMB, Department of Justice (<http://www.whitehouse.gov/omb/budget/fy2007/justice.html>); Statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation, before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Science, State, Justice, Commerce, and Related Agencies, March 28, 2006 (<http://www.fbi.gov/congress/congress06/mueller032806.htm>)).

Reference: Computer Hacking and Intellectual Property (CHIP) Fact Sheet, Dec. 2002
(<http://www.usdoj.gov/criminal/cybercrime/chipfact.htm>)

D. Objective 4: Attack Counterfeiting and Piracy Beyond U.S. Borders

Objective 4 addresses the critical issue of attacking C&P activities overseas. Part of this effort involves coordinating existing agencies and resources to more effectively address the problem while also recognizing that diplomatic efforts with our trade partners are also called for.

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Appendix Table D.4
Low and High Cost Estimates for Objective #4:
Attack Counterfeiting and Piracy Beyond U.S. Borders

Description of Cost Item	Low Estimate		High Estimate	
	Number of Positions/ Sessions	Amount (\$)	Number of Positions/ Sessions	Amount (\$)
Task 4.1: Strategic Planning Total Costs (Cost is Covered Under Objective 1)		—		—
Task 4.2: Strengthening the Capabilities of Foreign Governments				
Total Costs (\$430,000 per Position)	10	\$4,300,000	20	\$8,600,000
Task 4.3: Increased Funding for IPR Enforcement Training and Enforcement		\$1,750,000		\$3,500,000
Task 4.4: Additional Funding for Training and Technical Assistance to Foreign Counterparts				
Total Costs (\$45,000 per Session)	10	\$ 450,000	20	\$ 900,000
Task 4.5: Establish New IP Law Enforcement Coordinators in Additional Regions				
Total Costs (\$430,000 per Position)	10	\$4,300,000	20	\$8,600,000
Task 4: Total Costs		\$10,800,000		\$21,600,000

Source:

(1) Tasks 4.2 and 4.5 Travel Cost of \$430,000 per Position: Office of Management and Budget, "Department Of State and International Assistance Programs," 2006 (<http://www.whitehouse.gov/omb/budget/fy2006/state.html>).

(2) Task 4.4 Cost of 45,000 per Session: The \$45,000 seminar cost is based on the cost of a Patent and Trademark Office seminar.

Reference: Office of Management and Budget, "Department Of State and International Assistance Programs," 2006 (<http://www.whitehouse.gov/omb/budget/fy2006/state.html>).

E. Objective 5: Civil and Judicial Reforms to Protect IP Holders

Objective 5 calls for more aggressive action to protect the interests of IP holders by increasing civil penalties for violators, by training federal attorneys to more effectively prosecute C&P cases and by building judicial expertise in civil IP enforcement.

Appendix Table D.5
Low and High Cost Estimates for Objective #5:
Institute Civil and Judicial Reforms to Protect IP Holders

Description of Cost Item	Low Estimate		High Estimate	
	Number of Trainees	Amount (\$)	Number of Trainees	Amount (\$)
Task 5.1: Additional Support for Funding		\$ 1,000,000		\$2,000,000
Task 5.2: Training Federal Attorneys in Civil IP Enforcement				
Training Costs (\$3,000 per Trainee per Session)	96	\$ 288,000	192	\$ 576,000
Travel Costs (\$1,500 per Trainee per Session)	96	\$ 144,000	192	\$ 288,000
Task 5.2 Total Costs		\$ 432,000		\$ 864,000
Task 5.3: Training Judges in Civil IP Enforcement				
Training Costs (\$3,000 per Trainee per Session)	10	\$ 30,000	20	\$ 60,000
Travel Costs (\$1,500 per Trainee per Session)	10	\$ 15,000	20	\$ 30,000
Task 5.3 Total Costs		\$ 45,000		\$ 90,000
Task 5: Total Costs		\$1,477,000		\$2,954,000

Sources:

- (1) Tasks 5.2 and 5.3 Training Cost per Trainee per Session: The \$3,000 per person per seminar cost is based on the cost of a Patent and Trademark Office seminar assuming 15 participants per session.
(2) Tasks 5.2 and 5.3 Travel Cost per Trainee per Session: The \$1,500 per trip estimated is based on flight costs for a trip about two-thirds the distance cross country (San Francisco to Pittsburgh) plus per diem for two days.

F. Objective 6: Coordinate and Conduct Public Education Campaigns

To be truly effective, efforts must be made to address the demand side of the C&P problem. Therefore, Objective 6 of the CACP Initiative calls for a comprehensive public education campaign plus targeted prevention campaigns at selected ports of entry.

Appendix Table D.6
Low and High Cost Estimates for Objective #6:
Coordinate and Conduct Public Education Campaigns

Description of Cost Item	Low Estimate	High Estimate
Task 6.1: Coordinate a Public Education Campaign (Cost is Covered Under Objective 1)	---	---
Task 6.2: Funding for a Public Education Campaign, Task 6.3: Convening an Industry-Led Commission, and Task 6.4: Evaluating Effectiveness	\$ 7,000,000	\$ 10,000,000
Task 6.5: Counterfeiting and Piracy Prevention Marketing Campaigns at Customs Entry Points	\$ 500,000	\$ 750,000
Task 6: Total Costs	\$ 7,500,000	\$ 10,750,000

Source: French Embassy, Brune Meseulch-Jacquemin. France spent 5 million euros which is approximately 7 million U.S. dollars on an anticounterfeiting campaign. This effort included a multi-media campaign of 15-second television ads, radio ads, print ads, and posters, a website, a national call center, and a traveling exhibition. The affected French industries contributed to the creation of the television and radio advertising. The expectation is that the affected U.S. companies would do the same thing and sponsor some of the television and radio ads.

Appendix E

Calculations to Support Determination of the
Benefits From the CACP Initiative

Appendix Table	Table Description
E.1	Calculation of the Implied Final Demand Multipliers and the Direct Effect Multipliers for the Combined Movie and Recorded Music Industries
E.2	Calculation of the Effects on Output, Earnings, and Employment As A Consequence of the Reduction in U.S. Business Revenue Lost Due to Implementing the CACP Initiative
E.3	Tax Rates to Apply to Calculate the Tax Revenue Effects (Based on 2004 Data)
E.4	U.S. Output, Earnings, Employment, and Tax Revenue Increase Due to Implementing the CACP Initiative (Billions of Dollars Unless Otherwise Noted)

Appendix Table E.1

**Calculation of the Implied Final Demand Multipliers and the
Direct Effect Multipliers for the Combined Movie and Recorded Music Industries**

IP-Intensive Industry	Revenue Lost Due to Counterfeiting and Piracy (Millions \$)	Impact on All Industries			Impact on IP-Intensive Industry		
		Lost Output (Millions \$)	Lost Earnings (Millions \$)	Lost Jobs (Number)	Lost Output (Millions \$)	Lost Earnings (Millions \$)	Lost Jobs (Number)
Movies	\$ 7,327	\$20,484	\$5,542	141,030	\$ 7,327	\$1,903	46,597
Recorded Music	\$ 6,374	\$12,502	\$2,697	71,060	\$ 6,374	\$1,056	26,860
Combined Movie and Recorded Music Industries	\$13,701	\$32,986	\$8,239	212,090	\$13,701	\$2,959	73,457
Addendum:							
Implied Final Demand Multipliers	-----	2.4076	0.6013	15.4799	-----	-----	-----
Implied Direct Effect Multipliers	-----	-----	-----	-----	-----	2.7844	2.8873

Sources: (1) Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 186, September 2006, Table 3, page 9 and Table 4, page 10.
 (2) Stephen Siwek, *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007, Table 6, page 11 and Table 7, page 12.
 (3) LECG calculations. See notes.

Notes: (1) The implied final demand multipliers equal the impacts on all industries for the combined movie and recorded music industries divided by combined revenue losses due to counterfeiting and piracy.
 (2) The implied direct effect multipliers equal the combined impacts on all industries divided by the combined impacts on the IP-intensive industry.
 (3) The term "jobs" should be interpreted as the number of full-time equivalent employees.

Appendix Table E.2

**Calculation of the Effects on Output, Earnings, and Employment
As A Consequence of the Reduction in U.S. Business
Revenue Lost Due to Implementing the CACP Initiative**

- I. Changes in Output, Earnings, and Jobs for All Industries
 - A. Output change equals business revenue change times 2.4076
 - B. Earnings change equals business revenue change times 0.6013
 - C. Employment (jobs) change equals business revenue change times 1,000 times 15.4799
- II. Changes in Output, Earnings, and Employment (Jobs) for the Directly Affected Industry
 - A. Output change equals business revenue change.
 - B. Earnings change equals earnings change for all industries divided by 2.7844.
 - C. Employment (jobs) change equals employment (jobs) change for all industries divided by 2.8873.

Sources: (1) Appendix D, Table D.1.
 (2) Stephen Siwek, *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007, pp. 8-13, Table 4 at p. 9, Table 5 at p. 10, Table 6 at p. 11, and Table 7 at p. 12.

Appendix Table E.3

Tax Rates to Apply to Calculate Tax Revenue Effects
(Based on 2004 Data)

I. Federal Tax Revenues

A. Federal Personal Income Tax Rate

1. 8.21% which equals federal personal income tax collections (\$797.4 billion) divided by U.S. personal income (\$9,713.3 billion)
2. Estimated federal personal income tax receipts equal "earnings" times 0.0821.
3. The term "earnings" equals the change in earnings for all industries resulting from the reduction in U.S. business revenue losses due to the CACP initiative being implemented.

B. Federal Corporate Income Tax Rate

1. 13.73% which equals federal corporate income tax collections (\$250.3 billion) divided by U.S. Other Gross Operating Surplus (\$1,822.9 billion).
2. The U.S. Other Gross Operating Surplus is assumed to equal "earnings" times 0.2726 which equals U.S. Other Gross Operating Surplus in 2004 (\$1,022.9 billion) divided by U.S. compensation of employees in 2004 (\$6,687.6 billion).
3. Estimated federal corporate income tax receipts equal "earnings" times 0.2726 times 0.1373.
4. The term "earnings" equals the change in earnings for all industries resulting from the reduction in U.S. business revenue losses due to the CACP initiative being implemented.

C. Federal Taxes on Production and Imports Less Subsidies Rate

1. 0.75% which equals federal taxes on production and imports less subsidies in 2004 (\$50.4 billion) divided by U.S. employee compensation (\$6,687.6 billion).
2. Estimated federal tax on production and imports less subsidies receipts equal "earnings" times 0.0075.
3. The term "earnings" equals the change in earnings for all industries resulting from the reduction in U.S. business revenue losses due to the CACP initiative being implemented.

Sources:

- (1) Stephen Siwek, *The True Cost of Sound Recording Piracy to the U.S. Economy*, prepared for the Institute for Policy Innovation (IPI), Policy Report 188, August 2007, Table 8A, p. 14, Table 8B, p. 5, Appendix Tables C-1 and C-2, pp. 25-26.

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- (2) Federal tax data for 2004: U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, Table 1.10. Gross Domestic Income by Type of Income (Corporate Profits with Adjustments), Table 2.1. Personal Income and Its Disposition (Personal Income), and Table 3.2. Federal Government Current Receipts and Expenditures (Personal Income Tax, Production and Imports Tax, Corporate Income Tax, and Subsidies)
(<http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=N>).

II. Total State and Local Revenues

- A. 11.3% of personal income.
- B. Estimated total state and local revenues equal "earnings" times 0.113.
- C. The term "earnings" The term "earnings" equals the change in earnings for all industries resulting from the reduction in U.S. business revenue losses due to the CACP initiative being implemented.

Source: Federation of Tax Administrators, State and Local Tax Burdens, 2005 State & Local Revenues as a Percentage of Personal Income
(http://www.taxadmin.org/fta/rate/05stl_pi.html).

Appendix Table E.4
U.S. Output, Earnings, Employment, and Tax Revenue Increases Due to Implementing the CACP Initiative
(Billions of Dollars Unless Otherwise Noted)

Description	Coefficient	Pessimistic Case				Optimistic Case			
		Year 1	Year 2	Year 3	Total	Year 1	Year 2	Year 3	Total
Reduction in U.S. Business Revenue Losses									
U.S. Business Revenue Losses (Billions of Dollars)	\$225								
Percentage Reduction in Revenue Losses		1.0%	3.0%	5.0%		2.0%	6.0%	10.0%	
Reduction in Revenue Losses (Billions of Dollars)		\$2.25	\$6.75	\$11.25		\$4.50	\$13.50	\$22.50	
Total Present Value		\$2.25	\$6.31	\$9.83	\$18.38	\$4.50	\$12.62	\$19.65	\$36.77
Resulting Increases for All Industries									
Output	2.4076	\$5.42	\$16.25	\$27.09		\$10.83	\$32.50	\$54.17	
Earnings	0.0013	\$1.35	\$4.06	\$6.76		\$2.71	\$8.12	\$13.53	
Employment (Number)	15.4799	34,830	104,489	174,149		69,660	208,979	348,298	
Resulting Increases for Directly Affected Industries									
Direct Output		\$2.25	\$6.75	\$11.25		\$4.50	\$13.50	\$22.50	
Direct Earnings	2.7644	\$0.49	\$1.46	\$2.43		\$0.97	\$2.92	\$4.86	
Direct Employment (Number)	2.8873	12,063	36,189	60,316		24,126	72,379	120,631	
Resulting Federal Tax Revenue Increases									
Personal Income Tax	8.210%	\$0.111	\$0.333	\$0.555		\$0.222	\$0.666	\$1.111	
Corporate Income Tax	3.743%	\$0.051	\$0.152	\$0.253		\$0.101	\$0.304	\$0.506	
Production and Imports Tax	0.750%	\$0.010	\$0.030	\$0.051		\$0.020	\$0.061	\$0.101	
Total Current Value		\$0.172	\$0.516	\$0.859		\$0.344	\$1.031	\$1.719	
Total Present Value		\$0.172	\$0.482	\$0.751	\$1.404	\$0.344	\$0.964	\$1.501	\$2.809
Resulting State and Local Government Tax Revenue Increases									
Total Current Value	11.3%	\$0.153	\$0.459	\$0.764		\$0.306	\$0.917	\$1.529	
Total Present Value		\$0.153	\$0.429	\$0.668	\$1.249	\$0.306	\$0.857	\$1.335	\$2.498
Discount Rate and Factors	7.0%	1.0000	0.9346	0.8734	2.8080	1.0000	0.9346	0.8734	2.8080

Sources:

- (1): Table V-1 in the body of the report.
- (2): Appendix D, Tables D.1, D.2, and D.3.
- (3): Federal tax rates are derived from U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, Table 1.10, Gross Domestic Income by Type of Income (Corporate Profits with Adjustments), Table 2.1, Personal Income and Its Disposition (Personal Income), and Table 3.2, Federal Government Current Receipts and Expenditures (Personal Income Tax, Production and Imports Tax, Corporate Income Tax, and Subsidies) (<http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=N1>).
- (4): The federal discount rate is defined in Office of Management and Budget, Memorandum for Heads of Executive Departments and Establishments, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, October 29, 1992 (<http://www.whitehouse.gov/omb/circulars/a094/a094.html>).
- (5): State and local tax rate: Federation of Tax Administrators, State and Local Tax Burdens, 2005 State & Local Revenues as a Percentage of Personal Income (http://www.taxadmin.org/fta/rate/05ell_pi.html).