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 is8 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. 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 FEDERAL EFFORT AGAINST COUNTERFEITING AND INFRINGEMENT

- 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 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

out the provisions of certain international conventions,
 and for other purposes", approved July 5, 1946 (15)
 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 perma9 nent domestic establishment of any foreign concern),
10 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,

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 de18 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	(b) Technical and Conforming Amendments.—
7	(1) Section 412 of title 17, United States Code,
8	is amended by striking "411(b)" and inserting
9	"411(c)".
10	(2) The item relating to section 411 in the table
11	of sections for chapter 4 of title 17, United States
12	Code, is amended to read as follows:
	"Sec. 411. Registration and civil infringement actions.".
13	SEC. 102. CIVIL REMEDIES FOR INFRINGEMENT.
13 14	SEC. 102. CIVIL REMEDIES FOR INFRINGEMENT. (a) IN GENERAL.—Section 503(a) of title 17, United
14	(a) IN GENERAL.—Section 503(a) of title 17, United
14 15	(a) IN GENERAL.—Section 503(a) of title 17, UnitedStates Code, is amended to read as follows:"(a)(1) At any time while an action under this title
14 15 16	(a) IN GENERAL.—Section 503(a) of title 17, UnitedStates Code, is amended to read as follows:"(a)(1) At any time while an action under this title
14 15 16 17	 (a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended to read as follows: "(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such
14 15 16 17 18	 (a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended to read as follows: "(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable—
14 15 16 17 18 19	 (a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended to read as follows: "(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable— "(A) of all copies or phonorecords claimed to
 14 15 16 17 18 19 20 	 (a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended to read as follows: "(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable— "(A) of all copies or phonorecords claimed to have been made or used in violation of the exclusive
 14 15 16 17 18 19 20 21 	 (a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended to read as follows: "(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable— "(A) of all copies or phonorecords claimed to have been made or used in violation of the exclusive right of the copyright owner;
 14 15 16 17 18 19 20 21 22 	 (a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended to read as follows: "(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable— "(A) of all copies or phonorecords claimed to have been made or used in violation of the exclusive right of the copyright owner; "(B) of all plates, molds, matrices, masters,

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

6 "(2) For impoundments of records ordered under 7 paragraph (1)(C), the court shall enter an appropriate 8 protective order with respect to discovery and use of any 9 records or information that has been impounded. The pro-10 tective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged 11 12 information contained in such records is not improperly 13 disclosed or used.

14 "(3) The relevant provisions of paragraphs (2)15 through (11) of section 34(d) of the Trademark Act (15)U.S.C. 1116(d)(2) through (11) shall extend to any im-16 poundment of records ordered under paragraph (1)(C)17 18 that is based upon an exparte application, notwithstanding the provisions of rule 65 of the Federal Rules 19 20 of Civil Procedure. Any references in paragraphs (2) 21 through (11) of section 34(d) of the Trademark Act to 22 section 32 of such Act shall be read as references to sec-23 tion 501 of this title, and references to use of a counterfeit 24 mark in connection with the sale, offering for sale, or disO:\GRA\GRA08B64.xml

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tribution of goods or services shall be read as references
 to infringement of a copyright.".

3 (b) PROTECTIVE ORDER FOR SEIZED RECORDS.—
4 Section 34(d)(7) of the Trademark Act (15 U.S.C.
5 1116(d)(7)) is amended to read as follows:

6 "(7) Any materials seized under this subsection 7 shall be taken into the custody of the court. For sei-8 zures made under this section, the court shall enter 9 an appropriate protective order with respect to dis-10 covery and use of any records or information that 11 has been seized. The protective order shall provide 12 for appropriate procedures to ensure that confiden-13 tial, private, proprietary, or privileged information 14 contained in such records is not improperly disclosed 15 or used.".

16 SEC. 103. TREBLE DAMAGES IN COUNTERFEITING CASES.

17 Section 35(b) of the Trademark Act of 1946 (1518 U.S.C. 1117(b)) is amended to read as follows:

19 "(b) In assessing damages under subsection (a) for 20 any violation of section 32(1)(a) of this Act or section 21 220506 of title 36, United States Code, in a case involving 22 use of a counterfeit mark or designation (as defined in 23 section 34(d) of this Act), the court shall, unless the court 24 finds extenuating circumstances, enter judgment for three 25 times such profits or damages, whichever amount is great-

er, together with a reasonable attorney's fee, if the viola tion consists of—

3 "(1) intentionally using a mark or designation,
4 knowing such mark or designation is a counterfeit
5 mark (as defined in section 34(d) of this Act), in
6 connection with the sale, offering for sale, or dis7 tribution of goods or services; or

8 "(2) providing goods or services necessary to 9 the commission of a violation specified in paragraph 10 (1), with the intent that the recipient of the goods 11 or services would put the goods or services to use in 12 committing the violation.

13 In such a case, the court may award prejudgment interest on such amount at an annual interest rate established 14 15 under section 6621(a)(2) of the Internal Revenue Code of 1986, beginning on the date of the service of the claim-16 17 ant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or 18 19 for such shorter time as the court considers appropriate.". 20 SEC. 104. STATUTORY DAMAGES IN COUNTERFEITING

21 CASES.

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

24 (1) in paragraph (1)—

1	(A) by striking "\$500" and inserting
2	" \$1,000 "; and
3	(B) by striking "\$100,000" and inserting
4	"\$200,000"; and
5	(2) in paragraph (2), by striking "\$1,000,000"
6	and inserting ''\$2,000,000''.
7	SEC. 105. IMPORTATION AND EXPORTATION.
8	(a) IN GENERAL.—The heading for chapter 6 of title
9	17, United States Code, is amended to read as follows:
10	"CHAPTER 6-MANUFACTURING REQUIRE-
11	MENTS, IMPORTATION, AND EXPOR-
12	TATION".
13	(b) Amendment on Exportation.—Section 602(a)
14	of title 17, United States Code, is amended—
15	(1) by redesignating paragraphs (1) through
16	(3) as subparagraphs (A) through (C), respectively,
17	and moving such subparagraphs 2 ems to the right;
18	(2) by striking "(a)" and inserting "(a) IN-
19	FRINGING IMPORTATION OR EXPORTATION.—
20	"(1) Importation.—";
21	(3) by striking "This subsection does not apply
22	to—" and inserting the following:
23	"(2) Importation or exportation of in-
24	FRINGING ITEMS.—Importation into the United
25	States or exportation from the United States, with-

1	out the authority of the owner of copyright under
2	this title, of copies or phonorecords, the making of
3	which either constituted an infringement of copy-
4	right, or which would have constituted an infringe-
5	ment of copyright if this title had been applicable,
6	is an infringement of the exclusive right to distribute
7	copies or phonorecords under section 106, actionable
8	under sections 501 and 506.
9	"(3) EXCEPTIONS.—This subsection does not
10	apply to—";
11	(4) in paragraph $(3)(A)$ (as redesignated by
12	this subsection) by inserting "or exportation" after
13	"importation"; and
14	(5) in paragraph $(3)(B)$ (as redesignated by
15	this subsection)—
16	(A) by striking "importation, for the pri-
17	vate use of the importer" and inserting "impor-
18	tation or exportation, for the private use of the
19	importer or exporter"; and
20	(B) by inserting "or departing from the
21	United States" after "United States".
22	(c) Conforming Amendments.—(1) Section 602 of
23	title 17, United States Code, is further amended—
24	(A) in the section heading, by inserting " or
25	exportation " after " importation "; and

1	(B) in subsection (b)—
2	(i) by striking "(b) In a case" and insert-
3	ing "(b) IMPORT PROHIBITION.—In a case";
4	(ii) by striking "the United States Cus-
5	toms Service" and inserting "United States
6	Customs and Border Protection''; and
7	(iii) by striking "the Customs Service" and
8	inserting "United States Customs and Border
9	Protection".
10	(2) Section 601(b)(2) of title 17, United States Code,
11	is amended by striking "the United States Customs Serv-
12	ice" and inserting "United States Customs and Border
13	Protection".
14	(3) The item relating to chapter 6 in the table of
15	chapters for title 17, United States Code, is amended to
16	read as follows:
	"6. Manufacturing Requirements, Importation, and Exportation 601".
17	TITLE II-ENHANCEMENTS TO
18	CRIMINAL INTELLECTUAL
19	PROPERTY LAWS
20	SEC. 201. CRIMINAL COPYRIGHT INFRINGEMENT.
21	(a) Forfeiture and Destruction; Restitu-
22	TION.—Section 506(b) of title 17, United States Code, is
23	amended to read as follows:

1	"(b) Forfeiture, Destruction, and Restitu-
2	TION.—Forfeiture, destruction, and restitution relating to
3	this section shall be subject to section 2323 of title 18,
4	to the extent provided in that section, in addition to any
5	other similar remedies provided by law.".
6	(b) Seizures and Forfeitures.—
7	(1) REPEAL.—Section 509 of title 17, United
8	States Code, is repealed.
9	(2) TECHNICAL AND CONFORMING AMEND-
10	MENT.—The table of sections for chapter 5 of title
11	17, United States Code, is amended by striking the
12	item relating to section 509.
10	
13	SEC. 202. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT
13 14	LABELS, OR COUNTERFEIT DOCUMENTATION
14	LABELS, OR COUNTERFEIT DOCUMENTATION
14 15	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE
14 15 16	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED.
14 15 16 17	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED. Section 2318 of title 18, United States Code, is
14 15 16 17 18	LABELS, OR COUNTERFEIT DOCUMENTATIONOR PACKAGING FOR WORKS THAT CAN BECOPYRIGHTED.Section 2318 of title 18, United States Code, isamended—
14 15 16 17 18 19	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED. Section 2318 of title 18, United States Code, is amended— (1) in subsection (a)—
14 15 16 17 18 19 20	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED. Section 2318 of title 18, United States Code, is amended— (1) in subsection (a)— (A) by redesignating subparagraphs (A)
 14 15 16 17 18 19 20 21 	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED. Section 2318 of title 18, United States Code, is amended— (1) in subsection (a)— (A) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respec-
 14 15 16 17 18 19 20 21 22 	LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED. Section 2318 of title 18, United States Code, is amended— (1) in subsection (a)— (A) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respec- tively;

	13
1	(C) by striking "Whoever" and inserting
2	"(1) Whoever";
3	(2) by amending subsection (d) to read as fol-
4	lows:
5	"(d) Forfeiture and Destruction of Property;
6	RESTITUTION.—Forfeiture, destruction, and restitution
7	relating to this section shall be subject to section 2323,
8	to the extent provided in that section, in addition to any
9	other similar remedies provided by law."; and
10	(3) by striking subsection (e) and redesignating
11	subsection (f) as subsection (e).
12	SEC. 203. UNAUTHORIZED FIXATION.
13	(a) Section 2319A(b) of title 18, United States Code,
14	is amended to read as follows:
15	"(b) Forfeiture and Destruction of Property;
16	RESTITUTION.—Forfeiture, destruction, and restitution

17 relating to this section shall be subject to section 2323,18 to the extent provided in that section, in addition to any19 other similar remedies provided by law.".

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

ies or phonorecords that appear to consist of unauthorized
 fixations of the sounds or sounds and images of a live mu sical performance.".

4 SEC. 204. UNAUTHORIZED RECORDING OF MOTION PIC-5 TURES.

6 Section 2319B(b) of title 18, United States Code, is7 amended to read as follows:

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

13 SEC. 205. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-

14 ICES.

15 (a) IN GENERAL.—Section 2320 of title 18, United16 States Code, is amended—

17 (1) in subsection (a)—

18 (A) by striking "WHOEVER" and inserting

19 "OFFENSE.—"

20 "(1) IN GENERAL.—Whoever;";

21 (B) by moving the remaining text 2 ems to22 the right; and

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

24 "(2) Serious bodily harm or death.—

1	"(A) SERIOUS BODILY HARM.—If the of-
2	fender knowingly or recklessly causes or at-
3	tempts to cause serious bodily injury from con-
4	duct in violation of paragraph (1), the penalty
5	shall be a fine under this title or imprisonment
6	for not more than 20 years, or both.
7	"(B) DEATH.—If the offender knowingly
8	or recklessly causes or attempts to cause death
9	from conduct in violation of paragraph (1), the
10	penalty shall be a fine under this title or im-
11	prisonment for any term of years or for life, or

12 both."; and

13

(2) by adding at the end the following:

14 "(h) TRANSSHIPMENT AND EXPORTATION.—No 15 goods or services, the trafficking in of which is prohibited by this section, shall be transshipped through or exported 16 17 from the United States. Any such transshipment or exportation shall be deemed a violation of section 42 of an Act 18 to provide for the registration of trademarks used in com-19 20 merce, to carry out the provisions of certain international conventions, and for other purposes, approved July 5, 21 22 1946 (commonly referred to as the 'Trademark Act of 23 1946' or the 'Lanham Act').".

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

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

9 SEC. 206. FORFEITURE, DESTRUCTION, AND RESTITUTION.

10 (a) IN GENERAL.—Chapter 113 of title 18, United
11 States Code, is amended by adding at the end the fol12 lowing:

13 "SEC. 2323. FORFEITURE, DESTRUCTION, AND RESTITU-14 TION.

15 "(a) CIVIL FORFEITURE.—

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

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

23 "(B) Any property used, or intended to be24 used, in any manner or part to commit or facili-

tate the commission of an offense referred to in
 subparagraph (A).

3 "(C) Any property constituting or derived
4 from any proceeds obtained directly or indi5 rectly as a result of the commission of an of6 fense referred to in subparagraph (A).

7 "(2) PROCEDURES.—The provisions of chapter 8 46 relating to civil forfeitures shall extend to any 9 seizure or civil forfeiture under this section. For sei-10 zures made under this section, the court shall enter 11 an appropriate protective order with respect to dis-12 covery and use of any records or information that 13 has been seized. The protective order shall provide 14 for appropriate procedures to ensure that confiden-15 tial, private, proprietary, or privileged information 16 contained in such records is not improperly disclosed 17 or used. At the conclusion of the forfeiture pro-18 ceedings, unless otherwise requested by an agency of 19 the United States, the court shall order that any 20 property forfeited under paragraph (1) be destroyed, 21 or otherwise disposed of according to law.

22 "(b) CRIMINAL FORFEITURE.—

23 "(1) PROPERTY SUBJECT TO FORFEITURE.—
24 The court, in imposing sentence on a person con25 victed of an offense under section 506 of title 17, or

18

19

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section 2318, 2319, 2319A, 2319B, or 2320, or
 chapter 90, of this title, shall order, in addition to
 any other sentence imposed, that the person forfeit
 to the United States Government any property sub ject to forfeiture under subsection (a) for that of fense.

7 "(2) PROCEDURES.—

8 "(A) IN GENERAL.—The forfeiture of 9 property under paragraph (1), including any 10 seizure and disposition of the property and any 11 related judicial or administrative proceeding, 12 shall be governed by the procedures set forth in 13 section 413 of the Comprehensive Drug Abuse 14 Prevention and Control Act of 1970 (21 U.S.C. 15 853), other than subsection (d) of that section. 16 "(B) DESTRUCTION.—At the conclusion of

the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States shall order that any—

20 "(i) forfeited article or component of
21 an article bearing or consisting of a coun22 terfeit mark be destroyed or otherwise dis23 posed of according to law; and

24 "(ii) infringing items or other prop25 erty described in subsection (a)(1)(A) and

1	forfeited under paragraph (1) of this sub-
2	section be destroyed or otherwise disposed
3	of according to law.

4 "(c) RESTITUTION.—When a person is convicted of
5 an offense under section 506 of title 17 or section 2318,
6 2319, 2319A, 2319B, or 2320, or chapter 90, of this title,
7 the court, pursuant to sections 3556, 3663A, and 3664
8 of this title, shall order the person to pay restitution to
9 any victim of the offense as an offense against property
10 referred to in section 3663A(c)(1)(A)(ii) of this title.".

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

"Sec. 2323. Forfeiture, destruction, and restitution.".

15 SEC. 207. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.

16 Section 1834 of title 18, United States Code, is17 amended to read as follows:

18 "SEC. 1834. CRIMINAL FORFEITURE.

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

23 SEC. 208. CRIMINAL INFRINGEMENT OF A COPYRIGHT.

24 Section 2319 of title 18, United States Code, is25 amended—

1	(1) in subsection $(b)(2)$ —
2	(A) by inserting "is a felony and" after
3	"offense" the first place such term appears;
4	and
5	(B) by striking "paragraph (1)" and in-
6	serting "subsection (a)";
7	(2) in subsection $(c)(2)$ —
8	(A) by inserting "is a felony and" after
9	"offense" the first place such term appears;
10	and
11	(B) by striking "paragraph (1)" and in-
12	serting "subsection (a)";
13	(3) in subsection $(d)(3)$ —
14	(A) by inserting "is a felony and" after
15	"offense" the first place such term appears;
16	and
17	(B) by inserting "under subsection (a)"
18	before the semicolon; and
19	(4) in subsection $(d)(4)$, by inserting "is a fel-
20	ony and" after "offense" the first place such term
21	appears.
22	SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.
23	(a) Amendments to Title 17, United States
24	Code.—

1	(1) Section 109 (b)(4) of title 17, United States
2	Code, is amended by striking "505, and 509" and
3	inserting "and 505".
4	(2) Section 111 of title 17, United States Code,
5	is amended—
6	(A) in subsection (b), by striking "and
7	509'';
8	(B) in subsection (c)—
9	(i) in paragraph (2), by striking "and
10	509'';
11	(ii) in paragraph (3), by striking "sec-
12	tions 509 and 510" and inserting "section
13	510"; and
14	(iii) in paragraph (4), by striking
15	"and section 509"; and
16	(C) in subsection (e)—
17	(i) in paragraph (1), by striking "sec-
18	tions 509 and 510" and inserting "section
19	510"; and
20	(ii) in paragraph (2), by striking "and
21	509".
22	(3) Section 115(c) of title 17, United States
23	Code, is amended—
24	(A) in paragraph $(3)(G)(i)$, by striking
25	"and 509"; and

1	(B) in paragraph (6), by striking "and
2	509".
3	(4) Section 119(a) of title 17, United States
4	Code, is amended—
5	(A) in paragraph (6), by striking "sections
6	509 and 510" and inserting "section 510";
7	(B) in paragraph (7)(A), by striking "and
8	509'';
9	(C) in paragraph (8), by striking "and
10	509"; and
11	(D) in paragraph (13), by striking "and
12	509".
13	(5) Section 122 of title 17, United States Code,
14	is amended—
15	(A) in subsection (d), by striking "and
16	509";
17	(B) in subsection (e), by striking "sections
18	509 and 510" and inserting "section 510"; and
19	(C) in subsection $(f)(1)$, by striking "and
20	509".
21	(6) Section 411(b) of title 17, United States
22	Code, is amended by striking "sections 509 and
23	510" and inserting "section 510".

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

III—COORDINATION AND TITLE 4 **STRATEGIC** PLANNING OF 5 FEDERAL **EFFORT** AGAINST 6 COUNTERFEITING AND IN-7 FRINGEMENT 8

9 SEC. 301. INTELLECTUAL PROPERTY ENFORCEMENT COOR-

10 **DINATOR.**

11 (a) INTELLECTUAL PROPERTY ENFORCEMENT CO-12 ORDINATOR.—The President shall appoint, by and with 13 the advice and consent of the Senate, an Intellectual Prop-14 erty Enforcement Coordinator (in this title referred to as 15 the "IPEC") to serve within the Executive Office of the President. As an exercise of the rulemaking power of the 16 17 Senate, any nomination of the IPEC submitted to the Sen-18 ate for confirmation, and referred to a committee, shall 19 be referred to the Committee on the Judiciary.

- 20 (b) DUTIES OF IPEC.—
- 21 (1) IN GENERAL.—The IPEC shall—

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

1 coordinate the development of the (\mathbf{B}) 2 Joint Strategic Plan against counterfeiting and 3 infringement by the advisory committee under 4 section 303; 5 (C) assist in the implementation of the 6 Joint Strategic Plan by the departments and agencies listed in subsection (b)(3)(A); 7 8 (D) facilitate the issuance of policy guid-9 ance to departments and agencies on basic 10 issues of policy and interpretation, to the extent necessary to assure the coordination of intellec-11 12 tual property enforcement policy and consist-13 ency with other law; 14 (E) report to the President and report to 15 Congress, to the extent consistent with law, re-16 garding domestic and international intellectual 17 property enforcement programs; 18 (F) report to Congress, as provided in sec-19 tion 304, on the implementation of the Joint 20 Strategic Plan, and make recommendations, if 21 any and as appropriate, to Congress for im-22 provements in Federal intellectual property laws 23 and enforcement efforts; and 24 (G) carry out such other functions as the 25 President may direct.

1	(2) LIMITATION ON AUTHORITY.—The IPEC
2	may not control or direct any law enforcement agen-
3	cy, including the Department of Justice, in the exer-
4	cise of its investigative or prosecutorial authority.
5	(3) Advisory committee.—
6	(A) ESTABLISHMENT.—There is estab-
7	lished an interagency intellectual property en-
8	forcement advisory committee composed of the
9	IPEC, who shall chair the committee, and the
10	following members:
11	(i) Senate-confirmed representatives
12	of the following departments and agencies
13	who are involved in intellectual property
14	enforcement, and who are, or are ap-
15	pointed by, the respective heads of those
16	departments and agencies:
17	(I) The Office of Management
18	and Budget.
19	(II) Relevant units within the
20	Department of Justice, including the
21	Federal Bureau of Investigation and
22	the Criminal Division.
23	(III) The United States Patent
24	and Trademark Office and other rel-

1	evant units of the Department of
2	Commerce.
3	(IV) The Office of the United
4	States Trade Representative.
5	(V) The Department of State,
6	the United States Agency for Inter-
7	national Development, and the Bu-
8	reau of International Narcotics Law
9	Enforcement.
10	(VI) The Department of Home-
11	land Security, United States Customs
12	and Border Protection, and United
13	States Immigration and Customs En-
14	forcement.
15	(VII) The Food and Drug Ad-
16	ministration of the Department of
17	Health and Human Services.
18	(VIII) The Department of Agri-
19	culture.
20	(IX) Any such other agencies as
21	the President determines to be sub-
22	stantially involved in the efforts of the
23	Federal Government to combat coun-
24	terfeiting and infringement.

(ii) The Register of Copyrights, or a
 senior representative of the United States
 Copyright Office appointed by the Register
 of Copyrights.
 (B) FUNCTIONS.—The advisory committee
 established under subparagraph (A) shall de velop the Joint Strategic Plan against counter-

8 feiting and infringement under section 303.

9 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 infringed goods.

17 SEC. 303. JOINT STRATEGIC PLAN.

(a) PURPOSE.—The objectives of the Joint Strategic
Plan against counterfeiting and infringement that is referred to in section 301(b)(1)(B) (in this section referred
to as the "joint strategic plan") are the following:

(1) Reducing counterfeit and infringed goods inthe domestic and international supply chain.

24 (2) Identifying and addressing structural weak25 nesses, systemic flaws, or other unjustified impedi-

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1 ments to effective enforcement action against the fi-2 nancing, production, trafficking, or sale of counter-3 feit or infringed goods, including identifying duplica-4 tive efforts to enforce, investigate, and prosecute in-5 tellectual property crimes across the Federal agen-6 cies and Departments that comprise the Advisory 7 Committee and recommending how such duplicative 8 efforts may be minimized. Such recommendations 9 may include recommendations on how to reduce du-10 plication in personnel, materials, technologies, and 11 facilities utilized by the agencies and Departments 12 responsible for the enforcement, investigation, or 13 prosecution of intellectual property crimes.

14 (3) Ensuring that information is identified and 15 shared among the relevant departments and agen-16 cies, to the extent permitted by law, including re-17 quirements relating to confidentiality and privacy, 18 and to the extent that such sharing of information 19 is consistent with Department of Justice and other 20 law enforcement protocols for handling such infor-21 mation, to aid in the objective of arresting and pros-22 ecuting individuals and entities that are knowingly 23 involved in the financing, production, trafficking, or 24 sale of counterfeit or infringed goods.

(4) Disrupting and eliminating domestic and
 international counterfeiting and infringement net works.
 (5) Strengthening the capacity of other coun-

5 tries to protect and enforce intellectual property
6 rights, and reducing the number of countries that
7 fail to enforce laws preventing the financing, produc8 tion, trafficking, and sale of counterfeit and in9 fringed goods.

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

14 (7) Protecting intellectual property rights over-15 seas by—

16 (A) working with other countries and ex17 changing information with appropriate law en18 forcement agencies in other countries relating
19 to individuals and entities involved in the fi20 nancing, production, trafficking, or sale of in21 fringed or counterfeit goods;

(B) ensuring that the information referred
to in subparagraph (A) is provided to appropriate United States law enforcement agencies
in order to assist, as warranted, enforcement

1 activities in cooperation with appropriate law 2 enforcement agencies in other countries; and 3 (C) building a formal process for con-4 sulting with companies, industry associations, 5 labor unions, and other interested groups in 6 other countries with respect to intellectual prop-7 erty enforcement. 8 (b) TIMING.—Not later than 12 months after the 9 date of the enactment of this Act, and not later than De-10 cember 31 of every third year thereafter, the IPEC shall 11 submit the joint strategic plan to the Committee on the 12 Judiciary and the Committee on Appropriations of the 13 Senate, and to the Committee on the Judiciary and the Committee on Appropriations of the House of Representa-14 15 tives.

16 (c) RESPONSIBILITY OF THE IPEC.—During the de-17 velopment of the joint strategic plan, the IPEC—

(1) shall provide assistance to, and coordinate
the meetings and efforts of, the appropriate officers
and employees of departments and agencies represented on the advisory committee appointed under
section 301(b)(3) who are involved in intellectual
property enforcement; and

24 (2) may consult with private sector experts in25 intellectual property enforcement in furtherance of

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providing assistance to the members of the advisory
 committee appointed under section 301(b)(3).

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

7 (1) designate personnel with expertise and expe8 rience in intellectual property enforcement matters
9 to work with the IPEC and other members of the
10 advisory committee; and

11 (2) share relevant department or agency infor-12 mation with the IPEC and other members of the ad-13 visory committee, including statistical information 14 on the enforcement activities of the department or 15 agency against counterfeiting or infringement, and 16 plans for addressing the joint strategic plan, to the 17 extent permitted by law, including requirements re-18 lating to confidentiality and privacy, and to the ex-19 tent that such sharing of information is consistent 20 with Department of Justice and other law enforce-21 ment protocols for handling such information.

(e) CONTENTS OF THE JOINT STRATEGIC PLAN.—23 Each joint strategic plan shall include the following:

(1) A description of the priorities identified forcarrying out the objectives in the joint strategic

1	plan, including activities of the Federal Government
2	relating to intellectual property enforcement.
3	(2) A description of the means to be employed
4	to achieve the priorities, including the means for im-
5	proving the efficiency and effectiveness of the Fed-
6	eral Government's enforcement efforts against coun-
7	terfeiting and infringement.
8	(3) Estimates of the resources necessary to ful-
9	fill the priorities identified under paragraph (1).
10	(4) The performance measures to be used to
11	monitor results under the joint strategic plan during
12	the following year.
13	(5) An analysis of the threat posed by violations
14	of intellectual property rights, including the costs to
15	the economy of the United States resulting from vio-
16	lations of intellectual property laws, and the threats
17	to public health and safety created by counterfeiting
18	and infringement.
19	(6) An identification of the departments and
20	agencies that will be involved in implementing each
21	priority under paragraph (1).
22	(7) A strategy for ensuring coordination among
23	the departments and agencies identified under para-
24	graph (6), including a process for oversight by the
25	executive branch of, and accountability among, the

departments and agencies responsible for carrying
 out the strategy.

3 (8) Such other information as is necessary to 4 convey the costs imposed on the United States econ-5 omy by, and the threats to public health and safety 6 created by, counterfeiting and infringement, and 7 those steps that the Federal Government intends to 8 take over the period covered by the succeeding joint 9 strategic plan to reduce those costs and counter 10 those threats.

11 (f) ENHANCING ENFORCEMENT EFFORTS OF FOR-12 EIGN GOVERNMENTS.—The joint strategic plan shall in-13 clude programs to provide training and technical assist-14 ance to foreign governments for the purpose of enhancing 15 the efforts of such governments to enforce laws against 16 counterfeiting and infringement. With respect to such pro-17 grams, the joint strategic plan shall—

18 (1) seek to enhance the efficiency and consist19 ency with which Federal resources are expended,
20 and seek to minimize duplication, overlap, or incon21 sistency 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 in-

fringed 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;

7 (3) in identifying the priorities under paragraph
8 (2), be guided by the list of countries identified by
9 the United States Trade Representative under sec10 tion 182(a) of the Trade Act of 1974 (19 U.S.C.
11 2242(a)); and

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

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

21 SEC. 304. REPORTING.

(a) ANNUAL REPORT.—Not later than December 31
of each calendar year beginning in 2009, the IPEC shall
submit a report on the activities of the advisory committee
during the preceding fiscal year. The annual report shall

be submitted to Congress, and disseminated to the people
 of the United States, in the manner specified in sub sections (b) and (g) of section 303.

4 (b) CONTENTS.—The report required by this section5 shall include the following:

6 (1) The progress made on implementing the
7 strategic plan and on the progress toward fulfillment
8 of the priorities identified under section 303(e)(1).

9 (2) The progress made in efforts to encourage
10 Federal, State, and local government departments
11 and agencies to accord higher priority to intellectual
12 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 infringed goods.

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

(5) An assessment of the successes and shortcomings of the efforts of the Federal Government,
including departments and agencies represented on
the committee established under section 301(b)(3).

1	(6) Recommendations, if any and as appro-
2	priate, for any changes in enforcement statutes, reg-
3	ulations, or funding levels that the advisory com-
4	mittee considers would significantly improve the ef-
5	fectiveness or efficiency of the effort of the Federal
6	Government to combat counterfeiting and infringe-
7	ment and otherwise strengthen intellectual property
8	enforcement, including through the elimination or
9	consolidation of duplicative programs or initiatives.
10	(7) The progress made in strengthening the ca-
11	pacity of countries to protect and enforce intellectual
12	property rights.
13	(8) The successes and challenges in sharing
14	with other countries information relating to intellec-
15	tual property enforcement.
16	(9) The progress made under trade agreements
17	and treaties to protect intellectual property rights of
18	United States persons and their licensees.
19	(10) The progress made in minimizing duplica-
20	tive efforts, materials, facilities, and procedures of
21	the Federal agencies and Departments responsible
22	for the enforcement, investigation, or prosecution of
23	intellectual property crimes.
24	(11) Recommendations, if any and as appro-
25	priate, on how to enhance the efficiency and consist-

1	ency with which Federal funds and resources are ex-
2	pended to enforce, investigate, or prosecute intellec-
3	tual property crimes, including the extent to which
4	the agencies and Departments responsible for the
5	enforcement, investigation, or prosecution of intellec-
6	tual property crimes have utilized existing personnel,
7	materials, technologies, and facilities.
8	SEC. 305. SAVINGS AND REPEALS.
9	(a) TRANSITION FROM NIPLECC TO IPEC.—
10	(1) REPEAL OF NIPLECC.—Section 653 of the
11	Treasury and General Government Appropriations
12	Act, 2000 (15 U.S.C. 1128) is repealed effective
13	upon confirmation of the IPEC by the Senate and
14	publication of such appointment in the Congres-
15	sional Record.
16	(2) Continuity of performance of du-
17	TIES.—Upon confirmation by the Senate, and not-
18	withstanding paragraph (1), the IPEC may use the
19	services and personnel of the National Intellectual
20	Property Law Enforcement Coordination Council,
21	for such time as is reasonable, to perform any func-
22	tions or duties which in the discretion of the IPEC
23	are necessary to facilitate the orderly transition of
24	any functions or duties transferred from the Council

1 to the IPEC pursuant to any provision of this Act 2 or any amendment made by this Act. 3 (b) CURRENT AUTHORITIES NOT AFFECTED.—Ex-4 cept as provided in subsection (a), nothing in this title 5 shall alter the authority of any department or agency of the United States (including any independent agency) that 6 7 relates to-8 (1) the investigation and prosecution of viola-

9 tions of laws that protect intellectual property 10 rights;

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

14 (3) the United States trade agreements pro-15 gram or international trade.

16 (c) RULES OF CONSTRUCTION.—Nothing in this 17 title—

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

(2) shall be construed to transfer authority regarding the control, use, or allocation of law enforcement resources, or the initiation or prosecution of

1 individual cases or types of cases, from the respon-2 sible law enforcement department or agency. 3 SEC. 306. AUTHORIZATION OF APPROPRIATIONS. 4 (a) IN GENERAL.—There are authorized to be appro-5 priated for each fiscal year such sums as may be necessary 6 to carry out this title. TITLE IV—DEPARTMENT OF 7 JUSTICE PROGRAMS 8 9 SEC. 401. LOCAL LAW ENFORCEMENT GRANTS. 10 (a) AUTHORIZATION.—Section 2 of the Computer 11 Crime Enforcement Act (42 U.S.C. 3713) is amended— 12 (1) in subsection (b), by inserting after "com-13 puter crime" each place it appears the following: ". 14 including infringement of copyrighted works over the 15 Internet"; and 16 (2) in subsection (e)(1), relating to authoriza-17 tion of appropriations, by striking "fiscal years 2001 18 through 2004" and inserting "fiscal years 2009 19 through 2013". 20 (b) GRANTS.—The Office of Justice Programs of the 21 Department of Justice may make grants to eligible State 22 or local law enforcement entities, including law enforce-23 ment agencies of municipal governments and public edu-24 cational institutions, for training, prevention, enforce-

25 ment, and prosecution of intellectual property theft and

infringement crimes (in this subsection referred to as "IP TIC grants"), in accordance with the following:

3 (1) Use of ip-tic grant amounts.—IP-TIC 4 grants may be used to establish and develop pro-5 grams to do the following with respect to the en-6 forcement of State and local true name and address 7 laws and State and local criminal laws on anti-in-8 fringement, anti-counterfeiting, and unlawful acts 9 with respect to goods by reason of their protection 10 by a patent, trademark, service mark, trade secret, 11 or other intellectual property right under State or 12 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

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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.

8 (E) Assist State and local law enforcement 9 officers and prosecutors in acquiring computer 10 and other equipment to conduct investigations 11 and forensic analyses of evidence in matters in-12 volving those laws.

13 (F) Facilitate and promote the sharing, 14 with State and local law enforcement officers 15 and prosecutors, of the expertise and informa-16 tion of Federal law enforcement agencies about 17 the investigation, analysis, and prosecution of 18 matters involving those laws and criminal in-19 fringement of copyrighted works, including the 20 use of multijurisdictional task forces.

(2) ELIGIBILITY.—To be eligible to receive an
IP-TIC grant, a State or local government entity
shall provide to the Attorney General, in addition to
the information regularly required to be provided
under the Financial Guide issued by the Office of

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1	Justice Programs and any other information re-
2	quired of Department of Justice's grantees—
3	(A) assurances that the State in which the
4	government entity is located has in effect laws
5	described in paragraph (1);
6	(B) an assessment of the resource needs of
7	the State or local government entity applying
8	for the grant, including information on the need
9	for reimbursements of base salaries and over-
10	time costs, storage fees, and other expenditures
11	to improve the investigation, prevention, or en-
12	forcement of laws described in paragraph (1) ;
13	and
14	(C) a plan for coordinating the programs
15	funded under this section with other federally
16	funded technical assistance and training pro-
17	grams, including directly funded local programs
18	such as the Edward Byrne Memorial Justice
19	Assistance Grant Program authorized by sub-
20	part 1 of part E of title I of the Omnibus
21	Crime Control and Safe Streets Act of 1968
22	(42 U.S.C. 3750 et seq.).
23	(3) MATCHING FUNDS.—The Federal share of
24	an IP–TIC grant may not exceed 50 percent of the

1	costs of the program or proposal funded by the IP–
2	TIC grant.
3	(4) Authorization of appropriations.—
4	(A) AUTHORIZATION.—There is authorized
5	to be appropriated to carry out this subsection
6	the sum of \$25,000,000 for each of fiscal years
7	2009 through 2013.
8	(B) LIMITATION.—Of the amount made
9	available to carry out this subsection in any fis-
10	cal year, not more than 3 percent may be used
11	by the Attorney General for salaries and admin-
12	istrative expenses.
13	SEC. 402. IMPROVED INVESTIGATIVE AND FORENSIC RE-
13 14	SEC. 402. IMPROVED INVESTIGATIVE AND FORENSIC RE- SOURCES FOR ENFORCEMENT OF LAWS RE-
14	SOURCES FOR ENFORCEMENT OF LAWS RE-
14 15	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY
14 15 16	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES.
14 15 16 17	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES. (a) IN GENERAL.—Subject to the availability of ap-
14 15 16 17 18	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES. (a) IN GENERAL.—Subject to the availability of ap- propriations to carry out this subsection, the Attorney
14 15 16 17 18 19	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES. (a) IN GENERAL.—Subject to the availability of ap- propriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal
 14 15 16 17 18 19 20 	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES. (a) IN GENERAL.—Subject to the availability of ap- propriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes re-
 14 15 16 17 18 19 20 21 	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES. (a) IN GENERAL.—Subject to the availability of ap- propriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes re- lated to the theft of intellectual property—
 14 15 16 17 18 19 20 21 22 	SOURCES FOR ENFORCEMENT OF LAWS RE- LATED TO INTELLECTUAL PROPERTY CRIMES. (a) IN GENERAL.—Subject to the availability of ap- propriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes re- lated to the theft of intellectual property— (1) ensure that there are at least 10 additional

Division of the Department of Justice in the inves tigation and coordination of intellectual property
 crimes;

4 (2) ensure that any Computer Hacking and In-5 tellectual Property Crime Unit in the Department of 6 Justice is supported by at least 1 agent of the Fed-7 eral Bureau of Investigation (in addition to any 8 agent supporting such unit as of the date of the en-9 actment of this Act) to support such unit for the 10 purpose of investigating or prosecuting intellectual 11 property crimes;

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

(4) ensure the implementation of a regular andcomprehensive training program—

20 (A) the purpose of which is to train agents
21 of the Federal Bureau of Investigation in the
22 investigation and prosecution of such crimes
23 and the enforcement of laws related to intellec24 tual property crimes; and

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

4 (b) ORGANIZED CRIME PLAN.—Subject to the avail-5 ability of appropriations to carry out this subsection, and not later than 180 days after the date of the enactment 6 7 of this Act, the Attorney General, through the United 8 States Attorneys' Offices, the Computer Crime and Intel-9 lectual Property section, and the Organized Crime and 10 Racketeering section of the Department of Justice, and in consultation with the Federal Bureau of Investigation 11 12 and other Federal law enforcement agencies, such as the 13 Department of Homeland Security, shall create and implement a comprehensive, long-range plan to investigate and 14 15 prosecute international organized crime syndicates engaging in or supporting crimes relating to the theft of intellec-16 tual property. 17

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

21	SEC. 403. ADDITIONAL FUNDING FOR RESOURCES TO IN-
22	VESTIGATE AND PROSECUTE CRIMINAL AC-
23	TIVITY INVOLVING COMPUTERS.
24	(a) Additional Funding for Resources.—

1	(1) AUTHORIZATION.—In addition to amounts
2	otherwise authorized for resources to investigate and
3	prosecute intellectual property crimes and other
4	criminal activity involving computers, there are au-
5	thorized to be appropriated for each of the fiscal
6	years 2009 through 2013—
7	(A) \$10,000,000 to the Director of the
8	Federal Bureau of Investigation; and
9	(B) \$10,000,000 to the Attorney General
10	for the Criminal Division of the Department of
11	Justice.
12	(2) AVAILABILITY.—Any amounts appropriated
13	under paragraph (1) shall remain available until ex-
14	pended.
15	(b) USE OF ADDITIONAL FUNDING.—Funds made
16	available under subsection (a) shall be used by the Direc-
17	tor of the Federal Bureau of Investigation and the Attor-
18	ney General, for the Federal Bureau of Investigation and
19	the Criminal Division of the Department of Justice, re-
20	spectively, to—
21	(1) hire and train law enforcement officers to—
22	(A) investigate intellectual property crimes
23	and other crimes committed through the use of
24	computers and other information technology, in-
25	cluding through the use of the Internet; and

1 (B) assist in the prosecution of such 2 crimes; and

3 (2) enable relevant units of the Department of
4 Justice, including units responsible for investigating
5 computer hacking or intellectual property crimes, to
6 procure advanced tools of forensic science and expert
7 computer forensic assistance, including from non8 governmental entities, to investigate, prosecute, and
9 study such crimes.

10 SEC. 404. ANNUAL REPORTS.

(a) REPORT OF THE ATTORNEY GENERAL.-Not 11 12 later than 1 year after the date of the enactment of this 13 Act, and annually thereafter, the Attorney General shall 14 submit a report to Congress on actions taken to carry out this title. The initial report required under this subsection 15 shall be submitted by October 1, 2009. All subsequent an-16 17 nual reports shall be submitted by October 1st of each 18 fiscal year thereafter. The report required under this sub-19 section may be submitted as part of the annual perform-20 ance report of the Department of Justice, and shall in-21 clude the following:

(1) With respect to grants issued under section
401, the number and identity of State and local law
enforcement grant applicants, the number of grants
issued, the dollar value of each grant, including a

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

(2) With respect to the additional agents of the
Federal Bureau of Investigation authorized under
paragraphs (1) and (2) of section 402(a), the number of investigations and actions in which such
agents were engaged, the type of each action, the
resolution of each action, and any penalties imposed
in each action.

(3) With respect to the training program authorized under section 402(a)(4), the number of agents of the Federal Bureau of Investigation participating in such program, the elements of the

1	training program, and the subject matters covered
2	by the program.
3	(4) With respect to the organized crime plan
4	authorized under section 402(b), the number of or-
5	ganized crime investigations and prosecutions result-
6	ing from such plan.
7	(5) With respect to the authorizations under
8	section 403—
9	(A) the number of law enforcement officers
10	hired and the number trained;
11	(B) the number and type of investigations
12	and prosecutions resulting from the hiring and
13	training of such law enforcement officers;
14	(C) the defendants involved in any such
15	prosecutions;
16	(D) any penalties imposed in each such
17	successful prosecution;
18	(E) the advanced tools of forensic science
19	procured to investigate, prosecute, and study
20	computer hacking or intellectual property
21	crimes; and
22	(F) the number and type of investigations
23	and prosecutions in such tools were used.
24	(6) Any other information that the Attorney
25	General may consider relevant to inform Congress

1	on the effective use of the resources authorized
2	under sections 401, 402, and 403.
3	(7) A summary of the efforts, activities, and re-
4	sources the Department of Justice has allocated to
5	the enforcement, investigation, and prosecution of
6	intellectual property crimes, including—
7	(A) a review of the policies and efforts of
8	the Department of Justice related to the pre-
9	vention and investigation of intellectual prop-
10	erty crimes, including efforts at the Office of
11	Justice Programs, the Criminal Division of the
12	Department of Justice, the Executive Office of
13	United States Attorneys, the Office of the At-
14	torney General, the Office of the Deputy Attor-
15	ney General, the Office of Legal Policy, and any
16	other agency or bureau of the Department of
17	Justice whose activities relate to intellectual
18	property;
19	(B) a summary of the overall successes
20	and failures of such policies and efforts;
21	(C) a review of the investigative and pros-
22	ecution activity of the Department of Justice
23	with respect to intellectual property crimes, in-
24	cluding-

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1	(i) the number of investigations initi-
2	ated related to such crimes;
3	(ii) the number of arrests related to
4	such crimes; and
5	(iii) the number of prosecutions for
6	such crimes, including—
7	(I) the number of defendants in-
8	volved in such prosecutions;
9	(II) whether the prosecution re-
10	sulted in a conviction; and
11	(III) the sentence and the statu-
12	tory maximum for such crime, as well
13	as the average sentence imposed for
14	such crime; and
15	(D) a Department-wide assessment of the
16	staff, financial resources, and other resources
17	(such as time, technology, and training) devoted
18	to the enforcement, investigation, and prosecu-
19	tion of intellectual property crimes, including
20	the number of investigators, prosecutors, and
21	forensic specialists dedicated to investigating
22	and prosecuting intellectual property crimes.
23	(8) A summary of the efforts, activities, and re-
24	sources that the Department of Justice has taken
25	to—

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

6 (B) enhance the efficiency and consistency 7 with which Federal funds and resources are ex-8 pended to enforce, investigate, or prosecute in-9 tellectual property crimes, including the extent 10 to which the Department has utilized existing 11 personnel, materials, technologies, and facilities. 12 INITIAL REPORT OF THE ATTORNEY GEN-(b) 13 ERAL.—The first report required to be submitted by the Attorney General under subsection (a) shall include a 14 15 summary of the efforts, activities, and resources the Department of Justice has allocated in the 5 years prior to 16 17 the date of enactment of this Act, as well as the 1-year period following such date of enactment, to the enforce-18 ment, investigation, and prosecution of intellectual prop-19 20 erty crimes, including—

(1) a review of the policies and efforts of the
Department of Justice related to the prevention and
investigation of intellectual property crimes, including efforts at the Office of Justice Programs, the
Criminal Division of the Department of Justice, the

1	Executive Office of United States Attorneys, the Of-
2	fice of the Attorney General, the Office of the Dep-
3	uty Attorney General, the Office of Legal Policy,
4	and any other agency or bureau of the Department
5	of Justice whose activities relate to intellectual prop-
6	erty;
7	(2) a summary of the overall successes and fail-
8	ures of such policies and efforts;
9	(3) a review of the investigative and prosecution
10	activity of the Department of Justice with respect to
11	intellectual property crimes, including—
12	(A) the number of investigations initiated
13	related to such crimes;
14	(B) the number of arrests related to such
15	crimes; and
16	(C) the number of prosecutions for such
17	crimes, including—
18	(i) the number of defendants involved
19	in such prosecutions;
20	(ii) whether the prosecution resulted
21	in a conviction; and
22	(iii) the sentence and the statutory
23	maximum for such crime, as well as the
24	average sentence imposed for such crime;
25	and

1 (4) a Department-wide assessment of the staff, 2 financial resources, and other resources (such as 3 time, technology, and training) devoted to the en-4 forcement, investigation, and prosecution of intellec-5 tual property crimes, including the number of inves-6 tigators, prosecutors, and forensic specialists dedi-7 cated to investigating and prosecuting intellectual 8 property crimes.

9 (c) REPORT OF THE FBI.—Not later than 1 year 10 after the date of the enactment of this Act, and annually thereafter, the Director of the Federal Bureau of Inves-11 12 tigation shall submit a report to Congress on actions taken 13 to carry out this title. The initial report required under this subsection shall be submitted by October 1, 2009. All 14 15 subsequent annual reports shall be submitted by October 1st of each fiscal year thereafter. The report required 16 17 under this subsection may be submitted as part of the annual performance report of the Department of Justice, 18 19 and shall include—

20 (1) a review of the policies and efforts of the
21 Bureau related to the prevention and investigation
22 of intellectual property crimes;

(2) a summary of the overall successes and failures of such policies and efforts;

1	(3) a review of the investigative and prosecution
2	activity of the Bureau with respect to intellectual
3	property crimes, including—
4	(A) the number of investigations initiated
5	related to such crimes;
6	(B) the number of arrests related to such
7	crimes; and
8	(C) the number of prosecutions for such
9	crimes, including—
10	(i) the number of defendants involved
11	in such prosecutions;
12	(ii) whether the prosecution resulted
13	in a conviction; and
14	(iii) the sentence and the statutory
15	maximum for such crime, as well as the
16	average sentence imposed for such crime;
17	and
18	(4) a Bureau-wide assessment of the staff, fi-
19	nancial resources, and other resources (such as time,
20	technology, and training) devoted to the enforce-
21	ment, investigation, and prosecution of intellectual
22	property crimes, including the number of investiga-
23	tors, prosecutors, and forensic specialists dedicated
24	to investigating and prosecuting intellectual property
25	crimes.

1	(d) INITIAL REPORT OF THE FBI.—The first report
2	required to be submitted by the Director of the Federal
3	Bureau of Investigation under subsection (c) shall include
4	a summary of the efforts, activities, and resources the
5	Federal Bureau of Investigation has allocated in the 5
6	years prior to the date of enactment of this Act, as well
7	as the 1-year period following such date of enactment to
8	the enforcement, investigation, and prosecution of intellec-
9	tual property crimes, including—
10	(1) a review of the policies and efforts of the
11	Bureau related to the prevention and investigation
12	of intellectual property crimes;
13	(2) a summary of the overall successes and fail-
14	ures of such policies and efforts;
15	(3) a review of the investigative and prosecution
16	activity of the Bureau with respect to intellectual
17	property crimes, including—
18	(A) the number of investigations initiated
19	related to such crimes;
20	(B) the number of arrests related to such
21	crimes; and
22	(C) the number of prosecutions for such
23	crimes, including—
24	(i) the number of defendants involved
25	in such prosecutions;

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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 Bureau-wide assessment of the staff, fi-
8	nancial resources, and other resources (such as time,
9	technology, and training) devoted to the enforce-
10	ment, investigation, and prosecution of intellectual
11	property crimes, including the number of investiga-
12	tors, prosecutors, and forensic specialists dedicated
13	to investigating and prosecuting intellectual property
13 14	to investigating and prosecuting intellectual property crimes.
14	crimes.
14 15	crimes. TITLE V—MISCELLANEOUS
14 15 16	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL
14 15 16 17	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS.
14 15 16 17 18	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS. (a) STUDY.—The Comptroller General of the Untied
14 15 16 17 18 19	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS. (a) STUDY.—The Comptroller General of the Untied States shall conduct a study to help determine how the
 14 15 16 17 18 19 20 	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS. (a) STUDY.—The Comptroller General of the Untied States shall conduct a study to help determine how the Federal Government could better protect the intellectual
 14 15 16 17 18 19 20 21 	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS. (a) STUDY.—The Comptroller General of the Untied States shall conduct a study to help determine how the Federal Government could better protect the intellectual property of manufacturers by quantification of the im-
 14 15 16 17 18 19 20 21 22 	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS. (a) STUDY.—The Comptroller General of the Untied States shall conduct a study to help determine how the Federal Government could better protect the intellectual property of manufacturers by quantification of the im- pacts of imported and domestic counterfeit goods on—
 14 15 16 17 18 19 20 21 22 23 	crimes. TITLE V—MISCELLANEOUS SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL PROPERTY OF MANUFACTURERS. (a) STUDY.—The Comptroller General of the Untied States shall conduct a study to help determine how the Federal Government could better protect the intellectual property of manufacturers by quantification of the im- pacts of imported and domestic counterfeit goods on— (1) the manufacturing industry in the United

1 (b) CONTENTS.—In conducting the study required under subsection (a), the Comptroller General shall exam-2 3 ine— 4 (1) the extent that counterfeit manufactured 5 goods are actively being trafficked in and imported 6 into the United States; 7 (2) the impacts on domestic manufacturers in 8 the United States of current law regarding defend-9 ing intellectual property, including patent, trade-10 mark, and copyright protections;

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

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

(5) any effective practices or procedures that
are protecting all types of intellectual property; and
(6) any changes to current statutes or rules
that would need to be implemented to more effectively protect the intellectual property rights of manufacturers.

23 (c) REPORT.—Not later than 1 year after the date24 of the enactment of this Act, the Comptroller General shall

submit to Congress a report on the results of the study
 required under subsection (a).

3 SEC. 502. GAO AUDIT AND REPORT ON NONDUPLICATION 4 AND EFFICIENCY.

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

(1) the efforts, activities, and actions of the Intellectual Property Enforcement Coordinator and the
Attorney General in achieving the goals and purposes of this Act, as well as in carrying out any responsibilities or duties assigned to each such individual or agency under this Act;

(2) any possible legislative, administrative, or
regulatory changes that Comptroller General recommends be taken by or on behalf of the Intellectual
Property Enforcement Coordinator or the Attorney
General to better achieve such goals and purposes,
and to more effectively carry out such responsibilities and duties;

(3) the effectiveness of any actions taken and
efforts made by the Intellectual Property Enforcement Coordinator and the Attorney General to—

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

6 (B) enhance the efficiency and consistency 7 with which Federal funds and resources are ex-8 pended to enforce, investigate, or prosecute in-9 tellectual property crimes, including whether 10 the IPEC has utilized existing personnel, mate-11 rials, technologies, and facilities, such as the 12 National Intellectual Property Rights Coordina-13 tion Center established at the Department of 14 Homeland Security; and

15 (4) any actions or efforts that the Comptroller 16 General recommends be taken by or on behalf of the 17 Intellectual Property Enforcement Coordinator and 18 the Attorney General to reduce duplication of efforts 19 and increase the efficiency and consistency with 20 which Federal funds and resources are expended to 21 enforce, investigate, or prosecute intellectual prop-22 erty crimes.

23 SEC. 503. SENSE OF CONGRESS.

24 It is the sense of Congress that—

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

5 (2) the United States intellectual property in-6 dustries continue to represent a major source of cre-7 ativity and innovation, business start-ups, skilled job 8 creation, exports, economic growth, and competitive-9 ness;

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

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

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

1	(6) effective criminal enforcement of the intel-
2	lectual property laws against violations in all cat-
3	egories of works should be among the highest prior-
4	ities of the Attorney General;
5	(7) with respect to all crimes related to the
6	theft of intellectual property, the Attorney General
7	shall give priority to cases with a nexus to terrorism
8	and organized crime; and
9	(8) with respect to criminal counterfeiting and
10	infringement of computer software, including those
11	by foreign-owned or foreign-controlled entities, the
12	Attorney General should give priority to cases—
13	(A) involving the willful theft of intellectual
14	property for purposes of commercial advantage
15	or private financial gain;
16	(B) where the theft of intellectual property
17	is central to the sustainability and viability of
18	the commercial activity of the enterprise (or
19	subsidiary) involved in the violation;
20	(C) where the counterfeited or infringing
21	goods or services enables the enterprise to un-
22	fairly compete against the legitimate rights
23	holder; or

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