

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 3325

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LEAHY

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

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

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

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

2

TITLE I—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY
LAWS

- Sec. 101. Registration of claim.
- Sec. 102. Civil remedies for infringement.
- Sec. 103. Treble damages in counterfeiting cases.
- Sec. 104. Statutory damages in counterfeiting cases.
- Sec. 105. Importation and exportation.

TITLE II—ENHANCEMENTS TO CRIMINAL INTELLECTUAL
PROPERTY LAWS

- Sec. 201. Criminal copyright infringement.
- Sec. 202. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging for works that can be copyrighted.
- Sec. 203. Unauthorized fixation.
- Sec. 204. Unauthorized recording of motion pictures.
- Sec. 205. Trafficking in counterfeit goods or services.
- Sec. 206. Forfeiture, destruction, and restitution.
- Sec. 207. Forfeiture under Economic Espionage Act.
- Sec. 208. Criminal infringement of a copyright.
- Sec. 209. Technical and conforming amendments.

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

- Sec. 301. Intellectual Property Enforcement Coordinator.
- Sec. 302. Definition.
- Sec. 303. Joint strategic plan.
- Sec. 304. Reporting.
- Sec. 305. Savings and repeals.
- Sec. 306. Authorization of appropriations.

TITLE IV—DEPARTMENT OF JUSTICE PROGRAMS

- Sec. 401. Local law enforcement grants.
- Sec. 402. Improved investigative and forensic resources for enforcement of laws related to intellectual property crimes.
- Sec. 403. Additional funding for resources to investigate and prosecute intellectual property crimes and other criminal activity involving computers.
- Sec. 404. Annual reports.

TITLE V—MISCELLANEOUS

- Sec. 501. GAO study on protection of intellectual property of manufacturers.
- Sec. 502. GAO audit and report on nonduplication and efficiency.
- Sec. 503. Sense of Congress.

1 SEC. 2. REFERENCE.

2 Any reference in this Act to the “Trademark Act of
3 1946” refers to the Act entitled “An Act to provide for
4 the registration of trademarks used in commerce, to carry

1 out the provisions of certain international conventions,
2 and for other purposes”, approved July 5, 1946 (15
3 U.S.C. 1051 et seq.).

4 **SEC. 3. DEFINITION.**

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

7 (1) any United States resident or national,

8 (2) any domestic concern (including any perma-
9 nent domestic establishment of any foreign concern),
10 and

11 (3) any foreign subsidiary or affiliate (including
12 any permanent foreign establishment) of any domes-
13 tic concern that is controlled in fact by such domes-
14 tic concern,

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

19 **TITLE I—ENHANCEMENTS TO**
20 **CIVIL INTELLECTUAL PROP-**
21 **ERTY LAWS**

22 **SEC. 101. REGISTRATION OF CLAIM.**

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

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

3 (2) in subsection (a)—

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

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

8 (3) by redesignating subsection (b) as sub-
9 section (c);

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

13 (5) by inserting after subsection (a) the fol-
14 lowing:

15 “(b)(1) A certificate of registration satisfies the re-
16 quirements of this section and section 412, regardless of
17 whether the certificate contains any inaccurate informa-
18 tion, unless—

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

22 “(B) the inaccuracy of the information, if
23 known, would have caused the Register of Copy-
24 rights to refuse registration.

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

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

11 (b) **TECHNICAL AND CONFORMING AMENDMENTS.—**

12 (1) Section 412 of title 17, United States Code,
13 is amended by striking “411(b)” and inserting
14 “411(e)”.

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

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

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

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

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

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

4 “(B) of all plates, molds, matrices, masters,
5 tapes, film negatives, or other articles by means of
6 which such copies of phonorecords may be repro-
7 duced; and

8 “(C) of records documenting the manufacture,
9 sale, or receipt of things involved in any such viola-
10 tion, provided that any records seized under this
11 subparagraph shall be taken into the custody of the
12 court.

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

21 “(3) The relevant provisions of paragraphs (2)
22 through (11) of section 34(d) of the Trademark Act (15
23 U.S.C. 1116(d)(2) through (11)) shall extend to any im-
24 poundment of records ordered under paragraph (1)(C)
25 that is based upon an ex parte application, notwith-

1 standing the provisions of rule 65 of the Federal Rules
2 of Civil Procedure. Any references in paragraphs (2)
3 through (11) of section 34(d) of the Trademark Act to
4 section 32 of such Act shall be read as references to sec-
5 tion 501 of this title, and references to use of a counterfeit
6 mark in connection with the sale, offering for sale, or dis-
7 tribution of goods or services shall be read as references
8 to infringement of a copyright.”.

9 (b) PROTECTIVE ORDER FOR SEIZED RECORDS.—
10 Section 34(d)(7) of the Trademark Act (15 U.S.C.
11 1116(d)(7)) is amended to read as follows:

12 “(7) Any materials seized under this subsection
13 shall be taken into the custody of the court. For sei-
14 zures made under this section, the court shall enter
15 an appropriate protective order with respect to dis-
16 covery and use of any records or information that
17 has been seized. The protective order shall provide
18 for appropriate procedures to ensure that confiden-
19 tial, private, proprietary, or privileged information
20 contained in such records is not improperly disclosed
21 or used.”.

22 **SEC. 103. TREBLE DAMAGES IN COUNTERFEITING CASES.**

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

1 “(b) In assessing damages under subsection (a) for
2 any violation of section 32(1)(a) of this Act or section
3 220506 of title 36, United States Code, in a case involving
4 use of a counterfeit mark or designation (as defined in
5 section 34(d) of this Act), the court shall, unless the court
6 finds extenuating circumstances, enter judgment for three
7 times such profits or damages, whichever amount is great-
8 er, together with a reasonable attorney’s fee, if the viola-
9 tion consists of—

10 “(1) intentionally using a mark or designation,
11 knowing such mark or designation is a counterfeit
12 mark (as defined in section 34(d) of this Act), in
13 connection with the sale, offering for sale, or dis-
14 tribution of goods or services; or

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

20 In such a case, the court may award prejudgment interest
21 on such amount at an annual interest rate established
22 under section 6621(a)(2) of the Internal Revenue Code of
23 1986, beginning on the date of the service of the claim-
24 ant’s pleadings setting forth the claim for such entry of

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

3 **SEC. 104. STATUTORY DAMAGES IN COUNTERFEITING**
4 **CASES.**

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

7 (1) in paragraph (1)—

8 (A) by striking “\$500” and inserting
9 “\$1,000”; and

10 (B) by striking “\$100,000” and inserting
11 “\$200,000”; and

12 (2) in paragraph (2), by striking “\$1,000,000”
13 and inserting “\$2,000,000”.

14 **SEC. 105. IMPORTATION AND EXPORTATION.**

15 (a) IN GENERAL.—The heading for chapter 6 of title
16 17, United States Code, is amended to read as follows:

17 **“CHAPTER 6—MANUFACTURING REQUIRE-**
18 **MENTS, IMPORTATION, AND EXPOR-**
19 **TATION”.**

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

22 (1) by redesignating paragraphs (1) through
23 (3) as subparagraphs (A) through (C), respectively,
24 and moving such subparagraphs 2 ems to the right;

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

3 “(1) IMPORTATION.—”;

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

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

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

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

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

24 (A) by striking “importation, for the pri-
25 vate use of the importer” and inserting “import-

1 tation or exportation, for the private use of the
2 importer or exporter”; and

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

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

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

9 (B) in subsection (b)—

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

12 (ii) by striking “the United States Cus-
13 toms Service” and inserting “United States
14 Customs and Border Protection”; and

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

18 (2) Section 601(b)(2) of title 17, United States Code,
19 is amended by striking “the United States Customs Serv-
20 ice” and inserting “United States Customs and Border
21 Protection”.

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

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

1 **TITLE II—ENHANCEMENTS TO**
2 **CRIMINAL INTELLECTUAL**
3 **PROPERTY LAWS**

4 **SEC. 201. CRIMINAL COPYRIGHT INFRINGEMENT.**

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

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

13 (b) SEIZURES AND FORFEITURES.—

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

16 (2) TECHNICAL AND CONFORMING AMEND-
17 MENT.—The table of sections for chapter 5 of title
18 17, United States Code, is amended by striking the
19 item relating to section 509.

20 **SEC. 202. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT**
21 **LABELS, OR COUNTERFEIT DOCUMENTATION**
22 **OR PACKAGING FOR WORKS THAT CAN BE**
23 **COPYRIGHTED.**

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

1 (1) in subsection (a)—

2 (A) by redesignating subparagraphs (A)
3 through (G) as clauses (i) through (vii), respec-
4 tively;

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

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

10 (2) by amending subsection (d) to read as fol-
11 lows:

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

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

19 **SEC. 203. UNAUTHORIZED FIXATION.**

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

22 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;
23 RESTITUTION.—Forfeiture, destruction, and restitution
24 relating to this section shall be subject to section 2323,

1 to the extent provided in that section, in addition to any
2 other similar remedies provided by law.”.

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

12 **SEC. 204. UNAUTHORIZED RECORDING OF MOTION PIC-**
13 **TURES.**

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

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

21 **SEC. 205. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**
22 **ICES.**

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

25 (1) in subsection (a)—

1 (A) by striking “WHOEVER” and inserting
2 “OFFENSE.—”

3 “(1) IN GENERAL.—Whoever;”;

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

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

7 “(2) SERIOUS BODILY HARM OR DEATH.—

8 “(A) SERIOUS BODILY HARM.—If the of-
9 fender knowingly or recklessly causes or at-
10 tempts to cause serious bodily injury from con-
11 duct in violation of paragraph (1), the penalty
12 shall be a fine under this title or imprisonment
13 for not more than 20 years, or both.

14 “(B) DEATH.—If the offender knowingly
15 or recklessly causes or attempts to cause death
16 from conduct in violation of paragraph (1), the
17 penalty shall be a fine under this title or im-
18 prisonment for any term of years or for life, or
19 both.”; and

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

21 “(h) TRANSSHIPMENT AND EXPORTATION.—No
22 goods or services, the trafficking in of which is prohibited
23 by this section, shall be transshipped through or exported
24 from the United States. Any such transshipment or expor-
25 tation shall be deemed a violation of section 42 of an Act

1 to provide for the registration of trademarks used in com-
2 merce, to carry out the provisions of certain international
3 conventions, and for other purposes, approved July 5,
4 1946 (commonly referred to as the ‘Trademark Act of
5 1946’ or the ‘Lanham Act’).”.

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

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

14 **SEC. 206. FORFEITURE, DESTRUCTION, AND RESTITUTION.**

15 (a) IN GENERAL.—Chapter 113 of title 18, United
16 States Code, is amended by adding at the end the fol-
17 lowing:

18 **“SEC. 2323. FORFEITURE, DESTRUCTION, AND RESTITU-**
19 **TION.**

20 “(a) CIVIL FORFEITURE.—

21 “(1) PROPERTY SUBJECT TO FORFEITURE.—

22 The following property is subject to forfeiture to the
23 United States Government:

24 “(A) Any article, the making or trafficking
25 of which is, prohibited under section 506 of title

1 17, or section 2318, 2319, 2319A, 2319B, or
2 2320, or chapter 90, of this title.

3 “(B) Any property used, or intended to be
4 used, in any manner or part to commit or facili-
5 tate the commission of an offense referred to in
6 subparagraph (A).

7 “(C) Any property constituting or derived
8 from any proceeds obtained directly or indi-
9 rectly as a result of the commission of an of-
10 fense referred to in subparagraph (A).

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

1 “(b) CRIMINAL FORFEITURE.—

2 “(1) PROPERTY SUBJECT TO FORFEITURE.—

3 The court, in imposing sentence on a person con-
4 victed of an offense under section 506 of title 17, or
5 section 2318, 2319, 2319A, 2319B, or 2320, or
6 chapter 90, of this title, shall order, in addition to
7 any other sentence imposed, that the person forfeit
8 to the United States Government any property sub-
9 ject to forfeiture under subsection (a) for that of-
10 fense.

11 “(2) PROCEDURES.—

12 “(A) IN GENERAL.—The forfeiture of
13 property under paragraph (1), including any
14 seizure and disposition of the property and any
15 related judicial or administrative proceeding,
16 shall be governed by the procedures set forth in
17 section 413 of the Comprehensive Drug Abuse
18 Prevention and Control Act of 1970 (21 U.S.C.
19 853), other than subsection (d) of that section.

20 “(B) DESTRUCTION.—At the conclusion of
21 the forfeiture proceedings, the court, unless oth-
22 erwise requested by an agency of the United
23 States shall order that any—

24 “(i) forfeited article or component of
25 an article bearing or consisting of a coun-

1 terfeit mark be destroyed or otherwise dis-
2 posed of according to law; and

3 “(ii) infringing items or other prop-
4 erty described in subsection (a)(1)(A) and
5 forfeited under paragraph (1) of this sub-
6 section be destroyed or otherwise disposed
7 of according to law.

8 “(c) RESTITUTION.—When a person is convicted of
9 an offense under section 506 of title 17 or section 2318,
10 2319, 2319A, 2319B, or 2320, or chapter 90, of this title,
11 the court, pursuant to sections 3556, 3663A, and 3664
12 of this title, shall order the person to pay restitution to
13 any victim of the offense as an offense against property
14 referred to in section 3663A(c)(1)(A)(ii) of this title.”.

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

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

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

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

22 **“SEC. 1834. CRIMINAL FORFEITURE.**

23 “Forfeiture, destruction, and restitution relating to
24 this chapter shall be subject to section 2323, to the extent

1 provided in that section, in addition to any other similar
2 remedies provided by law.”.

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

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

6 (1) in subsection (b)(2)—

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

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

12 (2) in subsection (c)(2)—

13 (A) by inserting “is a felony and” after
14 “offense” the first place such term appears;
15 and

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

18 (3) in subsection (d)(3)—

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

22 (B) by inserting “under subsection (a)”
23 before the semicolon; and

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

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

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

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

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

12 (A) in subsection (b), by striking “and
13 509”;

14 (B) in subsection (c)—

15 (i) in paragraph (2), by striking “and
16 509”;

17 (ii) in paragraph (3), by striking “sec-
18 tions 509 and 510” and inserting “section
19 510”; and

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

22 (C) in subsection (e)—

23 (i) in paragraph (1), by striking “sec-
24 tions 509 and 510” and inserting “section
25 510”; and

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

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

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

7 (B) in paragraph (6), by striking “and
8 509”.

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

11 (A) in paragraph (6), by striking “sections
12 509 and 510” and inserting “section 510”;

13 (B) in paragraph (7)(A), by striking “and
14 509”;

15 (C) in paragraph (8), by striking “and
16 509”; and

17 (D) in paragraph (13), by striking “and
18 509”.

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

21 (A) in subsection (d), by striking “and
22 509”;

23 (B) in subsection (e), by striking “sections
24 509 and 510” and inserting “section 510”; and

1 (C) in subsection (f)(1), by striking “and
2 509”.

3 (6) Section 411(b) of title 17, United States
4 Code, is amended by striking “sections 509 and
5 510” and inserting “section 510”.

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

9 **TITLE III—COORDINATION AND**
10 **STRATEGIC PLANNING OF**
11 **FEDERAL EFFORT AGAINST**
12 **COUNTERFEITING AND IN-**
13 **FRINGEMENT**

14 **SEC. 301. INTELLECTUAL PROPERTY ENFORCEMENT COOR-**
15 **DINATOR.**

16 (a) INTELLECTUAL PROPERTY ENFORCEMENT CO-
17 ORDINATOR.—The President shall appoint, by and with
18 the advice and consent of the Senate, an Intellectual Prop-
19 erty Enforcement Coordinator (in this title referred to as
20 the “IPEC”) to serve within the Executive Office of the
21 President. As an exercise of the rulemaking power of the
22 Senate, any nomination of the IPEC submitted to the Sen-
23 ate for confirmation, and referred to a committee, shall
24 be referred to the Committee on the Judiciary.

25 (b) DUTIES OF IPEC.—

1 (1) IN GENERAL.—The IPEC shall—

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

5 (B) coordinate the development of the
6 Joint Strategic Plan against counterfeiting and
7 infringement by the advisory committee under
8 section 303;

9 (C) assist, at the request of the depart-
10 ments and agencies listed in subsection
11 (b)(3)(A), in the implementation of the Joint
12 Strategic Plan;

13 (D) facilitate the issuance of policy guid-
14 ance to departments and agencies on basic
15 issues of policy and interpretation, to the extent
16 necessary to assure the coordination of intellec-
17 tual property enforcement policy and consist-
18 ency with other law;

19 (E) report to the President and report to
20 Congress, to the extent consistent with law, re-
21 garding domestic and international intellectual
22 property enforcement programs;

23 (F) report to Congress, as provided in sec-
24 tion 304, on the implementation of the Joint
25 Strategic Plan, and make recommendations, if

1 any and as appropriate, to Congress for im-
2 provements in Federal intellectual property laws
3 and enforcement efforts; and

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

6 (2) LIMITATION ON AUTHORITY.—The IPEC
7 may not control or direct any law enforcement agen-
8 cy, including the Department of Justice, in the exer-
9 cise of its investigative or prosecutorial authority.

10 (3) ADVISORY COMMITTEE.—

11 (A) ESTABLISHMENT.—There is estab-
12 lished an interagency intellectual property en-
13 forcement advisory committee composed of the
14 IPEC, who shall chair the committee, and the
15 following members:

16 (i) Senate-confirmed representatives
17 of the following departments and agencies
18 who are involved in intellectual property
19 enforcement, and who are, or are ap-
20 pointed by, the respective heads of those
21 departments and agencies:

22 (I) The Office of Management
23 and Budget.

24 (II) Relevant units within the
25 Department of Justice, including the

1 Federal Bureau of Investigation and
2 the Criminal Division.

3 (III) The United States Patent
4 and Trademark Office and other rel-
5 evant units of the Department of
6 Commerce.

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

9 (V) The Department of State,
10 the United States Agency for Inter-
11 national Development, and the Bu-
12 reau of International Narcotics Law
13 Enforcement.

14 (VI) The Department of Home-
15 land Security, United States Customs
16 and Border Protection, and United
17 States Immigration and Customs En-
18 forcement.

19 (VII) The Food and Drug Ad-
20 ministration of the Department of
21 Health and Human Services.

22 (VIII) The Department of Agri-
23 culture.

24 (IX) Any such other agencies as
25 the President determines to be sub-

1 stantially involved in the efforts of the
2 Federal Government to combat coun-
3 terfeiting and infringement.

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

8 (B) FUNCTIONS.—The advisory committee
9 established under subparagraph (A) shall de-
10 velop the Joint Strategic Plan against counter-
11 feiting and infringement under section 303.

12 **SEC. 302. DEFINITION.**

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

20 **SEC. 303. JOINT STRATEGIC PLAN.**

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

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

3 (2) Identifying and addressing structural weak-
4 nesses, systemic flaws, or other unjustified impedi-
5 ments to effective enforcement action against the fi-
6 nancing, production, trafficking, or sale of counter-
7 feit or infringing goods, including identifying dupli-
8 cative efforts to enforce, investigate, and prosecute
9 intellectual property crimes across the Federal agen-
10 cies and Departments that comprise the Advisory
11 Committee and recommending how such duplicative
12 efforts may be minimized. Such recommendations
13 may include recommendations on how to reduce du-
14 plication in personnel, materials, technologies, and
15 facilities utilized by the agencies and Departments
16 responsible for the enforcement, investigation, or
17 prosecution of intellectual property crimes.

18 (3) Ensuring that information is identified and
19 shared among the relevant departments and agen-
20 cies, to the extent permitted by law, including re-
21 quirements relating to confidentiality and privacy,
22 and to the extent that such sharing of information
23 is consistent with Department of Justice and other
24 law enforcement protocols for handling such infor-
25 mation, to aid in the objective of arresting and pros-

1 ecuting individuals and entities that are knowingly
2 involved in the financing, production, trafficking, or
3 sale of counterfeit or infringing goods.

4 (4) Disrupting and eliminating domestic and
5 international counterfeiting and infringement net-
6 works.

7 (5) Strengthening the capacity of other coun-
8 tries to protect and enforce intellectual property
9 rights, and reducing the number of countries that
10 fail to enforce laws preventing the financing, produc-
11 tion, trafficking, and sale of counterfeit and infring-
12 ing goods.

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

17 (7) Protecting intellectual property rights over-
18 seas by—

19 (A) working with other countries and ex-
20 changing information with appropriate law en-
21 forcement agencies in other countries relating
22 to individuals and entities involved in the fi-
23 nancing, production, trafficking, or sale of
24 counterfeit and infringing goods;

1 (B) ensuring that the information referred
2 to in subparagraph (A) is provided to appro-
3 priate United States law enforcement agencies
4 in order to assist, as warranted, enforcement
5 activities in cooperation with appropriate law
6 enforcement agencies in other countries; and

7 (C) building a formal process for con-
8 sulting with companies, industry associations,
9 labor unions, and other interested groups in
10 other countries with respect to intellectual prop-
11 erty enforcement.

12 (b) **TIMING.**—Not later than 12 months after the
13 date of the enactment of this Act, and not later than De-
14 cember 31 of every third year thereafter, the IPEC shall
15 submit the joint strategic plan to the Committee on the
16 Judiciary and the Committee on Appropriations of the
17 Senate, and to the Committee on the Judiciary and the
18 Committee on Appropriations of the House of Representa-
19 tives.

20 (c) **RESPONSIBILITY OF THE IPEC.**—During the de-
21 velopment of the joint strategic plan, the IPEC—

22 (1) shall provide assistance to, and coordinate
23 the meetings and efforts of, the appropriate officers
24 and employees of departments and agencies rep-
25 resented on the advisory committee appointed under

1 section 301(b)(3) who are involved in intellectual
2 property enforcement; and

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

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

11 (1) designate personnel with expertise and expe-
12 rience in intellectual property enforcement matters
13 to work with the IPEC and other members of the
14 advisory committee; and

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

1 (e) CONTENTS OF THE JOINT STRATEGIC PLAN.—

2 Each joint strategic plan shall include the following:

3 (1) A description of the priorities identified for
4 carrying out the objectives in the joint strategic
5 plan, including activities of the Federal Government
6 relating to intellectual property enforcement.

7 (2) A description of the means to be employed
8 to achieve the priorities, including the means for im-
9 proving the efficiency and effectiveness of the Fed-
10 eral Government's enforcement efforts against coun-
11 terfeiting and infringement.

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

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

17 (5) An analysis of the threat posed by violations
18 of intellectual property rights, including the costs to
19 the economy of the United States resulting from vio-
20 lations of intellectual property laws, and the threats
21 to public health and safety created by counterfeiting
22 and infringement.

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

1 (7) A strategy for ensuring coordination among
2 the departments and agencies identified under para-
3 graph (6), which will facilitate oversight by the execu-
4 tive branch of, and accountability among, the de-
5 partments and agencies responsible for carrying out
6 the strategy.

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

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

22 (1) seek to enhance the efficiency and consist-
23 ency with which Federal resources are expended,
24 and seek to minimize duplication, overlap, or incon-
25 sistency of efforts;

1 (2) identify and give priority to those countries
2 where programs of training and technical assistance
3 can be carried out most effectively and with the
4 greatest benefit to reducing counterfeit and infring-
5 ing products in the United States market, to pro-
6 tecting the intellectual property rights of United
7 States persons and their licensees, and to protecting
8 the interests of United States persons otherwise
9 harmed by violations of intellectual property rights
10 in those countries;

11 (3) in identifying the priorities under paragraph
12 (2), be guided by the list of countries identified by
13 the United States Trade Representative under sec-
14 tion 182(a) of the Trade Act of 1974 (19 U.S.C.
15 2242(a)); and

16 (4) develop metrics to measure the effectiveness
17 of the Federal Government's efforts to improve the
18 laws and enforcement practices of foreign govern-
19 ments against counterfeiting and infringement.

20 (g) DISSEMINATION OF THE JOINT STRATEGIC
21 PLAN.—The joint strategic plan shall be posted for public
22 access on the website of the White House, and shall be
23 disseminated to the public through such other means as
24 the IPEC may identify.

1 **SEC. 304. REPORTING.**

2 (a) ANNUAL REPORT.—Not later than December 31
3 of each calendar year beginning in 2009, the IPEC shall
4 submit a report on the activities of the advisory committee
5 during the preceding fiscal year. The annual report shall
6 be submitted to Congress, and disseminated to the people
7 of the United States, in the manner specified in sub-
8 sections (b) and (g) of section 303.

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

11 (1) The progress made on implementing the
12 strategic plan and on the progress toward fulfillment
13 of the priorities identified under section 303(e)(1).

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

18 (3) The progress made in working with foreign
19 countries to investigate, arrest, and prosecute enti-
20 ties and individuals involved in the financing, pro-
21 duction, trafficking, and sale of counterfeit and in-
22 fringing goods.

23 (4) The manner in which the relevant depart-
24 ments and agencies are working together and shar-
25 ing information to strengthen intellectual property
26 enforcement.

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

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

14 (7) The progress made in strengthening the ca-
15 pacity of countries to protect and enforce intellectual
16 property rights.

17 (8) The successes and challenges in sharing
18 with other countries information relating to intellec-
19 tual property enforcement.

20 (9) The progress made under trade agreements
21 and treaties to protect intellectual property rights of
22 United States persons and their licensees.

23 (10) The progress made in minimizing duplica-
24 tive efforts, materials, facilities, and procedures of
25 the Federal agencies and Departments responsible

1 for the enforcement, investigation, or prosecution of
2 intellectual property crimes.

3 (11) Recommendations, if any and as appro-
4 priate, on how to enhance the efficiency and consist-
5 ency with which Federal funds and resources are ex-
6 pended to enforce, investigate, or prosecute intellec-
7 tual property crimes, including the extent to which
8 the agencies and Departments responsible for the
9 enforcement, investigation, or prosecution of intellec-
10 tual property crimes have utilized existing personnel,
11 materials, technologies, and facilities.

12 **SEC. 305. SAVINGS AND REPEALS.**

13 (a) TRANSITION FROM NIPLECC TO IPEC.—

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

20 (2) CONTINUITY OF PERFORMANCE OF DU-
21 TIES.—Upon confirmation by the Senate, and not-
22 withstanding paragraph (1), the IPEC may use the
23 services and personnel of the National Intellectual
24 Property Law Enforcement Coordination Council,
25 for such time as is reasonable, to perform any func-

1 tions or duties which in the discretion of the IPEC
2 are necessary to facilitate the orderly transition of
3 any functions or duties transferred from the Council
4 to the IPEC pursuant to any provision of this Act
5 or any amendment made by this Act.

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

11 (1) the investigation and prosecution of viola-
12 tions of laws that protect intellectual property
13 rights;

14 (2) the administrative enforcement, at the bor-
15 ders of the United States, of laws that protect intel-
16 lectual property rights; or

17 (3) the United States trade agreements pro-
18 gram or international trade.

19 (c) RULES OF CONSTRUCTION.—Nothing in this
20 title—

21 (1) shall derogate from the powers, duties, and
22 functions of any of the agencies, departments, or
23 other entities listed or included under section
24 301(b)(3)(A); and

1 (2) shall be construed to transfer authority re-
2 garding the control, use, or allocation of law enforce-
3 ment resources, or the initiation or prosecution of
4 individual cases or types of cases, from the respon-
5 sible law enforcement department or agency.

6 **SEC. 306. AUTHORIZATION OF APPROPRIATIONS.**

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

10 **TITLE IV—DEPARTMENT OF**
11 **JUSTICE PROGRAMS**

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

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

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

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

23 (b) GRANTS.—The Office of Justice Programs of the
24 Department of Justice may make grants to eligible State
25 or local law enforcement entities, including law enforce-

1 ment agencies of municipal governments and public edu-
2 cational institutions, for training, prevention, enforce-
3 ment, and prosecution of intellectual property theft and
4 infringement crimes (in this subsection referred to as “IP-
5 TIC grants”), in accordance with the following:

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

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

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

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

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

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

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

24 (2) ELIGIBILITY.—To be eligible to receive an
25 IP–TIC grant, a State or local government entity

1 shall provide to the Attorney General, in addition to
2 the information regularly required to be provided
3 under the Financial Guide issued by the Office of
4 Justice Programs and any other information re-
5 quired of Department of Justice's grantees—

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

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

17 (C) a plan for coordinating the programs
18 funded under this section with other federally
19 funded technical assistance and training pro-
20 grams, including directly funded local programs
21 such as the Edward Byrne Memorial Justice
22 Assistance Grant Program authorized by sub-
23 part 1 of part E of title I of the Omnibus
24 Crime Control and Safe Streets Act of 1968
25 (42 U.S.C. 3750 et seq.).

1 (3) MATCHING FUNDS.—The Federal share of
2 an IP–TIC grant may not exceed 50 percent of the
3 costs of the program or proposal funded by the IP–
4 TIC grant.

5 (4) AUTHORIZATION OF APPROPRIATIONS.—

6 (A) AUTHORIZATION.—There is authorized
7 to be appropriated to carry out this subsection
8 the sum of \$25,000,000 for each of fiscal years
9 2009 through 2013.

10 (B) LIMITATION.—Of the amount made
11 available to carry out this subsection in any fis-
12 cal year, not more than 3 percent may be used
13 by the Attorney General for salaries and admin-
14 istrative expenses.

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

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

24 (1) ensure that there are at least 10 additional
25 operational agents of the Federal Bureau of Inves-

1 tigation designated to support the Computer Crime
2 and Intellectual Property Section of the Criminal
3 Division of the Department of Justice in the inves-
4 tigation and coordination of intellectual property
5 crimes;

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

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

20 (4) ensure the implementation of a regular and
21 comprehensive training program—

22 (A) the purpose of which is to train agents
23 of the Federal Bureau of Investigation in the
24 investigation and prosecution of such crimes

1 and the enforcement of laws related to intellec-
2 tual property crimes; and

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

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

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

1 **SEC. 403. ADDITIONAL FUNDING FOR RESOURCES TO IN-**
2 **VESTIGATE AND PROSECUTE INTELLECTUAL**
3 **PROPERTY CRIMES AND OTHER CRIMINAL**
4 **ACTIVITY INVOLVING COMPUTERS.**

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

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

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

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

17 (2) **AVAILABILITY.**—Any amounts appropriated
18 under paragraph (1) shall remain available until ex-
19 pended.

20 (b) **USE OF ADDITIONAL FUNDING.**—Funds made
21 available under subsection (a) shall be used by the Direc-
22 tor of the Federal Bureau of Investigation and the Attor-
23 ney General, for the Federal Bureau of Investigation and
24 the Criminal Division of the Department of Justice, re-
25 spectively, to—

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

1 (A) investigate intellectual property crimes
2 and other crimes committed through the use of
3 computers and other information technology, in-
4 cluding through the use of the Internet; and

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

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

14 **SEC. 404. ANNUAL REPORTS.**

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

1 (1) With respect to grants issued under section
2 401, the number and identity of State and local law
3 enforcement grant applicants, the number of grants
4 issued, the dollar value of each grant, including a
5 break down of such value showing how the recipient
6 used the funds, the specific purpose of each grant,
7 and the reports from recipients of the grants on the
8 efficacy of the program supported by the grant. The
9 Department of Justice shall use the information pro-
10 vided by the grant recipients to produce a statement
11 for each individual grant. Such statement shall state
12 whether each grantee has accomplished the purposes
13 of the grant as established in section 401(b). Those
14 grantees not in compliance with the requirements of
15 this title shall be subject, but not limited to, sanc-
16 tions as described in the Financial Guide issued by
17 the Office of Justice Programs at the Department of
18 Justice.

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

1 (3) With respect to the training program au-
2 thorized under section 402(a)(4), the number of
3 agents of the Federal Bureau of Investigation par-
4 ticipating in such program, the elements of the
5 training program, and the subject matters covered
6 by the program.

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

11 (5) With respect to the authorizations under
12 section 403—

13 (A) the number of law enforcement officers
14 hired and the number trained;

15 (B) the number and type of investigations
16 and prosecutions resulting from the hiring and
17 training of such law enforcement officers;

18 (C) the defendants involved in any such
19 prosecutions;

20 (D) any penalties imposed in each such
21 successful prosecution;

22 (E) the advanced tools of forensic science
23 procured to investigate, prosecute, and study
24 computer hacking or intellectual property
25 crimes; and

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

3 (6) Any other information that the Attorney
4 General may consider relevant to inform Congress
5 on the effective use of the resources authorized
6 under sections 401, 402, and 403.

7 (7) A summary of the efforts, activities, and re-
8 sources the Department of Justice has allocated to
9 the enforcement, investigation, and prosecution of
10 intellectual property crimes, including—

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

23 (B) a summary of the overall successes
24 and failures of such policies and efforts;

1 (C) a review of the investigative and pros-
2 ecution activity of the Department of Justice
3 with respect to intellectual property crimes, in-
4 cluding—

5 (i) the number of investigations initi-
6 ated related to such crimes;

7 (ii) the number of arrests related to
8 such crimes; and

9 (iii) the number of prosecutions for
10 such crimes, including—

11 (I) the number of defendants in-
12 volved in such prosecutions;

13 (II) whether the prosecution re-
14 sulted in a conviction; and

15 (III) the sentence and the statu-
16 tory maximum for such crime, as well
17 as the average sentence imposed for
18 such crime; and

19 (D) a Department-wide assessment of the
20 staff, financial resources, and other resources
21 (such as time, technology, and training) devoted
22 to the enforcement, investigation, and prosecu-
23 tion of intellectual property crimes, including
24 the number of investigators, prosecutors, and

1 forensic specialists dedicated to investigating
2 and prosecuting intellectual property crimes.

3 (8) A summary of the efforts, activities, and re-
4 sources that the Department of Justice has taken
5 to—

6 (A) minimize duplicating the efforts, mate-
7 rials, facilities, and procedures of any other
8 Federal agency responsible for the enforcement,
9 investigation, or prosecution of intellectual
10 property crimes; and

11 (B) enhance the efficiency and consistency
12 with which Federal funds and resources are ex-
13 pended to enforce, investigate, or prosecute in-
14 tellectual property crimes, including the extent
15 to which the Department has utilized existing
16 personnel, materials, technologies, and facilities.

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

1 (1) a review of the policies and efforts of the
2 Department of Justice related to the prevention and
3 investigation of intellectual property crimes, includ-
4 ing efforts at the Office of Justice Programs, the
5 Criminal Division of the Department of Justice, the
6 Executive Office of United States Attorneys, the Of-
7 fice of the Attorney General, the Office of the Dep-
8 uty Attorney General, the Office of Legal Policy,
9 and any other agency or bureau of the Department
10 of Justice whose activities relate to intellectual prop-
11 erty;

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

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

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

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

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

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

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

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

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

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

1 (1) a review of the policies and efforts of the
2 Bureau related to the prevention and investigation
3 of intellectual property crimes;

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

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

9 (A) the number of investigations initiated
10 related to such crimes;

11 (B) the number of arrests related to such
12 crimes; and

13 (C) the number of prosecutions for such
14 crimes, including—

15 (i) the number of defendants involved
16 in such prosecutions;

17 (ii) whether the prosecution resulted
18 in a conviction; and

19 (iii) the sentence and the statutory
20 maximum for such crime, as well as the
21 average sentence imposed for such crime;
22 and

23 (4) a Bureau-wide assessment of the staff, fi-
24 nancial resources, and other resources (such as time,
25 technology, and training) devoted to the enforce-

1 ment, investigation, and prosecution of intellectual
2 property crimes, including the number of investiga-
3 tors, prosecutors, and forensic specialists dedicated
4 to investigating and prosecuting intellectual property
5 crimes.

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

15 (1) a review of the policies and efforts of the
16 Bureau related to the prevention and investigation
17 of intellectual property crimes;

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

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

23 (A) the number of investigations initiated
24 related to such crimes;

1 (B) the number of arrests related to such
2 crimes; and

3 (C) the number of prosecutions for such
4 crimes, including—

5 (i) the number of defendants involved
6 in such prosecutions;

7 (ii) whether the prosecution resulted
8 in a conviction; and

9 (iii) the sentence and the statutory
10 maximum for such crime, as well as the
11 average sentence imposed for such crime;
12 and

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

21 **TITLE V—MISCELLANEOUS**

22 **SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL** 23 **PROPERTY OF MANUFACTURERS.**

24 (a) STUDY.—The Comptroller General of the United
25 States shall conduct a study to help determine how the

1 Federal Government could better protect the intellectual
2 property of manufacturers by quantification of the im-
3 pacts of imported and domestic counterfeit goods on—

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

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

7 (b) CONTENTS.—In conducting the study required
8 under subsection (a), the Comptroller General shall exam-
9 ine—

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

13 (2) the impacts on domestic manufacturers in
14 the United States of current law regarding defend-
15 ing intellectual property, including patent, trade-
16 mark, and copyright protections;

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

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

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

1 (6) any changes to current statutes or rules
2 that would need to be implemented to more effec-
3 tively protect the intellectual property rights of man-
4 ufacturers.

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

9 **SEC. 502. GAO AUDIT AND REPORT ON NONDUPLICATION**
10 **AND EFFICIENCY.**

11 Not later than 2 years after the date of enactment
12 of this Act, the Comptroller General shall conduct an audit
13 and submit a report to the Committee on the Judiciary
14 of the Senate and to the Committee on the Judiciary of
15 the House of Representatives on—

16 (1) the efforts, activities, and actions of the In-
17 tellectual Property Enforcement Coordinator and the
18 Attorney General in achieving the goals and pur-
19 poses of this Act, as well as in carrying out any re-
20 sponsibilities or duties assigned to each such indi-
21 vidual or agency under this Act;

22 (2) any possible legislative, administrative, or
23 regulatory changes that Comptroller General rec-
24 ommends be taken by or on behalf of the Intellectual
25 Property Enforcement Coordinator or the Attorney

1 General to better achieve such goals and purposes,
2 and to more effectively carry out such responsibil-
3 ities and duties;

4 (3) the effectiveness of any actions taken and
5 efforts made by the Intellectual Property Enforce-
6 ment Coordinator and the Attorney General to—

7 (A) minimize duplicating the efforts, mate-
8 rials, facilities, and procedures of any other
9 Federal agency responsible for the enforcement,
10 investigation, or prosecution of intellectual
11 property crimes; and

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

21 (4) any actions or efforts that the Comptroller
22 General recommends be taken by or on behalf of the
23 Intellectual Property Enforcement Coordinator and
24 the Attorney General to reduce duplication of efforts
25 and increase the efficiency and consistency with

1 which Federal funds and resources are expended to
2 enforce, investigate, or prosecute intellectual prop-
3 erty crimes.

4 **SEC. 503. SENSE OF CONGRESS.**

5 It is the sense of Congress that—

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

10 (2) the United States intellectual property in-
11 dustries continue to represent a major source of cre-
12 ativity and innovation, business start-ups, skilled job
13 creation, exports, economic growth, and competitive-
14 ness;

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

20 (4) the growing number of willful violations of
21 existing Federal criminal laws involving counter-
22 feiting and infringement by actors in the United
23 States and, increasingly, by foreign-based individuals
24 and entities is a serious threat to the long-term vi-

1 tality of the United States economy and the future
2 competitiveness of United States industry;

3 (5) terrorists and organized crime utilize piracy,
4 counterfeiting, and infringement to fund some of
5 their activities;

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

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

14 (8) with respect to criminal counterfeiting and
15 infringement of computer software, including those
16 by foreign-owned or foreign-controlled entities, the
17 Attorney General should give priority to cases—

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

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

1 (C) where the counterfeited or infringing
2 goods or services enables the enterprise to un-
3 fairly compete against the legitimate rights
4 holder; or

5 (D) where there is actual knowledge of the
6 theft of intellectual property by the directors or
7 officers of the enterprise.