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110TH CONGRESS
1ST SESSION

S. 2317

To amend titles 17 and 18, United States Code, and the Trademark Act of 1946 to strengthen and harmonize the protection of intellectual property, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2007

Mr. LEAHY (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend titles 17 and 18, United States Code, and the Trademark Act of 1946 to strengthen and harmonize the protection of intellectual property, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Intellectual Property
5 Enforcement Act of 2007”.

1 **SEC. 2. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCE-**
2 **MENT BY ATTORNEY GENERAL.**

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

6 **“§ 506a. Civil penalties for violations of section 506**

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

17 “(b) OTHER REMEDIES.—

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

23 “(2) OFFSET.—Any restitution received by a
24 copyright owner as a result of a civil action brought
25 under this section shall be offset against any award
26 of damages in a subsequent copyright infringement

1 civil action by that copyright owner for the conduct
2 that gave rise to the civil action brought under this
3 section.”.

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

6 (1) in subsection (b)—

7 (A) in the first sentence—

8 (i) by inserting “, or the Attorney
9 General in a civil action,” after “The copy-
10 right owner”; and

11 (ii) by striking “him or her” and in-
12 serting “the copyright owner”; and

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

16 (2) in subsection (c)—

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

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

23 (c) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections for chapter 5 of title 17, United

1 States Code, is amended by inserting after the item relat-
2 ing to section 506 the following:

“506a. Civil penalties for violation of section 506.”.

3 **SEC. 3. IMPROVED INVESTIGATIVE AND FORENSIC RE-**
4 **SOURCES FOR ENFORCEMENT OF LAWS RE-**
5 **LATED TO INTELLECTUAL PROPERTY**
6 **CRIMES.**

7 (a) IN GENERAL.—The Attorney General, in con-
8 sultation with the Director of the Federal Bureau of In-
9 vestigation, shall, with respect to crimes related to the
10 theft of intellectual property—

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

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

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

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

23 (2) ensure that any unit in the Department of
24 Justice responsible for investigating computer hack-
25 ing or intellectual property crimes is assigned at

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1 least 2 agents of the Federal Bureau of Investiga-
2 tion (in addition to any agent assigned to such unit
3 as of the date of the enactment of this Act) to sup-
4 port such unit for the purpose of investigating or
5 prosecuting intellectual property crimes; and

6 (3) implement a comprehensive program—

7 (A) the purpose of which is to train agents
8 of the Federal Bureau of Investigation in the
9 investigation and prosecution of such crimes
10 and the enforcement of laws related to intellec-
11 tual property crimes;

12 (B) that includes relevant forensic training
13 related to investigating and prosecuting intellec-
14 tual property crimes; and

15 (C) that requires such agents who inves-
16 tigate or prosecute intellectual property crimes
17 to attend the program annually.

18 (b) INTELLECTUAL PROPERTY LAW ENFORCEMENT
19 COORDINATORS.—Not later than 120 days after the date
20 of the enactment of this Act, the Attorney General shall
21 assign 1 Federal prosecutor to the appropriate office of
22 the Department of Justice located in Hong Kong and 1
23 Federal prosecutor to such an office located in Budapest,
24 Hungary, to assist in the coordination of the enforcement

1 of intellectual property laws between the United States
2 and foreign nations.

3 (c) ORGANIZED CRIME TASK FORCE.—Not later
4 than 120 days after the date of the enactment of this Act,
5 the Attorney General, through the United States Attor-
6 neys' Offices, the Computer Crime and Intellectual Prop-
7 erty section, and the Organized Crime and Racketeering
8 section of the Department of Justice, and in consultation
9 with the Federal Bureau of Investigation and other Fed-
10 eral law enforcement agencies, shall create a Task Force
11 to develop and implement a comprehensive, long-range
12 plan to investigate and prosecute international organized
13 crime syndicates engaging in or supporting crimes relating
14 to the theft of intellectual property.

15 (d) AUTHORIZATION.—There are authorized to be ap-
16 propriated to carry out this section \$12,000,000 for each
17 of fiscal years 2008 through 2011.

18 **SEC. 4. ADDITIONAL FUNDING FOR RESOURCES TO INVES-**
19 **TIGATE AND PROSECUTE CRIMINAL ACTIV-**
20 **ITY INVOLVING COMPUTERS.**

21 (a) ADDITIONAL FUNDING FOR RESOURCES.—

22 (1) AUTHORIZATION.—In addition to amounts
23 otherwise authorized for resources to investigate and
24 prosecute criminal activity involving computers,

1 there are authorized to be appropriated for each of
2 the fiscal years 2008 through 2011—

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

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

8 (2) AVAILABILITY.—Any amounts appropriated
9 under paragraph (1) shall remain available until ex-
10 pended.

11 (b) USE OF ADDITIONAL FUNDING.—Funds made
12 available under subsection (a) shall be used by the Direc-
13 tor of the Federal Bureau of Investigation and the Attor-
14 ney General, for the Federal Bureau of Investigation and
15 the Criminal Division of the Department of Justice, re-
16 spectively, to—

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

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

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

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

1 **SEC. 5. REGISTRATION IN CIVIL INFRINGEMENT ACTIONS.**

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

5 (1) in the section heading, by inserting “**civil**”
6 before “**infringement**”;

7 (2) in subsection (a)—

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

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

12 (3) in subsection (b)—

13 (A) by redesignating that subsection as
14 subsection (c); and

15 (B) by striking “506 and sections 509
16 and” and inserting “505 and section”; and

17 (4) by inserting after subsection (a) the fol-
18 lowing:

19 “(b)(1) A certificate of registration satisfies the re-
20 quirements of this section and section 412, regardless of
21 whether the certificate contains any inaccurate informa-
22 tion, unless—

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

1 “(B) the inaccurate information, if known,
2 would have caused the Register of Copyrights to
3 refuse registration.

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

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

 “411. Registration and civil infringement actions.”.

16 **SEC. 6. CIVIL REMEDIES FOR INFRINGEMENT.**

17 (a) IN GENERAL.—Section 503(a) of title 17, United
18 States Code, is amended—

19 (1) by striking “and of all plates” and inserting
20 “, of all plates”; and

21 (2) by striking the period and inserting “, and
22 of records documenting the manufacture, sale, or re-
23 ceipt of things involved in such violation. The court
24 shall enter an appropriate protective order with re-
25 spect to discovery of any records that have been

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1 seized. The protective order shall provide for appro-
2 priate procedures to assure that confidential infor-
3 mation contained in such records is not improperly
4 disclosed to any party.”.

5 (b) PROTECTIVE ORDERS FOR SEIZED RECORDS.—
6 Section 34(d)(1)(A) of the Act entitled “An Act to provide
7 for the registration and protection of trademarks used in
8 commerce, to carry out the provisions of certain inter-
9 national conventions, and for other purposes.”, approved
10 July 5, 1946 (commonly referred to as the Trademark Act
11 of 1946) (15 U.S.C. 1116(d)(1)(A)) is amended by adding
12 “The court shall enter an appropriate protective order
13 with respect to discovery of any records that have been
14 seized. The protective order shall provide for appropriate
15 procedures to assure that confidential information con-
16 tained in such records is not improperly disclosed to any
17 party.” after the first sentence.

18 **SEC. 7. CRIMINAL INFRINGEMENT.**

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

22 “(b) FORFEITURE, DESTRUCTION, AND RESTITU-
23 TION.—Forfeiture, destruction, and restitution relating to
24 this section shall be subject to section 2323 of title 18,

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

3 (b) SEIZURES AND FORFEITURES.—

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

6 (2) TECHNICAL AND CONFORMING AMEND-
7 MENT.—The table of sections for chapter 5 of title
8 17, United States Code, is amended by striking the
9 item relating to section 509.

10 **SEC. 8. IMPORTATION AND EXPORTATION.**

11 (a) IMPORTATION AND EXPORTATION OF INFRING-
12 ING ITEMS.—Section 602(a) of title 17, United States
13 Code, is amended—

14 (1) by redesignating paragraphs (1), (2), and
15 (3) as subparagraphs (A), (B), and (C);

16 (2) in the first sentence, by striking “Importa-
17 tion” and inserting “(1) Importation”;

18 (3) by striking “106, actionable” and inserting
19 “106 and is actionable”;

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

22 “(2) Importation into the United States or expor-
23 tation from the United States, without the authority of
24 the owner of copyright under this title, of copies or
25 phonorecords, the making of which either constituted an

1 infringement of copyright or would have constituted an in-
 2 fringement of copyright if this title had been applicable,
 3 is an infringement of the exclusive right to distribute cop-
 4 ies or phonorecords under section 106 and is actionable
 5 under sections 501 and 506.

6 “(3) This subsection does not apply to—”;

7 (5) in subparagraph (A), as redesignated, by in-
 8 serting “or exportation” after “importation”;

9 (6) in subparagraph (B), as redesignated—

10 (A) by striking “, for the private use of the
 11 importer” and inserting “or exportation, for the
 12 private use of the importer or exporter”;

13 (B) by inserting “or departing from the
 14 United States” after “outside the United
 15 States”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) The section heading for section 602 of title 17, United
 18 States Code, is amended by inserting “**or exportation**”
 19 after “**importation**”.

20 (2) The table of sections for chapter 6 of title 17,
 21 United States Code, is amended by inserting “or expor-
 22 tation” after “importation”.

23 (3) The heading for chapter 6 of title 17, United
 24 States Code, is amended to read as follows:

1 **“CHAPTER 6—MANUFACTURING REQUIRE-**
 2 **MENTS, IMPORTATION, AND EXPOR-**
 3 **TATION”.**

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

“6. Manufacturing Requirements, Importation, and Ex-
portation 601”.

7 **SEC. 9. DEFINING TERMS RELATING TO CIRCUMVENTION**
 8 **OF COPYRIGHT PROTECTION SYSTEMS.**

9 Section 1201 of title 17, United States Code, is
 10 amended—

11 (1) in subsection (a)—

12 (A) in paragraph (2), by striking “im-

13 port,”; and

14 (B) in paragraph (3)—

15 (i) in subparagraph (A), by striking

16 “and” after the semicolon;

17 (ii) in subparagraph (B), by striking

18 the period and inserting “; and”;

19 (iii) by redesignating subparagraph

20 (B) as subparagraph (C), and inserting

21 after subparagraph (A) the following:

22 “(B) the term ‘financial gain’ includes re-

23 ceipt, or expectation of receipt, of anything of

1 value, including the receipt of other copyrighted
2 works;” and

3 (iv) by adding at the end the fol-
4 lowing:

5 “(C) the term ‘traffic in’ means to trans-
6 port, transfer, or otherwise dispose of, to an-
7 other, for purposes of commercial advantage or
8 private financial gain, or to make, import, ex-
9 port, obtain control of, or possess, with intent
10 to so transport, transfer, or otherwise dispose
11 of.”; and

12 (2) in subsection (b)—

13 (A) in paragraph (1), by striking “im-
14 port,”; and

15 (B) in paragraph (2)—

16 (i) in subparagraph (A), by striking
17 “and” after the semicolon;

18 (ii) in subparagraph (B), by striking
19 the period and inserting “; and”;

20 (iii) by redesignating subparagraph
21 (B) as subparagraph (C), and inserting
22 after subparagraph (A) the following:

23 “(B) the term ‘financial gain’ includes re-
24 ceipt, or expectation of receipt, of anything of

1 value, including the receipt of other copyrighted
2 works;” and

3 (iv) by adding at the end the fol-
4 lowing:

5 “(D) the term ‘traffic in’ means to trans-
6 port, transfer, or otherwise dispose of, to an-
7 other, or to make, import, export, obtain control
8 of, or possess, with intent to so transport,
9 transfer, or otherwise dispose of.”.

10 **SEC. 10. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.**

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

13 **“§ 1834. Criminal forfeiture**

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

18 **SEC. 11. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT
19 LABELS, OR COUNTERFEIT DOCUMENTATION
20 OR PACKAGING FOR WORKS THAT CAN BE
21 COPYRIGHTED.**

22 Section 2318 of title 18, United States Code, is
23 amended as follows:

24 (1) Subsection (a) is amended—

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

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

7 (C) by striking “Whoever” and inserting
8 “(1) Whoever”.

9 (2) Section 2318(d) is amended to read as fol-
10 lows:

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

16 (3) Section 2318 is further amended by striking
17 subsection (c) and redesignating subsection (f) as
18 subsection (e).

19 **SEC. 12. UNAUTHORIZED RECORDING OF MOTION PIC-**
20 **TURES.**

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

23 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;
24 RESTITUTION.—Forfeiture, destruction, and restitution
25 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 **SEC. 13. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**
 4 **ICES.**

5 Section 2320(b) of title 18, United States Code, is
 6 amended to read as follows:

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

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

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

16 **“§ 2323. Forfeiture, destruction, and restitution**

17 **“(a) CIVIL FORFEITURE.—**

18 **“(1) PROPERTY SUBJECT TO FORFEITURE.—**

19 The following property is subject to forfeiture to the
 20 United States:

21 **“(A) Any article the making or trafficking**
 22 **of which is prohibited under section 506 or**
 23 **1204 of title 17, or section 2318, 2319, 2319A,**
 24 **2319B, or 2320, or chapter 90, of this title.**

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

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

9 “(2) PROCEDURES.—The provisions of chapter
10 46 relating to civil forfeitures shall extend to any
11 seizure or civil forfeiture under this section. At the
12 conclusion of the forfeiture proceedings, unless oth-
13 erwise requested by an agency of the United States,
14 the court shall order that any property forfeited
15 under paragraph (1) be destroyed, or otherwise dis-
16 posed of according to law.

17 “(b) CRIMINAL FORFEITURE.—

18 “(1) PROPERTY SUBJECT TO FORFEITURE.—
19 The court, in imposing sentence on a person con-
20 victed of an offense under section 506 or 1204 of
21 title 17, or section 2318, 2319, 2319A, 2319B, or
22 2320, or chapter 90, of this title, shall order, in ad-
23 dition to any other sentence imposed, that the per-
24 son forfeit to the United States any property subject
25 to forfeiture under subsection (a) for that offense.

1 “(2) PROCEDURES.—

2 “(A) IN GENERAL.—The forfeiture of
3 property under paragraph (1), including any
4 seizure and disposition of the property and any
5 related judicial or administrative proceeding,
6 shall be governed by the procedures set forth in
7 section 413 of the Comprehensive Drug Abuse
8 Prevention and Control Act of 1970 (21 U.S.C.
9 853), other than subsection (d) of that section.

10 “(B) DESTRUCTION.—At the conclusion of
11 the forfeiture proceedings, the court, unless oth-
12 erwise requested by an agency of the United
13 States—

14 “(i) shall order that any forfeited arti-
15 cle or component of an article bearing or
16 consisting of a counterfeit mark be de-
17 stroyed or otherwise disposed of according
18 to law; and

19 “(ii) shall order that any infringing
20 items or other property described in sub-
21 section (a)(1)(A) and forfeited under para-
22 graph (1) of this subsection be destroyed
23 or otherwise disposed of according to law.

24 “(c) RESTITUTION.—When a person is convicted of
25 an offense under section 506 or 1204 of title 17 or section

1 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of
 2 this title, the court, pursuant to sections 3556, 3663A,
 3 and 3664 of this title, shall order the person to pay res-
 4 titution to any victim of the offense as an offense against
 5 property referred to in section 3663A(c)(1)(A)(ii) of this
 6 title.”.

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

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

11 **SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

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

19 (A) in subsection (b), by striking “and
 20 509”;

21 (B) in subsection (c)—

22 (i) in paragraph (2), by striking “and
 23 509”;

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

4 (iii) in paragraph (4), by striking
5 “and section 509”; and
6 (C) in subsection (e)—

7 (i) in paragraph (1), by striking “sec-
8 tions 509 and 510” and inserting “section
9 510”; and

10 (ii) in paragraph (2), by striking “and
11 509”.

12 (3) Section 115(e) of title 17, United States
13 Code, is amended—

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

16 (B) in paragraph (6), by striking “and
17 509”.

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

20 (A) in paragraph (6), by striking “sections
21 509 and 510” and inserting “section 510”;

22 (B) in paragraph (7)(A), by striking “and
23 509”;

24 (C) in paragraph (8), by striking “and
25 509”; and

1 (D) in paragraph (13), by striking “and
2 509”.

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

5 (A) in subsection (d), by striking “and
6 509”;

7 (B) in subsection (e), by striking “sections
8 509 and 510” and inserting “section 510”; and

9 (C) in subsection (f)(1), by striking “and
10 509”.

11 (6) Section 411(b) of title 17, United States
12 Code, is amended by striking “sections 509 and
13 510” and inserting “section 510”.

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

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