

PRIORITIZING RESOURCES AND ORGANIZATION FOR INTELLECTUAL PROPERTY ACT OF 2008 -- (House of Representatives - May 06, 2008)

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Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4279) to enhance remedies for violations of intellectual property laws, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4279

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 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--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..Treble damages in counterfeiting cases.

Sec..105..Statutory damages in counterfeiting cases.

Sec..106..Exportation of goods bearing infringing marks.

Sec..107..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..Savings and repeals.

Sec..324..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. The Register shall respond to the court's request within 45 days after the request is made.

``(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 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. 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. 105. 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. 106. 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

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(2) in section 42--

(A) by striking the word ``imported"; and

(B) by inserting after ``customhouse of the United States" the following: `` , nor shall any such article be exported from the United States".

SEC. 107. 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 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 "U.S. Customs and Border Protection"; and

(iii) by striking "the Customs Service" and inserting "U.S. 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 "U.S. 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 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)--

(A) by inserting "is a felony and" after "offense" the first place such term appears; and

(B) by striking "paragraph (1)" and inserting "subsection (a)";

(2) in subsection (c)(2)--

(A) by inserting "is a felony and" after "offense" the first place such term appears; and

(B) by striking "paragraph (1)" and inserting "subsection (a)";

(3) in subsection (d)(3)--

(A) by inserting "is a felony and" after "offense" the first place such term appears; and

(B) by inserting "under subsection (a)" before the semicolon; and

(4) in subsection (d)(4), by inserting "is a felony and" after "offense" the first place such term appears.

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, 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, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

``(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, 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 knowingly providing 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, any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be made, 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 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, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of section 506(a) of title 17.

``(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 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 knowingly providing 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

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(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), 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, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

``(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 knowingly providing 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 of 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: `` , except 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".

(d) *Unauthorized Recording of Motion Pictures.*--Section 2319B(b) of title 18, 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, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

``(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 knowingly providing 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

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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 ``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."; 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.

(c) *Duties of IP Enforcement Representative.*--

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

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

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

(C) assist the United States Trade Representative--

(i) concerning 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 Organization or in the course of commodity or direct investment negotiations in which the United States participates; and

(ii) in the programs of the United States Trade Representative to monitor and enforce intellectual property enforcement obligations of other countries under trade agreements with the United States;

(D) coordinate the issuance of 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 intellectual property enforcement policy and consistency with any other law;

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

(F) report directly to the President and the Congress regarding domestic and international 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) **LIMITATION ON AUTHORITY.**--The IP Enforcement Representative may not control or direct any law enforcement agency in the exercise of its investigative or prosecutorial authority in particular cases.

(3) **SENSE OF CONGRESS.**--It is the sense of the Congress that the IP Enforcement Representative should--

(A) be a 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 economic summit and other international meetings at which international intellectual property enforcement is a significant topic.

(4) **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 the 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 develop recommendations on the allocation of Federal resources for intellectual property enforcement.

(2) **ADVISORY COMMITTEE.**--

(A) **ESTABLISHMENT.**--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:

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

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

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

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

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

(vi) The United States International Trade Commission.

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

(viii) The United States Copyright Office.

(ix) 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.

(B) **FUNCTIONS.**--The advisory committee established under subparagraph (A) shall, under the guidance of the IP Enforcement Representative, develop the Joint Strategic Plan against counterfeiting and piracy under section 321.

(3) **EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.**--The Federal Advisory Committee Act shall not apply to the interagency intellectual property enforcement advisory committee established under paragraph (2) or to any of the activities conducted by the IP Enforcement Representative in developing the Joint Strategic Plan under section 321.

(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 ``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

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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, with the consent of the Federal, State, and local government agencies concerned, the available services, equipment, personnel, and facilities of such 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, 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 in particular 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) Reducing counterfeit and pirated 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 goods.

(3) Assuring 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 goods.

- (4) Disrupting and eliminating domestic and international counterfeiting 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; and

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

(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 12 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.*--During the development of 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)(A) (including the heads of any other agencies identified by the IP Enforcement Representative under section 301(d)(2)(A)(ix)) 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, 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.

(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 infringement, 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 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, 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. 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 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

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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 calendar year beginning in 2009, the IP Enforcement Representative shall submit a 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), including an analysis of the performance measures used to monitor results described in section 321(e)(4).

(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 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 301(d)(2)(A), in fulfilling the priorities identified in the applicable joint strategic plan during the preceding fiscal year and in implementing the recommendations developed under section 301(d)(1).

(6) Recommendations for any changes in enforcement statutes, regulations, or funding levels that the IP Representative considers would significantly improve the effectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and piracy 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 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. 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 (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.

SEC. 324. 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.

(b) *Submission of Projected Budget.*--By not later than the date on which the President submits to the 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, within 2 years after the date of the enactment of this Act, appoint at least 10 intellectual property attachés to serve in United States embassies or other diplomatic missions. The appointments under this section shall be in addition to those individuals serving in the capacity of intellectual property attachés at United States embassies or other diplomatic missions on the date of the enactment of this Act. The Director shall provide such managerial, administrative, research, and other services as the Secretary of Commerce considers necessary to assist the intellectual property attachés in carrying out their responsibilities.

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 assist in the coordination of the efforts of the United States Intellectual Property Enforcement Representative, Federal agencies, and private organizations engaged in the promotion of United States intellectual property interests abroad so as to maximize their effectiveness and minimize duplicative efforts.
- (8) 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 Attaché*

s.--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, or 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 Attaché*

s.--The Inspector General of the Department of Commerce shall perform yearly audits of the intellectual property attachés of the Department, and shall report to the Committees on the Judiciary of the House of Representatives and the Senate the results of each such audit. In addition to an overview of the activities and effectiveness of the intellectual property attaché operations, the audit shall include--

- (1) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging intellectual property issues abroad; and
- (2) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and performance appraisal of personnel, and the use of limited appointees.

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 individuals 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.

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(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) Sections 506 and 1204 of title 17, United States Code.

(B) Sections 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 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 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 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 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 supported by at least 2 additional agents of the Federal Bureau of Investigation 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, D.C., 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 activities 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 assistant United States attorneys who are assigned to CHIP units, and all agents of the Federal Bureau of Investigation who support those 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) 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 501(c)(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.

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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) **PROSECUTORIAL MATTERS.**--Nothing in this section shall be construed to impinge on the appropriate exercise of prosecutorial discretion with respect 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) **NO CLAIMS, ETC., MAY BE ASSERTED.**--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 Coordinators.*--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, or 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 this title, including a report on the activities of the IP Officer.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. Conyers) and the gentleman from Texas (Mr. Smith) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we move to dramatically step up our Nation's intellectual property laws and enforcement efforts. With so much unpleasant economic news in the headlines, the measure before us, H.R. 4279, puts resources towards aiding a sector of the economy that employs an estimated 18 million workers. That is 13 percent of our labor force and accounts for half of all of the United States exports driving 40 percent of the country's growth.

As a result of less-than-effective enforcement, however, counterfeiting and piracy cost the United States' economy somewhere in the neighborhood of \$250 billion a year and creates the loss of about 750,000 American jobs.

And so H.R. 4279 will do these important things: It will prioritize intellectual property protection to the highest level of our government by creating an office in the White House that will be responsible for coordinating the intellectual property efforts of eight diverse agencies and producing a national Joint Strategic Plan for IP enforcement. It will elevate IP enforcement within the Department of Justice and provide more resources for investigating and prosecuting IP crimes.

It will make changes to both civil and criminal IP laws to enhance the ability of intellectual property owners to effectively protect their rights, and it will increase penalties for IP violations that endanger public health and safety.

Throughout the process of developing this bill, we heard many expressions of support as well as a number of expressions of concern. But we've been able to work out these issues on a bipartisan basis at every step of the process.

I congratulate the distinguished members of the Judiciary Committee, both Republicans and Democrats, for their cooperation in this process. And so now as a result, the measure is supported by the Consumer Electronics Association, the Digital Media Association, the Net Coalition, the Internet Commerce Coalition, the Coalition for Consumers' Picture Rights, the Printing Industries Association and more.

That is in addition to the support we've already had from the Teamsters, the Directors Guild of America, SEIU, AFTRA, Unite Here, AFM, OPEIU, the Coalition Against Counterfeiting in Piracy, the Motor Equipment Manufacturing Association, the Motion Picture Association of America, PHARMA, and NBC Universal.

Intellectual property protection is among the key issues that will determine American competitiveness in the 21st century. The ability to create, innovate, and generate the best artistic, technological, and knowledge-based intellectual property is the formula for continued growth in the global economy and is fundamental to the promotion of human progress.

This committee of ours, the Judiciary Committee, has given these items involved in the measure extensive consideration, lots of compromise back and forth, and we feel that this bill will make important contributions to the fight against counterfeiting and piracy.

[Page: H3075]

It was reported by voice with strong bipartisan statements of support, and I urge my colleagues to vote for its passage.

Mr. Speaker, I reserve the balance of my time.

[Time: 14:15]

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at the outset I want to recognize Chairman *Conyers*, Subcommittee Chairman *Berman* and Ranking Member *Howard Coble* of the subcommittee, each of whom I have enjoyed working with in developing and advancing this legislation.

Mr. Speaker, at a time when many Americans are facing a slowing economy and increasing costs of food and fuel, it is imperative that Congress put aside any differences we may have and work together to promote the interests of U.S. entrepreneurs and industry.

Over the past 25 years, perhaps no group of industries has contributed more to the tremendous and sustained growth in our economy than those who rely on strong patent, trademark and copyright protections.

American intellectual property industries, including entertainment, high-tech and pharmaceutical industries, account for over half of all U.S. exports, represent 40 percent of the country's economic growth and employ 18 million American workers.

American technology, entertainment and productivity-based enterprises serve as the cornerstone of our economic and export strength.

Because of the important role IP industries play in our economy, we cannot take these innovations, or their creativity and investment required to bring them to life, for granted.

Unfortunately, the tremendous success of these innovators, creators and rights-holders has made them prime targets for thieves who seek out items protected by patent, copyright, trademark or trade secret designation. These thieves not only steal the creations of others, but also reap the monetary benefits by reproducing and distributing the products themselves.

And the losses attributed to counterfeiting and piracy affect more than the inventor. According to the U.S. Government, American businesses lose approximately \$250 billion each year to pirated and counterfeited goods.

The theft of intellectual property has also cost nearly 750,000 Americans their jobs. Given the current state of the economy, preventing these crimes and enforcing IP laws must be a top priority for the Federal Government.

H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which is also known as PRO-IP, is a measure designed to respond directly to these challenges.

Specifically, the bill strengthens our laws against counterfeiting and piracy; provides new resources to key agencies involved in the enforcement of IP rights; and mandates a new and unprecedented level of coordination and leadership on IP enforcement issues from the White House.

Mr. Speaker, the incentive to innovate and the ability to profit from the creation of new intellectual property cannot be sustained without enforcing the rights that protect the ownership of such valuable, intangible property.

And while our government agencies are doing more today to protect intellectual property than ever before, the reality is that we must do much more. **We must make it increasingly difficult, and costly, for counterfeiters and traffickers, some of whom are connected to organized crime, to steal and profit from American innovations.**

Because intellectual property is such an important asset for both the inventor and the economy as a whole, Congress has a responsibility to ensure that IP enforcement is made a permanent priority of every administration.

By supporting the PRO-IP bill, the House will send a clear message that there is a bipartisan commitment to ensure the next President and succeeding administrations have the resources, organizations and strategies required to protect our vital national and economic interests.

Mr. Speaker, I urge my colleagues to support this bill, H.R. 4279.

I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I rise now to yield to my dear friend and chairman of the Intellectual Property Subcommittee who's worked on this subject matter for so many years. *Howard Berman* has been a bellwether in bringing together the groups, and I'm happy to yield him as much time as he may consume.

Mr. BERMAN. Thank you, Chairman *Conyers*, for those kind words.

I rise today in support of H.R. 4279. American inventors, artists and businesses rely on intellectual property rights to protect the value of their creative works. These works, unfortunately, are being ripped off around the world. The rampant counterfeiting and piracy of U.S. products is having a devastating impact on our economy.

Counterfeit and pirated products may account for up to 8 percent of world trade, and a significant portion of this illicit trade are knock-offs of American products. Latest estimates indicate that U.S. businesses lose up to \$250 billion a year due to intellectual property theft. This level of counterfeiting and piracy of U.S. intellectual property rights translates to job losses, lower tax receipts, and a greater trade deficit. It has also led to public health and safety threats ranging from exploding batteries to toxic pharmaceuticals to sawdust brake

pads.

The economic threat and safety problems that counterfeit and pirated products pose for U.S. businesses and consumers must be dealt with. Given the difficult economic times we find ourselves in, it is that much more important that we address these problems quickly and effectively.

I am aware of the recent efforts the administration has taken to stem the tide of counterfeit and pirated products. The Department of Homeland Security has seized record numbers of counterfeit and pirated goods coming through the border. The Department of Justice is prosecuting and convicting more intellectual property thieves. The Patent and Trademark Office has stationed representatives in foreign countries to advocate for better enforcement. However, despite these efforts, intellectual property theft is on the rise. More must be done. H.R. 4279 is more.

The Act strengthens our civil and criminal laws in ways that attack the organizational structures intellectual property thieves are using and reduce the economic incentives that thieves have to engage in commercial scale counterfeiting and piracy. The Act devotes more resources to investigate and prosecute intellectual property crimes. The Act also provides more resources for the U.S. Government to work with other governments to improve intellectual property enforcement abroad.

And probably most importantly, H.R. 4279 provides a permanent and effective means of coordinating intellectual property enforcement activities. This includes the creation of an intellectual property enforcement representative in the Executive Office of the President and requiring that a national strategic plan to counter intellectual property theft be created, complete with clear goals and benchmarks that will facilitate accountability.

I'd like very much to thank Chairman *Conyers*, Ranking Member *Smith*, and Subcommittee Ranking Member *Coble* and all of their staffs, as well as mine, for the hard work they've put into crafting this bill. The hard work shows in both the scope of the reforms and in the strong support for the bill by U.S. businesses and labor groups, and Chairman *Conyers* outlined a number of those organizations and the broad sweep that they cover and their strong endorsement.

I'm also pleased to say that the amendments adopted in the bill before us go a long way in alleviating concerns raised over the operational independence of agencies like the USTR and the Department of Justice, without compromising the underlying reforms.

H.R. 4279 will bolster U.S. efforts to combat counterfeiting and piracy, and I urge support of the bill.

Mr. SMITH of Texas. Mr. Speaker, I yield to the gentleman from North Carolina (Mr. *Coble*), the ranking member of the Intellectual Property Subcommittee and the former chairman of the Intellectual Property Subcommittee, as much time as he may consume.

Mr. COBLE. I thank the gentleman from Texas and, Mr. Speaker, at the outset I, too, want to recognize and express thanks to Judiciary Chairman

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JOHN CONYERS, Ranking Member **LAMAR SMITH**, and Subcommittee Chairman **HOWARD BERMAN** for having made every effort to address all concerns raised during the development of this legislation.

Mr. Speaker, the Prioritizing Resources and Organization for Intellectual Property Act of 2008 reflects a bipartisan recognition and shared commitment to the strengthening of our Nation's intellectual property laws.

A comprehensive measure, it is not confined to making marginal improvements in the available civil and criminal authorities. Instead, it incorporates bold and urgently needed provisions that will permanently elevate the importance of intellectual property, IP, enforcement in future administrations.

This is accomplished by providing focused and accountable strategic leadership in the Executive Office of the President and at key enforcement agencies.

Mr. Speaker, in considering why we should take steps to improve the enforcement of U.S. IP rights, Members should be aware that U.S. losses from global copyright piracy and counterfeiting cost our innovators and entrepreneurs from \$200 to \$250 billion each and every year.

The impact in America has been widespread. More than 750,000 Americans in communities across our land have lost their jobs due to counterfeiting and piracy. Counterfeit goods lack proper quality control and can be dangerous. Toothpaste, medicines, cigarettes, and fake auto parts are but a small sample of the virtually unlimited supply of goods that have been counterfeited.

The United States Chamber of Commerce has done an excellent job of documenting the extent of this problem. I encourage anyone interested in learning about these issues to visit the Chamber's Web site for additional information or to take the time to watch the documentary *Illicit* which was produced by National Geographic and the Chamber.

Mr. Speaker, fighting piracy and counterfeiting, as you all know, is easier said than done because most of this illicit activity occurs outside our borders. In recent years, the Federal Government has made progress in improving both our domestic and global enforcement efforts, but it is also clear that achieving success in the fight against piracy and counterfeiting requires government-wide coordination and cooperation.

In addition to authorizing the Office of the United States Intellectual Property Enforcement Representative, H.R. 4279 also raises the profile of IP enforcement within the Department of Justice through the creation of a new IP enforcement division. This is absolutely necessary in my opinion.

The bill creates an additional 10 attaches at the United States Patent and Trademark Office who will be assigned to work with foreign countries to better coordinate our international enforcement efforts.

And the bill enhances existing anti-piracy and counterfeiting criminal statutes, authorizes grants to assist local anti-piracy and

counterfeiting efforts, and directs the Justice Department to refine its policies for investigating and prosecuting piracy and counterfeiting operations.

Before closing, Mr. Speaker, I'd like to note for the record three final amendments the managers agreed to incorporate into the bill. The first is designed to harmonize the cooperative provisions in title II of the bill.

The second, in section 301, places an affirmative limitation on the authority of the new IP enforcement representative that makes clear the official has no authority to control or direct law enforcement agencies in the exercise of their respective investigative or prosecutorial discretion in particular cases.

And the third, which amends section 323 of the bill, simply contains technical and conforming changes to make the text of the bill clearer.

Finally, Mr. Speaker, I want to recognize some of the stakeholders who have worked so diligently on this effort. Specifically, I'd like to note the efforts of the Coalition Against Counterfeiting and Piracy, which has been so ably led by Mr. Rick Cotton; and the U.S. Chamber of Commerce, which, of course, is led by President Tom Donohue; and the Congressional International Anti-Piracy Caucus, which is led by Representatives **ADAM SCHIFF** of California and **BOB GOODLATTE** of Virginia.

In closing, I urge my colleagues to support H.R. 4279, and I thank the distinguished gentleman from Texas for having yielded to me.

Mr. CONYERS. Mr. Speaker, I think I have only one speaker left, but might I say a word about the distinguished ranking member, **LAMAR SMITH** of Texas, who's worked with us incredibly, with deliberation. He's brought parties together. There has been an enormous amount of work behind the scenes for which nobody knows how much he's done to make this possible. I thank him publicly.

I now yield the rest of our time to the gentleman from Tennessee (Mr. *Cohen*).

[Time: 14:30]

Mr. COHEN. I want to thank the chairman and the chairmen for the work they've done, and for the ranking member, on this bill.

I rise in support of H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, or the PRO-IP Act.

Our Nation's intellectual property is the basis for our economic success and security. That is something that can't be undermined by cheap labor prices overseas. It's an American product. Therefore, protecting our 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, American pet owners, steal income from legitimate businesses, deprive American workers of good jobs, and undermine the necessary incentive for innovation and creativity which has made America the great country that it is. It is for these reasons I'm an original cosponsor of the PRO-IP Act.

The PRO-IP Act will help strengthen enforcement of intellectual property rights domestically and internationally through enhanced criminal and civil penalties for intellectual property crimes, better high-level coordination among Federal Government agencies, and increased resources to domestic and foreign law enforcement authorities.

This bill, Mr. Speaker, rightfully enjoys broad support from a wide range of industries, including the entertainment, pharmaceutical, food, automobile parts and software industries. It has such diverse partners as the Chamber of Commerce and the Teamsters. When the Chamber of Commerce and the Teamsters come together it's like E.F. Hutton--we listen. We've listened well and need to pass this bill.

This coalition that supports PRO-IP is indicative of the broad support and the need for passage of such legislation. I urge my colleagues to heed the words and vote in favor of this important legislation.

Mr. SMITH of Texas. Mr. Speaker, first of all, I'd like to thank the chairman of the Judiciary Committee, Mr. *Conyers*, for his earlier very generous comments.

Mr. Speaker, I submit the following extraneous material for the **RECORD**:

CONGRESS OF THE UNITED STATES,

Washington, DC, May 5, 2008.
Re support H.R. 4279, the PRO-IP Act.

Dear Colleague: We want to alert all Congressional Caucus on Intellectual Property Promotion and Piracy Prevention Members that tomorrow the House will consider H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property Act of 2007 (PRO IP Act) under suspension of the rules. As a caucus dedicated to enforcing IP rights, it is not only critical that our Members support this legislation, but also make an effort to educate other Members about the value of protecting American IP.

It has become increasingly clear that IP-based industries are the key to the future competitiveness and economic prosperity of the United States. They currently account for between \$5-5.5 trillion of the U.S. gross domestic product and this sector is responsible for 40% of the nation's economic growth. It is therefore imperative that our government protect IP industries from criminal networks that engage in counterfeiting and piracy, which cost U.S. businesses \$250 billion annually and have caused the loss of 750,000 American jobs.

Unfortunately, the counterfeiting and piracy problem will continue to worsen without strong, resolute action by Congress. The PRO IP Act addresses this disturbing trend by strengthening civil and criminal IP laws

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to deter offenders and also provides increased government resources and coordination to enforce Americans' IP rights in the U.S. and around the world.

Given the extent of the counterfeiting and piracy problem and its impact on U.S. economic security, jobs, and consumer health and safety, it is not surprising that H.R. 4279 is supported by an array of businesses, trade associations and organized labor groups.

We urge you to support this legislation.

If you have any questions about the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention please feel free to contact the following Member Offices Rep. Robert Wexler (Ellen McLaren, 202-225-3001), Rep. Mary Bono Mack (Paul Cancienne, 202-225-5330), Rep. Tom Feeney (D. Cameron Smith, 202-225-2706), or Rep. Adam Smith (Jonathan Pawlow, 202-225-8901).

Sincerely,

Robert Wexler,

Member of Congress.

Tom Feeney,

Member of Congress.

Mary Bono Mack,

Member of Congress.

Adam Smith,

Member of Congress.

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CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,

Washington, DC, April 29, 2008.

Hon. **JOHN CONYERS, JR.**,

Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

Hon. *Lamar Smith,*

Ranking Member, Committee on the Judiciary, House of Representatives, Washington, DC.

Dear Chairman Conyers and Ranking Member Smith: The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, would like to thank you for scheduling a full committee markup of H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007," (PRO-IP Act).

Protection of intellectual property (IP) is critical to America's continued competitiveness and future economic security. Counterfeiting and piracy of IP costs the United States an estimated 750,000 jobs and U.S. companies close to \$250 billion in annual revenue. Moreover, counterfeit products such as auto and aviation parts, toothpaste, prescription drugs, and many others pose a severe health and safety risk to American consumers.

Unfortunately, the incidence of counterfeiting and piracy has increased faster than the government resources necessary to stop this problem and current legal penalties are insufficient to deter criminals. H.R. 4279 addresses these concerns by providing increased resources and coordination within the executive branch for IP enforcement and enhancing civil and criminal IP laws.

The Chamber appreciates your leadership on this important issue and supports expeditious approval of the PRO-IP Act by the Judiciary Committee and the full House of Representatives.

Sincerely,

R. BRUCE JOSTEN,

*Executive Vice President,
Government Affairs.*

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April 29, 2008.

Hon. *John Conyers, Jr.,*

Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

Hon. Lamar Smith,
Ranking Member, Committee on the Judiciary, House of Representatives, Washington, DC.

Dear Chairman Conyers and Ranking Member Smith: The Coalition Against Counterfeiting and Piracy (CACP), which includes more than 500 businesses and associations, thanks you for scheduling a markup of H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007," (PRO-IP Act).

As you know, intellectual property (IP) accounts for more than \$5 trillion of the U.S. gross domestic product, comprises more than half of all U.S. exports, and represents 40 percent of U.S. economic growth. Counterfeiting and piracy of IP are growing problems that threaten the ability of businesses to remain competitive and continue providing quality jobs to Americans. Additionally, unsafe counterfeit products pose a severe risk to U.S. consumer health and safety.

CACP members strongly support passage of the PRO-IP Act because it will help the U.S. government significantly improve IP protection and enforcement both internationally and domestically. It is crucial that Congress address counterfeiting and piracy before the end of this session. CACP therefore urges the Committee on the Judiciary not to adopt any controversial amendments that might jeopardize swift enactment of this legislation.

The CACP thanks you again for sponsoring the PRO-IP Act and for your continued leadership in moving this critical bill through the legislative process.

Sincerely,
RICK COTTON,

*Chairman, The Coalition Against
Counterfeiting and Piracy.*

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INTERNATIONAL TRADEMARK

ASSOCIATION,

Washington, DC, May 5, 2008.

DEAR MEMBER, The International Trademark Association (INTA) would like to express its full support for the legislation, "Prioritizing Resources and Organization for Intellectual Property Act of 2007" (H.R. 4279). INTA is a not-for-profit membership association of more than 5,500 trademark owners and professionals dedicated to the support and advancement of trademarks and related intellectual property ("IP") as elements of fair and effective national and international commerce. We urge you to vote "YES" on H.R. 4279.

We commend the House of Representatives for this bill, which seeks to improve the protection of IP and enhances the capacity for enforcement and coordination activities. The protection of intellectual property is a global challenge and requires a focus on strengthening and streamlining U.S. law and policy as well as a mechanism for creating new opportunities for enforcement and collaboration on a global level. H.R. 4279 succeeds in achieving these objectives.

Counterfeiting is a growing problem that is affecting the health and well-being of consumers throughout the world. It steals the identity of trademark owners and robs consumers of a safe and reliable marketplace. 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. Passage of H.R. 4279 is a crucial step to counteract the challenges and burdens presented by counterfeiting.

INTA is pleased to see a united effort by Congress to address this growing problem and INTA looks forward to passage of this legislation in the House of Representatives.

Thank you.

Sincerely,

ALAN C. DREWSEN,
Executive Director.

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MOTION PICTURE ASSOCIATION

OF AMERICA, INC.,

Washington, DC, May 6, 2008.

Hon. **NANCY PELOSI,**
*House of Representatives,
Washington, DC.*

Hon. **JOHN BOEHNER,**
*House of Representatives,
Washington, DC.*

DEAR SPEAKER PELOSI AND LEADER BOEHNER: On behalf of the Motion Picture Association of America, I write to convey our strong support for House passage of H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property Act of 2007. H.R. 4279 is a comprehensive bi-partisan measure that will strength protections for intellectual property and thereby strengthen our nation's economy and generate more jobs for American workers.

Theft of intellectual property by counterfeiting and copyright piracy have a profoundly detrimental impact on our nation's economy. Theft of intellectual property costs American industry more than \$250 billion annually, as well as an estimated 750,000 jobs. Piracy costs the motion picture and television production industries alone over 140,000 U.S. jobs each year. Absent piracy, workers employed by the motion picture and television production industries would earn an additional \$5.5 billion per year, and cities, towns and states would receive \$837 million in additional tax revenue annually. Protecting intellectual property is vital to our nation's continuing economic strength and H.R. 4279 includes important and much needed provisions that will help do so.

H.R. 4279 will ensure that federal authorities have the resources necessary to investigate and prosecute criminal intellectual property crimes. It will also ensure that intellectual property protection remains a federal priority by creating a new office within the White House dedicated to this important goal. Finally, H.R. 4279 increases the protection of American intellectual property abroad by enhancing critically important international enforcement resources.

Intellectual property is among America's most precious commodities. Protecting intellectual property is good for America's economy, will produce more jobs for U.S. workers and more and better products for consumers. H.R. 4279 is a measured, reasonable and much-needed piece of legislation that will ensure that the American intellectual property system remains the world leader. This important legislation has strong bi-partisan support and enjoys broad support from both the American business community, and labor unions. Accordingly, we urge House Members to vote in favor of H.R. 4279.

Sincerely,
Dan Glickman,

*Chairman and
Chief Executive Officer.*

- [Begin Insert]

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong support of H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act of 2007." I urge my colleagues to join me in voting for this legislation. I am confident that working together we can address and strengthen criminal and civil enforcement of United States intellectual property law.

The purpose of H.R. 4279 is to strengthen criminal and civil enforcement of United States intellectual property law focusing, in particular, on copyright violations (piracy) and trademark violations (counterfeiting). In addition, the PRO-IP Act seeks to modernize and improve U.S. government efforts for coordination and enforcement of our nation's IP laws.

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The knowledge and innovation of American citizens contributes significantly to the economic strength of our nation. Intellectual property law provides the principal incentives that are calculated to lead to the creation and production of new works. This bill is needed because the effect of piracy and counterfeiting on the economy is devastating. Total global losses to United States companies from counterfeiting and copyright piracy amount to \$250 billion per year. Every company in every industry is vulnerable.

Because these illegal activities represent a growing public health, safety and law enforcement problem, H.R. 4279 provides additional targeted resources for investigation, enforcement and prosecution; requires the development and promulgation of a national Joint Strategic Plan to combat counterfeiting and piracy; and provides for enhanced Presidential level leadership and coordination among federal agencies involved with preserving and protecting intellectual property rights.

Title I of H.R. 4279 provides enhancements to civil intellectual property laws. Specifically, Title I makes it clear that a certificate of registration will satisfy registration requirements regardless of whether there is any inaccurate information on the registration application, unless the inaccurate information was included with knowledge that it was inaccurate.

Title I also broadens the civil remedies for infringement by broadening the scope of articles that may be ordered impounded by the court upon a finding that the article was made or used in violation of a copyright. This Title also directs the court to enter a protective order to ensure that confidential information is not improperly disclosed.

Title II provides enhancements to criminal intellectual property laws by addressing repeat offender penalties for criminal acts contained within the criminal copyright statute. Title II clarifies that a repeat offender is a person that commits the same criminal act twice. The bill clarifies that any property subject to forfeiture must be owned or predominantly controlled by the violator in order to be seized and directs the United States Sentencing Commission to consider whether the sentencing guidelines should be expanded to include the export of infringing items. There are enhanced maximum statutory penalties for counterfeit offenses that endanger public health and safety.

Title III of H.R. 4279 provides greater coordination and strategic planning of federal efforts against counterfeiting and piracy. Specifically, this Title establishes within the Executive Office of the President, the Office of the United States Intellectual Property Enforcement Representative and, within that Office, the United

States Intellectual Property Enforcement Representative, appointed by the President of the United States. Lastly, Titles IV and V provide international, national, and local enforcement.

The bill has several important enforcement provisions that are worthy to discuss. First, it places a 45-day time limit on the Register of Copyrights' response to a court. Second, it strikes the section allowing for multiple statutory damages for compilation infringement. Third, it clarifies that there must be a substantial nexus between the property and the crime to institute civil forfeiture proceedings. Lastly, it removes the requirements for Federal Bureau of Investigation agents to receive IP related crime training.

While I support the bill, I would have liked to consider ways to ensure diversity in the Computer Hacking and Intellectual Property (CHIPS) units that are established by this bill. I would have liked to work to ensure that minorities be represented in hiring and that special recruitment initiatives be launched at historically black colleges and universities and other minority serving institutions. We should do all within our efforts to guarantee that minorities receive the necessary training and be recruited to help in the IP enforcement at the Executive, State, and local levels.

Mr. Speaker, H.R. 4279 is a first step toward the promotion of the American economy. It ensures that American innovation will remain crucial to the United States economy and that American innovation will allow the United States to remain a global economic power. Indeed, this bill ensures that the United States IP laws are enforced and that the American intellectual property system remains one of the best in the world.

Mr. Speaker, I urge all members to support this much needed and thoughtful legislation.

Ms. ZOE LOFGREN of California. Mr. Speaker, I rise in opposition to H.R. 4279.

While this administration can and should do more to protect intellectual property rights, I do not think that the answer lies in this bill's creation of new forfeiture provisions, a new ``IP Czar," or a new IP-only division within the Department of Justice.

In recent civil actions pursued by some within the content industry, we have seen unduly aggressive tactics that occasionally target innocent individuals. I am concerned that given the bill's thrust toward more aggressive enforcement of copyright infringement, enhanced forfeiture provisions similarly may sweep up wholly innocent students, parents, and consumers in larger enforcement actions.

I regret that more was not done to strike the appropriate balance between protecting copyright owners from those who unlawfully benefit from infringement and ensuring that we do not inadvertently punish innocent bystanders.

I also have concerns with Title III's creation of a new office of the U.S. IP Enforcement Representative. I appreciate the work that has been done to refine the scope of Title III. Nonetheless, Title III still creates a position that is a coequal of the U.S. Trade Representative in the Department of Commerce. There is a strong possibility that the USTR and the ``IP Czar" will come to conflicting policy decisions in matters affecting both IP enforcement and international trade.

The bill offers little guidance with respect to how those conflicts will be resolved. Nor does it contain adequate safeguards to ensure that the IP Czar does not target legitimate innovation out of overstated concerns about contributory infringement.

Finally, I share the authors' frustration with this administration's failure to engage in a more constructive dialogue about how best to focus the DOJ's resources on IP enforcement without harming and disrupting equally important law enforcement priorities. Nonetheless, that potential harm and disruption cannot be ignored and has not been addressed adequately.

I share the goals of the authors of this legislation but not the means by which they sought to achieve them. I thank the authors for their work to improve this bill, but regret that it was not improved further.

- [End Insert]

Mr. SMITH of Texas. I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I follow suit and yield back any time remaining on this side.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. *Conyers*) that the House suspend the rules and pass the bill, H.R. 4279, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. FRELINGHUYSEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

END