

108TH CONGRESS
2D SESSION

H. R. 5117

To establish in the Office of the United States Trade Representative an Assistant United States Trade Representative for Intellectual Property Rights.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2004

Mr. SCHIFF (for himself, Mr. GOODLATTE, Mr. BECERRA, and Mr. FOLEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To establish in the Office of the United States Trade Representative an Assistant United States Trade Representative for Intellectual Property Rights.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fortifying America’s
5 Intellectual Property Rights (FAIR) Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) International markets are vital to intellec-
9 tual property industries in the United States, pro-

1 viding a strong export base that sustains jobs in the
2 United States. This sector of the United States
3 economy is threatened due to widespread patent and
4 trademark infringement and the unauthorized repro-
5 duction, distribution, and sale of copyrighted works
6 created in the United States.

7 (2) The United States is the world’s largest cre-
8 ator, producer, and exporter of copyrighted mate-
9 rials, accounting for more than 5 percent of the
10 Gross Domestic Product (GDP) of the United States
11 and adding billions of dollars to the United States
12 economy annually.

13 (3) International markets are vital to creative
14 industries in the United States, providing a strong
15 export base that sustains jobs in the United States.
16 This sector of the United States economy is threat-
17 ened due to widespread piracy—the unauthorized re-
18 production, distribution, and sale of works created in
19 the United States.

20 (4) Global piracy affecting the motion picture
21 industry is estimated as amounting to
22 \$3,500,000,000 annually, not including illegal
23 downloading. Globally, 2 in 5 music recordings are
24 pirated copies, with annual world-wide sales of pirat-
25 ed music estimated at from \$4,000,000,000 to

1 \$5,000,000,000. The software industry estimates
2 losses of more than \$13,000,000,000 in 2002 due to
3 worldwide piracy.

4 (5) The United States Trade Representative
5 (USTR) has been charged with identifying countries
6 that deny adequate and effective protection of intel-
7 lectual property rights. The effective use of trade
8 tools by the USTR, including the negotiation of bi-
9 lateral free trade agreements, serves an essential
10 role in protecting abroad the intellectual property
11 rights of United States persons.

12 (6) The Office of the USTR has more than 20
13 offices dedicated to specific areas of expertise, but
14 does not include an office solely dedicated to the
15 protection abroad of the intellectual property rights
16 of United States persons. Currently, the Office of
17 the Assistant United States Trade Representative
18 for Services, Investment and Intellectual Property
19 has a substantially large workload, given that serv-
20 ices and investment account for more than 50 per-
21 cent of the United States economy.

22 (7) The USTR's ability to meet its mandate to
23 protect abroad the intellectual property rights of
24 United States persons should be enhanced by estab-
25 lishing a separate office dedicated exclusively to in-

1 intellectual property matters, headed by an Assistant
 2 United States Trade Representative for Intellectual
 3 Property Rights. The resources dedicated to secur-
 4 ing high standards of protection in trade agreements
 5 and enforcing those provisions vigorously should
 6 likewise be enhanced.

7 **SEC. 3. ASSISTANT U.S. TRADE REPRESENTATIVE FOR IN-**
 8 **TELLECTUAL PROPERTY RIGHTS.**

9 Section 141(c) of the Trade Act of 1974 (19 U.S.C.
 10 2171(c)) is amended by adding at the end the following:

11 “(6)(A) There shall be in the Office the position of
 12 Assistant United States Trade Representative for Intellec-
 13 tual Property Rights. The Assistant United States Trade
 14 Representative for Intellectual Property Rights shall be
 15 appointed by the United States Trade Representative.

16 “(B) The Assistant United States Trade Representa-
 17 tive for Intellectual Property Rights shall have primary
 18 responsibility for—

19 “(i) intellectual property matters relating to bi-
 20 lateral and multilateral trade agreements, includ-
 21 ing—

22 “(I) enforcement of, and any modifications
 23 to, the Agreement on Trade-Related Aspects of
 24 Intellectual Property Rights referred to in sec-

1 tion 101(d)(15) of the Uruguay Round Agree-
2 ments Act (19 U.S.C. 3511(d)(15)); and

3 “(II) the negotiation and enforcement of
4 intellectual property provisions of any other bi-
5 lateral or multilateral trade agreement to which
6 the United States is a party;

7 “(ii) the identification of countries under para-
8 graphs (1) and (2) of section 182(a) of the Trade
9 Act of 1974 (19 U.S.C. 2242(a)(1) and (2)), and
10 any investigations under chapter 1 of title III of
11 that Act (19 U.S.C. 2411 et seq.) arising from such
12 identification or other actions of a foreign country
13 described in section 182(a)(1) of that Act; and

14 “(iii) monitoring the extent to which the trad-
15 ing partners of the United States protect and en-
16 force intellectual property rights of United States
17 persons.

18 “(C) At least 6 professional staff members shall be
19 assigned to assist the Assistant United States Trade Rep-
20 resentative for Intellectual Property Rights in carrying out
21 his or her functions, of which 3 shall be assigned to mat-
22 ters relating to enforcement.

23 “(D) The Assistant United States Trade Representa-
24 tive should direct and coordinate all interagency activities,
25 including in consultation with the Under Secretary of

1 Commerce for Intellectual Property and Director of the
2 United States Patent and Trademark Office and the Reg-
3 ister of Copyrights, on trade-related intellectual property
4 matters and serve as the primary contact in the executive
5 branch for all matters described in subparagraph (B).

6 “(E) The Assistant United States Trade Representa-
7 tive for Intellectual Property Rights shall receive com-
8 pensation at the rate of pay payable for level IV of the
9 Executive Schedule under section 5315 of title 5, United
10 States Code.”.

11 **SEC. 4. CONSTRUCTION.**

12 Nothing in this Act or the amendment made by this
13 Act shall be construed to limit the powers and duties of
14 the United States Patent and Trademark Office or the
15 United States Copyright Office.

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