

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

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

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

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

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

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS ACT OF 2008

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

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

The bill clerk read as follows:

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

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

S. 3325

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Enforcement of Intellectual Property Rights Act of 2008”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Reference.

Sec. 3. Definition.

TITLE I—AUTHORIZATION OF CIVIL COPYRIGHT ENFORCEMENT BY ATTORNEY GENERAL

Sec. 101. Civil penalties for certain violations.

TITLE II—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

Sec. 201. Registration of claim.

Sec. 202. Civil remedies for infringement.

Sec. 203. Treble damages in counterfeiting cases.

Sec. 204. Statutory damages in counterfeiting cases.

Sec. 205. Transshipment and exportation of goods bearing infringing marks.

Sec. 206. Importation, [transshipment,] and exportation.

TITLE III—ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

Sec. 301. Criminal copyright infringement.

Sec. 302. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging for works that can be copyrighted.

Sec. 303. Unauthorized fixation.

Sec. 304. Unauthorized recording of motion pictures.

Sec. 305. Trafficking in counterfeit goods or services.

Sec. 306. Forfeiture, destruction, and restitution.

Sec. 307. Forfeiture under Economic Espionage Act.

Sec. 308. Technical and conforming amendments.

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

Sec. 401. Intellectual property enforcement coordinator.

Sec. 402. Definition.

Sec. 403. Joint strategic plan.

Sec. 404. Reporting.

Sec. 405. Savings and repeals.

Sec. 406. Authorization of appropriations.

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

Sec. 501. Local law enforcement grants.

Sec. 502. Improved investigative and forensic resources for enforcement of laws related to intellectual property crimes.

Sec. 503. Additional funding for resources to investigate and prosecute criminal activity involving computers.

Sec. 504. International intellectual property law enforcement coordinators.

Sec. 505. Annual reports.

[Sec. 506. Authorization of appropriations.]

TITLE VI—MISCELLANEOUS

Sec. 601. GAO study on protection of intellectual property of manufacturers.

Sec. 602. Sense of Congress.

SEC. 2. REFERENCE.

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

SEC. 3. DEFINITION.

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

- (1) any United States resident or national,
- (2) any domestic concern (including any permanent domestic establishment of any foreign concern), and

- (3) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern, except that such term does not include an individual who resides outside the United States and is employed by an individual or entity other than an individual or entity described in paragraph (1), (2), or (3).

TITLE I—AUTHORIZATION OF CIVIL COPYRIGHT ENFORCEMENT BY ATTORNEY GENERAL

SEC. 101. CIVIL PENALTIES FOR CERTAIN VIOLATIONS.

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

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

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

“(b) OTHER REMEDIES.—

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

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

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

(1) in subsection (b)—

(A) in the first sentence—

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

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

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

(2) in subsection (c)—

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

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

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

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

TITLE II—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

SEC. 201. REGISTRATION OF CLAIM.

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

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

(2) in subsection (a)—

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

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

(3) by redesignating subsection (b) as subsection (c);

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

(5) by inserting after subsection (a) the following:

“(b)(1) A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

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

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

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

SEC. 202. CIVIL REMEDIES FOR INFRINGEMENT.

[(a) IN GENERAL.—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 and inserting “, and of records documenting the manufacture, sale, or receipt of things involved in such violation. The court shall enter, if appropriate, a protective order with respect to discovery of any records that have been seized. The protective order shall provide for appropriate procedures to ensure that confidential information contained in such records is not improperly disclosed to any party.”.

[(b) PROTECTIVE ORDERS FOR SEIZED RECORDS.—Section 34(d)(1)(A) of the Trademark Act (15 U.S.C. 1116(d)(1)(A)) is amended by adding at the end the following: “The court shall enter, if appropriate, a protective order with respect to discovery of any records that have been seized. The protective order shall provide for appropriate procedures to ensure that confidential information contained in such records is not improperly disclosed to any party.”]

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

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

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

“(B) of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of phonorecords may be reproduced; and

“(C) of records documenting the manufacture, sale, or receipt of things involved in any such violation, provided that any records seized under this subparagraph shall be taken into the custody of the court.

“(2) For impoundments of records ordered under paragraph (1)(C), the court shall enter an appropriate protective order with respect to discovery and use of any records or information

that has been impounded. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.

“(3) The relevant provisions of paragraphs (2) through (11) of section 34(d) of the Trademark Act (15 U.S.C. 1116(d)(2) through (11)) shall extend to any impoundment of records ordered under paragraph (1)(C) that is based upon an *ex parte* application, notwithstanding the provisions of rule 65 of the Federal Rules of Civil Procedure. Any references in paragraphs (2) through (11) of section 34(d) of the Trademark Act to section 32 of such Act shall be read as references to section 501 of this title, and references to use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services shall be read as references to infringement of a copyright.”.

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

“(7) Any materials seized under this subsection shall be taken into the custody of the court. For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.”.

SEC. 203. 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; or

“(2) 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. 204. 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 “\$1,000”; 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. 205. TRANSSHIPMENT AND 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: “TRANSSHIPMENT, OR EXPORTATION”; and

(2) in section 42—

(A) by striking “imported”; and

(B) by inserting after “customhouse of the United States” the following: “, nor shall any such article be transshipped through or exported from the United States”.

SEC. 206. IMPORTATION, [TRANSSHIPMENT,] 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, [TRANSSHIPMENT,] 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, [Transshipment,] or Exportation.—

“(1) IMPORTATION.—”;

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

“(2) IMPORTATION, [TRANSHIPMENT,] OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United States, [transshipment through 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] *copyright*, or which would have constituted an infringement of copyright if this title had been applicable, 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”;

(ii) by striking “the United States Customs Service” and inserting “United States Customs and Border Protection”; and

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

(2) Section 601(b)(2) of title 17, United States Code, is amended by striking “the United States Customs Service” and inserting “United States Customs and Border Protection”.

(3) 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 III—ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

SEC. 301. CRIMINAL COPYRIGHT INFRINGEMENT.

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

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

(b) SEIZURES AND FORFEITURES.—

(1) REPEAL.—Section 509 of title 17, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 509.

SEC. 302. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED.

Section 2318 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respectively;

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) by striking “Whoever” and inserting “(1) Whoever”;

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

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

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

SEC. 303. UNAUTHORIZED FIXATION.

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

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

(b) Section 2319A(c) of title 18, United States Code, is amended by striking the second sentence and inserting: “The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States 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.”.

SEC. 304. UNAUTHORIZED RECORDING OF MOTION PICTURES.

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

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

SEC. 305. 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 “OFFENSE.”;

“(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.”.

(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Section 2320(b) of title 18, United States Code, is amended to read as follows:

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

SEC. 306. FORFEITURE, DESTRUCTION, AND RESTITUTION.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding at the end the following:

“SEC. 2323. FORFEITURE, DESTRUCTION, AND RESTITUTION.

“(a) CIVIL FORFEITURE.—

“(1) PROPERTY SUBJECT TO FORFEITURE.—The following property is subject to forfeiture to the United States Government:

“(A) Any article, the making or trafficking of which is, prohibited under section 506 [or 1204] of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title.

“(B) Any property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A), except that property is subject to forfeiture under this subparagraph only if the United States Government establishes that there was a substantial connection between the property and the violation of an offense referred to in subparagraph (A).

“(C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).

“(2) PROCEDURES.—The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. *For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.* At the conclusion of the forfeiture proceedings, unless otherwise requested by an agency of the United States, the court shall order that any property forfeited under paragraph (1) be destroyed, or otherwise disposed of according to law.

“(b) CRIMINAL FORFEITURE.—

“(1) PROPERTY SUBJECT TO FORFEITURE.—The court, in imposing sentence on a person convicted of an offense under section 506 or 1204 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, shall order, in addition to any other sentence imposed, that the person forfeit to the United States Government any property subject to forfeiture under subsection (a) for that offense.

“(2) PROCEDURES.—

“(A) IN GENERAL.—The forfeiture of property under paragraph (1), 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.

“(B) DESTRUCTION.—At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States shall order that any—

“(i) forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law; and

“(ii) infringing items or other property described in subsection (a)(1)(A) and forfeited under paragraph (1) of this subsection be destroyed or otherwise disposed of according to law.

“(c) RESTITUTION.—When a person is convicted of an offense under section 506 [or 1204] of title 17 or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, the court, pursuant to sections 3556, 3663A, and 3664 of this title, shall order the person to pay restitution to any victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii) of this title.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 18, United States Code, is amended by adding at the end the following:

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

SEC. 307. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.

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

“SEC. 1834. CRIMINAL FORFEITURE.

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

SEC. 308. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

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

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

(B) in subsection (c)—

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

(ii) in paragraph (3), by striking “sections 509 and 510” and inserting “section 510”; and

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

(C) in subsection (e)—

(i) in paragraph (1), by striking “sections 509 and 510” and inserting “section 510”; and

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

(3) Section 115(c) of title 17, United States Code, is amended—

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE IV—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND [PIRACY]INFRINGEMENT

SEC. 401. INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR.

(a) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR.—The President shall appoint, by and with the advice and consent of the Senate, an Intellectual Property Enforcement Coordinator (in this title referred to as the “IPEC”) to serve within the Executive Office of the President. As an exercise of the rulemaking power of the Senate, any nomination of the IPEC submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on the Judiciary.

(b) DUTIES OF IPEC.—

(1) IN GENERAL.—The IPEC shall—

(A) chair the interagency intellectual property enforcement advisory committee established under subsection (b)(3)(A);

(B) coordinate the development of the Joint Strategic Plan against counterfeiting and [piracy]infringement by the advisory committee under section 403;

(C) assist in the implementation of the Joint Strategic Plan by the departments and agencies listed in subsection (b)(3)(A);

(D) facilitate the issuance of policy guidance to departments and agencies on basic issues of policy and interpretation, to the extent necessary to assure the coordination of intellectual property enforcement policy and consistency with other law;

(E) report directly to the President and Congress regarding domestic and international intellectual property enforcement programs;

(F) report to Congress, as provided in section 404, on the implementation of the Joint Strategic Plan, and make recommendations to Congress for improvements in Federal intellectual property enforcement efforts; and

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

(2) LIMITATION ON AUTHORITY.—The IPEC may not control or direct any law enforcement agency in the exercise of its investigative or prosecutorial authority.

(3) ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There is established an interagency intellectual property enforcement advisory committee composed of the IPEC, who shall chair the committee, and Senate-confirmed representatives of the following departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies:

(i) The Office of Management and Budget.

(ii) The Department of Justice.

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

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

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

(vi) The Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement.

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

(viii) The United States Copyright Office.

(ix) Any such other agencies as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and piracy.]

(A) ESTABLISHMENT.—There is established an interagency intellectual property enforcement

advisory committee composed of the IPEC, who shall chair the committee, and—

(i) Senate-confirmed representatives of the following departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies:

(I) The Office of Management and Budget.

(II) The Department of Justice.

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

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

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

(VI) The Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement.

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

(VIII) The Department of Agriculture.

(IX) Any such other agencies as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and piracy; and

(ii) The Register of Copyrights, or a senior representative of the United States Copyright Office appointed by the Register of Copyrights.

(B) FUNCTIONS.—The advisory committee established under subparagraph (A) shall develop the Joint Strategic Plan against counterfeiting and [piracy]infringement under section 403.

(c) COMPENSATION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following: “United States Intellectual Property Enforcement Coordinator.”.

SEC. 402. 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 in particular matters relating to combating counterfeit and [pirated]infringed goods.

SEC. 403. JOINT STRATEGIC PLAN.

(a) PURPOSE.—The objectives of the Joint Strategic Plan against counterfeiting and [piracy]infringement that is referred to in section 401(b)(1)(B) (in this section referred to as the “joint strategic plan”) are the following:

(1) Reducing counterfeit and [pirated]infringed goods in the domestic and international supply chain.

(2) Identifying and addressing structural weaknesses, systemic flaws, or other unjustified impediments to effective enforcement action against the financing, production, trafficking, or sale of counterfeit or [pirated]infringed goods.

(3) Ensuring that information is identified and shared among the relevant departments and agencies, to the extent permitted by law and consistent with law enforcement protocols for handling information, to aid in the objective of arresting and prosecuting individuals and entities that are knowingly involved in the financing, production, trafficking, or sale of counterfeit or [pirated]infringed goods.

(4) Disrupting and eliminating domestic and international counterfeiting and [piracy]infringement 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]infringed 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 and 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]infringed or counterfeit goods;

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

(C) 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 12 months after the date of the enactment of this Act, and not later than December 31 of every third year thereafter, the IPEC shall submit the joint strategic plan to the Committee on the Judiciary and the Committee on Appropriations of the Senate, and to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives.

(c) RESPONSIBILITY OF THE IPEC.—During the development of the joint strategic plan, the IPEC—

(1) shall provide assistance to, and coordinate the meetings and efforts of, the appropriate officers and employees of departments and agencies represented on the advisory committee appointed under section 401(b)(3) who are involved in intellectual property enforcement; and

(2) may consult with private sector experts in intellectual property enforcement in furtherance of providing assistance to the members of the advisory committee appointed under section 401(b)(3).

(d) RESPONSIBILITIES OF OTHER DEPARTMENTS AND AGENCIES.—In the development and implementation of the joint strategic plan, the heads of the departments and agencies identified under section 401(b)(3) shall—

(1) designate personnel with expertise and experience in intellectual property enforcement matters to work with the IPEC and other members of the advisory committee; and

(2) share relevant department or agency information with the IPEC and other members of the advisory committee, including statistical information on the enforcement activities of the department or agency against counterfeiting or [piracy]infringement, and plans for addressing the joint strategic plan.

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

(1) A detailed description of the priorities identified for carrying out the objectives in the joint strategic plan, including 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]infringement.

(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 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]infringement.

(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 IPEC and the departments and agencies identified under paragraph (6), including a process for oversight by the executive branch of, and accountability among, the departments and agencies responsible for carrying out the strategy.

(8) Such other information as is necessary to convey the costs imposed on the United States economy by, and the threats to public health and safety created by, counterfeiting and [piracy]infringement, and those steps that the Federal Government intends to 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]infringement. With respect to such programs, 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]infringed 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 list of 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]infringement.

(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 IPEC may identify.

SEC. 404. REPORTING.

(a) **ANNUAL REPORT.**—Not later than December 31 of each calendar year beginning in 2009, the IPEC shall submit a report on the activities of the advisory committee during the preceding fiscal year. The annual report shall be submitted to Congress, and disseminated to the people of the United States, in the manner specified in subsections (b) and (g) of section 403.

(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 403(e)(1).

(2) The progress made in 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]infringed 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 established under section 401(b)(3).

(6) Recommendations for any changes in enforcement statutes, regulations, or funding levels that the advisory committee considers would significantly improve the effectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and [piracy]infringement and otherwise strengthen intellectual property enforcement, including through the elimination or consolidation of duplicative programs or initiatives.

(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 made under trade agreements and treaties to protect intellectual property rights of United States persons and their licensees.

SEC. 405. 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.]

(a) **TRANSITION FROM NIPLECC TO IPEC.**—

(1) **REPEAL OF NIPLECC.**—Section 653 of the Treasury and General Government Appropriations Act, 2000 (15 U.S.C. 1128) is repealed effective upon confirmation of the IPEC by the Senate and publication of such appointment in the Congressional Record.

(2) **CONTINUITY OF PERFORMANCE OF DUTIES.**—Upon confirmation by the Senate, and notwithstanding paragraph (1), the IPEC may use the services and personnel of the National Intellectual Property Law Enforcement Coordination Council, for such time as is reasonable, to perform any functions or duties which in the discretion of the IPEC are necessary to facilitate the orderly transition of any functions or duties transferred from the Council to the IPEC pursuant to any provision of this Act or any amendment made by this Act.

(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 (including any independent agency) that relates to—

(1) the investigation and prosecution of violations of laws that protect intellectual property rights;

(2) the administrative enforcement, at the borders of the United States, of laws that protect intellectual property rights; or

(3) the United States trade agreements program or international trade.

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

(c) **RULE OF CONSTRUCTION.**—Nothing in this title shall derogate from the powers, duties, and functions of any of the agencies, departments, or other entities listed or included under section 401(b)(3)(A).

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title.

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

SEC. 501. 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 2009 through 2013”.

(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 unlawful acts with respect to goods by reason of their protection by a 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 multijurisdictional task forces.

(2) **ELIGIBILITY.**—To be eligible to receive an IP-TIC grant, a State or local government entity shall 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 Edward Byrne Memorial Justice Assistance Grant Program authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(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 2009 through 2013.

(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. 502. IMPROVED INVESTIGATIVE AND FORENSIC RESOURCES FOR ENFORCEMENT OF LAWS RELATED TO INTELLECTUAL PROPERTY CRIMES.

(a) **IN GENERAL.**—Subject to the availability of appropriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to the theft of intellectual property—

(1) create an operational unit of the Federal Bureau of Investigation—

(A) to work with the Computer Crime and Intellectual Property section of the Department of Justice on the investigation and coordination of intellectual property crimes [that are complex, committed in more than 1 judicial district, or international];

(B) that consists of at least 10 agents of the Bureau; and

(C) that is located at the headquarters of the Bureau;

(2) ensure that any unit in the Department of Justice responsible for investigating computer hacking or intellectual property crimes is [assigned]supported by at least 2 agents of the Federal Bureau of Investigation (in addition to any agent [assigned to]supporting such unit as of the date of the enactment of this Act) to support such unit for the purpose of investigating or prosecuting intellectual property crimes; [and]

(3) ensure that all Computer Hacking and Intellectual Property Crime Units located at an office of a United States Attorney are assigned at least 2 Assistant United States Attorneys responsible for investigating and prosecuting computer hacking or intellectual property crimes; and

(34) implement a comprehensive program—

(A) the purpose of which is to train agents of the Federal Bureau of Investigation in the investigation and prosecution of such crimes and the enforcement of laws related to intellectual property crimes;

(B) that includes relevant forensic training related to investigating and prosecuting intellectual property crimes; and

(C) that requires such agents who investigate or prosecute intellectual property crimes to attend the program annually.

(b) **ORGANIZED CRIME TASK FORCE.**—Subject to the availability of appropriations to carry out this subsection, and not later than 120 days after the date of the enactment of this Act, the Attorney General, through the United States Attorneys' Offices, the Computer Crime and Intellectual Property section, and the Organized Crime and Racketeering section of the Department of Justice, and in consultation with the Federal Bureau of Investigation and other Federal law enforcement agencies, shall create [a Task Force to develop] and implement a comprehensive, long-range plan to investigate

and prosecute international organized crime syndicates engaging in or supporting crimes relating to the theft of intellectual property.

(c) **AUTHORIZATION.**—There are authorized to be appropriated to carry out this section \$12,000,000 for each of fiscal years 2009 through 2013.

SEC. 503. ADDITIONAL FUNDING FOR RESOURCES TO INVESTIGATE AND PROSECUTE CRIMINAL ACTIVITY INVOLVING COMPUTERS.

(a) **ADDITIONAL FUNDING FOR RESOURCES.**—

(1) **AUTHORIZATION.**—In addition to amounts otherwise authorized for resources to investigate and prosecute criminal activity involving computers, there are authorized to be appropriated for each of the fiscal years 2009 through 2013—

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

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

(2) **AVAILABILITY.**—Any amounts appropriated under paragraph (1) shall remain available until expended.

(b) **USE OF ADDITIONAL FUNDING.**—Funds made available under subsection (a) shall be used by the Director of the Federal Bureau of Investigation and the Attorney General, for the Federal Bureau of Investigation and the Criminal Division of the Department of Justice, respectively, to—

(1) hire and train law enforcement officers to—

(A) investigate crimes committed through the use of computers and other information technology, including through the use of the Internet; and

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

(2) procure advanced tools of forensic science to investigate, prosecute, and study such crimes.

SEC. 504. INTERNATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATORS.

(a) **DEPLOYMENT OF ADDITIONAL COORDINATORS.**—Subject to the availability of appropriations to carry out this section, 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]infringed 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]Assisting in the coordination of United States law enforcement activities against intellectual property-related crimes in the regions in which the coordinators serve.

(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 Enforce-

ment Coordinators of the Department of Justice, including those deployed under subsection (a).

SEC. 505. 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 this title.

[SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

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

TITLE VI—MISCELLANEOUS

SEC. 601. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study to help determine how the Federal Government could better protect the intellectual property of manufacturers by quantification of the impacts of imported and domestic counterfeit goods on—

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

(2) the overall economy of the United States.

(b) **CONTENTS.**—In conducting the study required under subsection (a), the Comptroller General shall examine—

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

(2) the impacts on domestic manufacturers in the United States of current law regarding defending intellectual property, including patent, trademark, and copyright protections;

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

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

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

(6) any changes to current statutes or rules that would need to be implemented to more effectively protect the intellectual property rights of manufacturers.

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the results of the study required under subsection (a).

SEC. 602. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the United States intellectual property industries have created millions of high-skill, high-paying United States jobs and pay billions of dollars in annual United States tax revenues;

(2) the United States intellectual property industries continue to represent a major source of creativity and innovation, business start-ups, skilled job creation, exports, economic growth, and competitiveness;

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

(4) the growing number of willful violations of existing Federal criminal laws involving counterfeiting and infringement by actors in the United States and, increasingly, by foreign-based individuals and entities is a serious threat to the long-term vitality of the United States economy and the future competitiveness of United States industry;

(5) effective criminal enforcement of the intellectual property laws against such violations in all categories of works should be among the highest priorities of the Attorney General; and

(6) with respect to criminal counterfeiting and infringement of computer software, the Attorney General should give priority to cases—

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

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

(C) where the counterfeited or infringing goods or services enables the enterprise to unfairly compete against the legitimate rights holder;

(D) where there is actual knowledge of the theft of intellectual property by the directors or officers of the enterprise; and

(E) where the enterprise involved in the theft of intellectual property is owned or controlled by a foreign enterprise or other foreign entity.

PROGRAM OVERSIGHT

Mr. LEAHY. Intellectual property is the lifeblood of our economy, and protecting that property from theft and misappropriation is important to preserving our place at the economic forefront of the world. Combatting intellectual property offenses can help us save jobs for Americans, increase tax revenues from legitimate businesses, and bolster our productivity, with all the gains that come from that. Some of the provisions in this bill authorize significant resources to the Department of Justice and the Federal Bureau of Investigation to better take on the tasks of battling intellectual property crimes. I have confidence in law enforcement, and I also take seriously the obligation we have in the Congress to ensure that the public's money is well and responsibly spent.

Mr. COBURN. I, too, believe that intellectual property is important to our country, businesses and individual rights holders. Illegal importation of counterfeit goods, such as pharmaceuticals, also threatens the health and safety of U.S. citizens. It is necessary for the Federal Government to protect and enforce intellectual property rights domestically and internationally. I believe we are on the way to achieving this goal with S. 3325, but we have to ensure that the agencies this bill tasks with enforcement of intellectual property rights are held responsible. All of us, including those in the intellectual property community, would have to agree that enforcement of intellectual property rights, even with passage of S. 3325, will only become a priority of the Federal Government if agencies, such as the Justice Department and FBI, are truly held accountable for achieving the goal of increased enforcement.

Mr. LEAHY. I am committed to vigorous oversight of the Justice Department in all its functions, and as the champion of S. 3325, I am especially interested in ensuring that these programs are effectively and efficiently managed. My interest does not end with the enactment of this bill; in fact, this is just the beginning. I am committing myself and the Judiciary Committee to oversight of these programs; soon after the filing date of the reports required of the Justice Department and the FBI, we will hold hearings to ensure that the information we need to evaluate these programs and the use of the funds that have been appropriated.

Mr. COBURN. I am glad that the Senator from Vermont is making this commitment and am relying on his assurance of oversight of these programs so that our government is held responsible and informed decisions are made on how to responsibly allocate our scarce Federal dollars. Although the criteria we established in this legislation are necessary, they will neither have an effect on how the Justice Department and FBI prioritize and use the funds authorized under this bill, nor ensure grantees appropriately use Federal grant dollars, unless we make certain these agencies rigorously follow the standards we set forth in this legislation. If the Justice Department and FBI continue to receive Federal funding year after year without Congress questioning the contents of their required reports or grantees' use of funds, all of the efforts of those supporting this bill will be for naught, and we will not have succeeded in making IP enforcement a priority for this country.

I thank the Senator from Vermont and the Senator from Pennsylvania for their work on this bill. I recognize we have all made compromises along the way to ensure we pass the most effective enforcement legislation possible, while still maintaining our desire to hold Federal agencies, which spend taxpayer dollars, accountable for their actions so that this country's intellectual property rights holders are protected from counterfeiting and piracy.

Mr. KYL. Mr. President, I rise today to comment on the impending passage of S. 3325, the Enforcement of Intellectual Property Rights Act of 2008/Prioritizing Resources and Organization for Intellectual Property Act of 2008.

When I first reviewed the bill, I was concerned that section 301's creation of the intellectual property enforcement coordinator, or IPEC, a presidentially appointed White House officer, might allow political interference with the Justice Department's copyright investigation and enforcement decisions. I am now persuaded, however, that the bill's creation of this new office does not, and was not intended to, influence the exercise of prosecutorial and law enforcement decisionmaking by the Department of Justice and other law enforcement agencies. Criminal law enforcement is a critical component of Federal enforcement of intellectual property rights, and the bill includes language that prevents the IPEC from exercising any control over criminal investigations and prosecutions. These restrictions are consistent with the bill's language, as well as with current Department of Justice and White House policies that guard against improper contacts between the White House and the Department of Justice on prosecutions and investigations.

For example, the bill contains several important limitations on the authority of the IPEC. Section 301(b)(2) of the bill provides that the IPEC "may

not control or direct any law enforcement agency, including the Department of Justice, in the exercise of its investigative or prosecutorial authority." Section 305(b) further provides that "nothing in this title shall alter the authority of any department or agency of the United States (including any independent agency) that relates to—(1) the investigation and prosecution of violations of laws that protect intellectual property rights; (2) the administrative enforcement, at the borders of the United States, of laws that protect intellectual property rights." Section 306(c) also provides that "Nothing in this title—(1) shall derogate from the powers, duties, and functions of any of the agencies, departments, or other entities listed or included under section 301(b)(3)(A); and (2) shall be construed to transfer authority regarding the control, use, or allocation of law enforcement resources, or the initiation of prosecution of individuals cases or types of case, from the responsible law enforcement department or agency."

The foregoing provisions of the bill make clear that the IPEC does not, and was not intended to, have the authority to influence or attempt to influence the law enforcement and prosecutorial decisionmaking of the Department of Justice and its law enforcement partners. Rather, the IPEC's role is limited to general coordination, as defined in the statute, that does not interfere with, or derogate from, the existing prosecutorial and law enforcement authority and responsibilities of the Department of Justice and other law enforcement agencies.

With this understanding in mind, I interpose no objection to the Senate's adoption of this bill and will lend my support to its passage.

Mr. COBURN. Mr. President I support the overall goals of S. 3325, the PRO-IP Act, and believe that our country's intellectual property rights should be protected at home and abroad. However, I believe that Congress should make both realistic and fiscally responsible commitments in the legislation it passes.

Intellectual property is important to our country, businesses, and individual rights holders. Illegal importation of counterfeit goods, such as pharmaceuticals, also threatens the health and safety of U.S. citizens. It is necessary for the Federal Government to protect and enforce intellectual property rights domestically and internationally.

I believe we are on the way to achieving this goal with this legislation, but we have to ensure that the agencies this bill tasks with enforcement of intellectual property rights are held responsible. All of us, including the members of the intellectual property community, would have to agree that enforcement of intellectual property rights, even with passage of this legislation, will only become a priority of the Federal Government if agencies,

such as the Department of Justice and Federal Bureau of Investigation, are truly held responsible for achieving the goal of increased enforcement.

I believe that the only way to ensure these agencies actually answer for their actions, and make intellectual property enforcement a priority, is through effective oversight by this Body. We have included in this bill two reporting requirements for the Justice Department and FBI that will make certain we know: (1) exactly what the agencies were doing before this bill was enacted to enforce intellectual property laws so that we may establish a performance baseline, and (2) what the agencies will be doing in the future as a result of this bill. We have also included other standards for State and local law enforcement agencies that will be receiving grants from the Justice Department, so that the grantees also have standards to meet in order to receive Federal funds.

These reports and standards, however, will neither have an effect on how these agencies prioritize and use the funds authorized under this bill, nor ensure grantees appropriately use Federal funds unless we make certain the criteria we set forth in this bill are met. If the Justice Department and FBI continue to receive funding year after year under this legislation without Congress questioning the contents of the reports they are required to submit, all of the efforts of those supporting this bill will be for naught, and we will not have succeeded in making intellectual property enforcement a priority for this country.

To be clear, I would prefer actual language in this bill stating that, if the Justice Department and FBI fail to submit their reports on time, any authorizations under title IV of this bill would be suspended until those reports are submitted. However, even though this language was not accepted, the Senator from Vermont has assured me that the Judiciary Committee will hold oversight hearings early each year so we may thoroughly question the contents of the reports required to be submitted by the Justice Department and FBI under title IV. It is my hope that the outcome of any oversight hearings in the Judiciary Committee related to the content of this bill will be effectively communicated to the Appropriations Committee so that the members of that committee will have detailed information to establish whether these agencies have complied with the requirements of S. 3325, and enable them to make informed decision on how to responsibly allocate our scarce Federal dollars.

I thank the Senator from Vermont and the Senator from Pennsylvania for their work on this bill. I recognize that we have all made compromises along the way to ensure we pass the most effective enforcement legislation possible, while still maintaining our desire to hold Federal agencies, which spend taxpayer dollars, accountable for their

actions so that this country's intellectual property rights holders are protected from counterfeiting and piracy.

Mr. VOINOVICH. Mr. President, I rise today to join my colleagues, Senators SPECTER, LEAHY, BAYH, and others in strong support of S. 3325, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, PRO IP Act, which was just approved unanimously by the Senate today. First, I would like to express my appreciation to Senator SPECTER and Senator LEAHY for the excellent job they have done in ensuring that the Senate passed this important piece of legislation before we complete our business for the year. I would like to thank Senator BAYH. I have partnered with Senator BAYH on this issue for the past 3 years. We first introduced intellectual property enforcement legislation in the first session of the 109th Congress. I believe it is safe to say that we are both pleased that the concepts contained in our legislation have become a part of the PRO-IP Act. I think it is important to point out that the PRO-IP Act has strong bipartisan support in the Senate. When we pass legislation in a bipartisan manner, it reveals the best of the Senate.

For over 4 years, I have been talking about the need for our Government to improve its efforts to protect our Nation's intellectual property from what I have referred to as the Pirates of the 21st Century. At a time when American businesses face some of the fiercest competition ever, our Government cannot ignore the growing threat of intellectual property theft to companies, workers, and consumers. Intellectual property theft is no longer an issue limited to knockoff hand bags and pirated DVDs and CDs.

Today, almost every product made is subject to being counterfeited. The problem of intellectual property theft impacts businesses—big and small. Genuine products manufactured in the United States are competing with phony products, which are sold both here and abroad. At a time when so many American businesses and workers are in dire straits, our Nation can no longer turn a blind eye to this problem. The economic impact of intellectual property theft is overwhelming. According to the U.S. Chamber of Commerce, intellectual property theft is costing American businesses an estimated \$250 billion each year and has cost an estimated 750,000 jobs. The chamber estimates that if counterfeit auto parts sales were eliminated, the U.S. auto industry could hire up to 200,000 additional workers. In my home State of Ohio, 200,000 additional auto industry jobs would make a tremendous impact in reversing the loss of manufacturing jobs.

The costs of intellectual property theft are not limited to lost jobs and revenues. There are significant health and safety ramifications. For example, during a hearing I held in July 2006, the general counsel from Bendix Commer-

cial Vehicle Systems LLC, Bendix, which is headquartered in Elyria, OH, testified that counterfeit air brakes used in tractor-trailers are so authentic looking that some of these counterfeit products are returned to Bendix via its warranty claims process. Bendix is so concerned about the safety implications of this problem that it is spending \$1 million annually on IP protection and enforcement activities—that is \$1 million that this one company is not able to spend each year on other things such as research and development or worker training. Moreover, given the proliferation of counterfeit goods into areas such as pharmaceuticals and auto parts, it is only a matter of time before our Nation sees the dire health and safety consequences arising from this problem.

The passage of the PRO-IP Act is an important step to building upon the efforts that have begun under the National Intellectual Property Law Enforcement Coordination Council and STOP! initiative. The PRO-IP Act will provide increased resources for Department of Justice programs to combat intellectual property theft and provide coordination and strategic planning of Federal efforts against counterfeiting and piracy. I am particularly pleased that the PRO-IP Act will create a White House-led coordinator. I believe that the most effective intellectual property enforcement coordination requires White House leadership. As a result, I believe the efforts underway in each Department and agency will have improved effectiveness by placing the new IP enforcement coordinator within the Executive Office of the President. The coordinator will have both the visibility and the access to provide a most effective executive branch voice on IP enforcement.

Finally, while I am pleased that the Senate completed its work on passing intellectual property enforcement legislation, I know that my job is not finished. I will continue to work with my colleagues to ensure that Congress provides effective oversight over the various agencies and departments charged with enforcing and protecting intellectual property rights and that these entities have the resources necessary to get the job done.

Mr. LEAHY. Mr. President, I ask unanimous consent that the committee amendments be withdrawn; that a Leahy substitute amendment, which is at the desk, be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table, with no intervening action or debate; and any statements related to the bill be printed in the RECORD.

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

The amendment (No. 5655) was agreed to:

The amendment is printed in today's RECORD under "Text of Amendments."

The bill (S. 3325), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. LEAHY. Mr. President, we are a nation in the midst of an unprecedented financial crisis. It is not just our financial enterprises that are shaken but our confidence in our own economic strength. The Members of this Congress and the people of this Nation are being asked to take extraordinary steps to contain the explosions on Wall Street.

We must not, as we try to repair the structure of our financial institutions, neglect the very sources of our economic power. Intellectual property—copyrights, patents, trademarks, and trade secrets—is an ever-growing sector of our economy. We are the envy of the world for the quality and the quantity of our innovative and creative goods and services. If we want to continue to lead the world in producing intellectual property, we need to protect Americans' rights in that property.

This bill is among the most important I have championed. I drew on the experiences of thousands of intellectual property owners, hundreds of law enforcement officials, and all the legislators on both sides of the aisle in Congress, and we have a bill that provides a focused and honed set of improvements to the intellectual property law, targeted increases in resources for significant enforcement efforts, streamlined interagency efforts to coordinate governmental intellectual property policies but also vigorous oversight of the Justice Department's programs.

I thank all those who cosponsored it. Our bill is going to improve the enforcement of our Nation's intellectual property laws, they will bolster our intellectual property-based economy, and it will protect American jobs.

Mr. President, we are a Nation in the midst of an unprecedented financial crisis. It is not just our financial enterprises that are shaken, but our confidence in our own economic strength. The Members of this Congress, and the people of this Nation, are being asked to take extraordinary steps to contain the explosions on Wall Street. We must not, as we try to repair the structure of our financial institutions, neglect the very sources of our economic power. Intellectual property—copyrights, patents, trademarks, and trade secrets—is an ever-growing sector of our economy. We are the envy of the world for the quality, and the quantity, of our innovative and creative goods and services. If we want to continue to lead the world in producing intellectual property, we need to protect our citizens' rights in that property.

Long ago, I was the Chittenden County State's Attorney in Vermont. There is crime everywhere, even in Vermont, and I prosecuted every kind of case. I will never forget how much successful prosecutions depend on whether the investigators and lawyers charged with protecting the public from crime have

the right tools to do so. No matter how dedicated the prosecutor, and no matter how outrageous the crime, if the laws are not clearly and sensibly drafted, or if the resources are simply inadequate, no justice will be done.

The intellectual property enforcement bill we consider today is designed solely and specifically to ensure that law enforcement has the tools it needs to protect our Nation's impressive array of intellectual property. The revisions to the civil and criminal statutes, the provision of directed resources to Government at all levels, the coordination across the Federal Government of efforts in creating policies and enforcement efforts, and the requirements for reporting to the Congress—all of these provisions are focused on strengthening the protection of our intellectual property.

Vermont is special to me, and the goods from Vermont that embody intellectual property are prized by consumers around the world. But every State in the Union is home to industries based on intellectual property. The creative and innovative Vermonters that I am proud to call friends and constituents have counterparts in every other State. These individuals and industries are essential to restoring and building our fiscal health. In a time of such frightening economic malaise, we should redouble our efforts to make sure that the productive and valuable sectors of our economy are freed from the debilitating effects of theft and misappropriation.

Intellectual property is just as vulnerable as it is valuable. The Internet has brought great and positive change to all our lives, but it is also an unparalleled tool for piracy. The increasing inter-connectedness of the globe, and the efficiencies of sharing information quickly and accurately between continents, has made foreign piracy and counterfeiting operations profitable in numerous countries. Americans suffer when their intellectual property is stolen, they suffer when those counterfeit goods displace sales of the legitimate products, and they suffer when counterfeit products actually harm them, as is sometimes the case with fake pharmaceuticals and faulty electrical products.

This bill is among the most important I have championed. Drawing on the experiences of thousands of intellectual property owners, hundreds of law enforcement officials, and all of the legislators in Congress, it provides a focused and honed set of improvements to the intellectual property law, targeted increases in resources for significant enforcement efforts, streamlined inter-agency efforts to coordinate governmental intellectual property policies, and vigorous oversight of the Justice Department's programs. I thank all the cosponsors of this legislation for their efforts and support. Our bill will improve the enforcement of our Nation's intellectual property

laws, bolster our intellectual property-based economy, and protect American jobs.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 771, 772, 773, 774, 775, 779, 780, 781, 782, and 783; that the Senate then proceed to the nominations en bloc, the nominations be confirmed en bloc, the motions to reconsider be laid upon the table en bloc; that no further motions be in order; that the President be immediately notified of the Senate's action, and the Senate resume legislative session; that any statements relating to these nominations be printed in the RECORD.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Clark Waddoups, of Utah, to be United States District Judge for the District of Utah.

Michael M. Anello, of California, to be United States District Judge for the Southern District of California.

Mary Stenson Scriven, of Florida, to be United States District Judge for the Middle District of Florida.

Christine M. Arguello, of Colorado, to be United States District Judge for the District of Colorado.

Philip A. Brimmer, of Colorado, to be United States District Judge for the District of Colorado.

Anthony John Trenga, of Virginia, to be United States District Judge for the Eastern District of Virginia.

C. Darnell Jones II, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mitchell S. Goldberg, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Joel H. Slomsky, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Eric F. Melgren, of Kansas, to be United States District Judge for the District of Kansas.

NOMINATION OF ANTHONY J. TRENGA

Mr. WARNER. Mr. President, I rise today in support of an outstanding Virginian, Anthony J. Trenga, who has been nominated by the President to serve as an article III judge on the United States District Court for the Eastern District of Virginia.

I am pleased to note that Mr. Trenga also enjoys the strong support of my colleague, Senator WEBB. Senator WEBB and I have worked closely together to provide the White House with recommendations of outstanding nominees to serve the Eastern District of Virginia. After interviewing more than a dozen candidates out of a very strong field of applicants, Senator WEBB and I