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110TH CONGRESS
1ST SESSION

S. 522

To safeguard the economic health of the United States and the health and safety of United States citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2007

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

A BILL

To safeguard the economic health of the United States and the health and safety of United States citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement, 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 Rights Enforcement Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) The greatest economic assets of the United
2 States are its innovators, entrepreneurs, and work-
3 ers.

4 (2) Counterfeiting and piracy cost United
5 States businesses, authors, and artists hundreds of
6 billions of dollars annually.

7 (3) Counterfeiting and piracy have resulted in
8 the loss of hundreds of thousands of jobs in the
9 United States.

10 (4) Counterfeit medicines and automobile and
11 aviation parts may result in serious health problems
12 and death.

13 (5) The World Customs Organization estimates
14 that up to 7 percent of global trade is in counterfeit
15 goods.

16 (6) The World Customs Organization estimates
17 that global trade in counterfeit and pirated goods
18 has increased from \$5,500,000,000 to more than
19 \$600,000,000,000 annually.

20 (7) Small- and medium-sized businesses are
21 particularly vulnerable to intellectual property theft
22 because they often lack the resources to pursue re-
23 course overseas or absorb the financial losses stem-
24 ming from counterfeiting and piracy.

1 (8) Terrorist groups have used the sale of coun-
2 terfeit goods to finance their activities.

3 (9) Funds generated from intellectual property
4 theft have financed acts of terrorism.

5 (10) The domestic and international efforts of
6 the United States to curb intellectual property rights
7 violations would be enhanced through hands-on lead-
8 ership by the President, increased coordination
9 among agencies, and a strategic partnership with
10 like-minded countries.

11 (11) Congress finds that no less than 9 United
12 States Government agencies bear responsibility for
13 supporting intellectual property rights, including the
14 Department of the Treasury.

15 (12) The efforts to enforce intellectual property
16 rights should be elevated across agencies due to the
17 increasing cost to the economy and the threat to the
18 health and safety of United States citizens.

19 (13) The success of intellectual property en-
20 forcement requires that a network of Government
21 agencies work closely with Federal, State, and local
22 law enforcement agencies.

23 (14) The domestic and international efforts of
24 the United States to combat money laundering
25 serves as a useful model for strengthening domestic

1 and international intellectual property rights en-
2 forcement.

3 (15) The Financial Crimes Enforcement Net-
4 work (FinCEN) represents a key effort by the
5 United States to combat money laundering and
6 other financial crimes.

7 (16) FinCEN has effectively enhanced the ex-
8 change of information relating to money laundering
9 and terrorist financing, both domestically and inter-
10 nationally.

11 (17) FinCEN combats money laundering inter-
12 nationally by partnering with other enforcement-
13 minded countries through the Financial Action Task
14 Force (FATF).

15 (18) FATF members have established effective
16 standards that they collectively agree to implement
17 and against which they agree to be assessed through
18 peer review.

19 (19) The success of intellectual property rights
20 enforcement requires that United States Government
21 agencies form an effective network to take advan-
22 tage of their diverse capabilities and to share infor-
23 mation for the purpose of enhancing the enforce-
24 ment capabilities of each agency and the United

1 States Government-wide intellectual property rights
2 enforcement effort.

3 (20) The Department of the Treasury's Office
4 of Terrorism and Financial Intelligence would be an
5 effective tool in combating intellectual property
6 theft.

7 (21) The success of international intellectual
8 property rights enforcement requires that the United
9 States partner with other countries that also suffer
10 from extensive intellectual property theft.

11 (22) The success of international intellectual
12 property rights enforcement requires that the United
13 States share information within an effective inter-
14 national task force of countries that are dedicated to
15 achieving results in the fight against intellectual
16 property theft.

17 (23) The success of international intellectual
18 property rights enforcement will be enhanced if the
19 United States and other reliable international part-
20 ners engage in joint enforcement operations and
21 work to strengthen the intellectual property rights
22 enforcement capacity of countries with a poor record
23 of intellectual property rights enforcement.

24 (24) An effective exchange of information do-
25 mestically and internationally will enhance the abil-

1 ity of the United States Trade Representative to en-
2 force violations of trade agreements.

3 (25) The success of domestic and international
4 intellectual property rights enforcement requires an
5 effective partnership between the public and private
6 sector and other interested groups.

7 **SEC. 3. NATIONAL INTELLECTUAL PROPERTY LAW EN-**
8 **FORCEMENT COORDINATION COUNCIL RE-**
9 **PEAL.**

10 Section 653 of the Treasury and General Government
11 Appropriations Act, 2000 (15 U.S.C. 1128) is repealed.

12 **SEC. 4. THE INTELLECTUAL PROPERTY ENFORCEMENT**
13 **NETWORK.**

14 (a) ESTABLISHMENT.—

15 (1) IN GENERAL.—There is established the In-
16 tellectual Property Enforcement Network (in this
17 section referred to as the “IPEN”).

18 (2) MEMBERSHIP.—The IPEN shall consist of
19 the following officials or their designees:

20 (A) The Deputy Director for Management
21 of the Office of Management and Budget, who
22 shall serve as the chairperson of the IPEN.

23 (B) The Coordinator for Intellectual Prop-
24 erty Enforcement, described in subsection

1 (b)(2)(A), who shall serve as vice chairperson of
2 the IPEN.

3 (C) The Deputy Attorney General.

4 (D) The Deputy Secretary for Homeland
5 Security.

6 (E) The Deputy Secretary of the Treasury.

7 (F) The Deputy Secretary of Commerce.

8 (G) The Deputy Secretary of State.

9 (H) A Deputy United States Trade Rep-
10 resentative, as determined by the United States
11 Trade Representative.

12 (I) Such other officials as the members of
13 the IPEN shall consider necessary and appro-
14 priate.

15 (3) RELEVANT AGENCIES.—In this section, the
16 term “relevant agency” means an agency of which
17 an official listed in paragraph (2) is a member, in-
18 cluding an agency of which an official identified by
19 the IPEN under paragraph (2)(I) is a member.

20 (b) ORGANIZATION.—

21 (1) MEETINGS.—The IPEN shall meet at least
22 once every 6 months to approve the ongoing oper-
23 ations of the IPEN, to provide overall direction for
24 the IPEN, to approve the strategic plan referred to
25 in subsection (h) and the report referred to in sub-

1 section (i), and to approve the budget referred to in
2 paragraph (2)(B)(i).

3 (2) COORDINATOR.—

4 (A) IN GENERAL.—The day-to-day func-
5 tions of the IPEN shall be carried out by a Co-
6 ordinator for Intellectual Property Enforcement
7 (in this Act referred to as the “Coordinator”)
8 who shall be appointed by the President.

9 (B) OTHER RESPONSIBILITIES.—In addi-
10 tion to the responsibilities described in subpara-
11 graph (A), the Coordinator shall be responsible
12 for the following:

13 (i) Developing for each fiscal year,
14 with the advice of the officials of the IPEN
15 and the relevant agencies, a budget pro-
16 posal to implement the policies, objectives,
17 and priorities described in subsection (c).

18 (ii) Drafting and transmitting to the
19 President and the Congress the strategic
20 plan referred to in subsection (h) and the
21 report referred to in subsection (i).

22 (c) DUTIES.—The IPEN, established under sub-
23 section (a), shall be responsible for the following:

24 (1) Coordinating and facilitating implementa-
25 tion by the relevant agencies of the policies, objec-

1 tives, and priorities described in paragraph (2), and
2 fulfilling the responsibilities assigned to such agen-
3 cies to complete the actions described in paragraph
4 (3).

5 (2) Establishing policies, objectives, and prior-
6 ities concerning international intellectual property
7 protection and intellectual property law enforcement.

8 The policies, objectives, and priorities shall include—

9 (A) eliminating counterfeit and pirated
10 goods from the international supply chain;

11 (B) identifying individuals, companies,
12 banks, and other entities involved in the financ-
13 ing, production, trafficking, and sale of counter-
14 feit and pirated goods;

15 (C) identifying and sharing information
16 among the relevant agencies for the purpose of
17 arresting and prosecuting persons who are
18 knowingly involved in the financing, production,
19 trafficking, and sale of counterfeit and pirated
20 goods;

21 (D) disrupting and shutting down counter-
22 feit and piracy networks;

23 (E) strengthening the capacity of other
24 countries to protect and enforce intellectual
25 property rights and reducing the number of

1 countries that fail to enforce laws that prevent
2 the financing, production, trafficking, and sale
3 of counterfeit and pirated goods; and

4 (F) working with like-minded countries to
5 establish international standards and policies
6 for the effective protection and enforcement of
7 intellectual property rights.

8 (3) Protecting United States intellectual prop-
9 erty rights overseas, including—

10 (A) working with similar networks in for-
11 eign countries to create an effective inter-
12 national intellectual property enforcement task
13 force (in this Act referred to as the “inter-
14 national task force”);

15 (B) ensuring the international task force
16 described in subparagraph (A) consists of net-
17 works in countries that—

18 (i) suffer substantial intellectual prop-
19 erty theft problems similar to those of the
20 United States;

21 (ii) have adequate and effective laws
22 protecting copyrights, trademarks, and
23 patents;

24 (iii) have legal regimes that enforce
25 their own domestic intellectual property

1 laws, and have a proven track record of
2 permanently shutting down piracy oper-
3 ations, and arresting and prosecuting those
4 who commit intellectual property crimes
5 and offenses;

6 (iv) have officials who have ex officio
7 authority to seize, inspect, and destroy pi-
8 rated and counterfeit goods at ports of
9 entry (or are working toward providing of-
10 ficials with such authority);

11 (v) have officials who can order the
12 seizure of pirated and counterfeit goods (or
13 are working toward providing officials with
14 such authority);

15 (vi) have laws in place that permit of-
16 ficials to seize property used to produce pi-
17 rated and counterfeit goods (or are work-
18 ing toward providing officials with such au-
19 thority);

20 (vii) are not on the Priority Watch
21 List issued by the United States Trade
22 Representative under title III of the Trade
23 Act of 1974 (19 U.S.C. 2411 et seq.); and

1 (viii) have met additional standards to
2 be established by the international task
3 force;

4 (C) exchanging information with networks
5 in the international task force relating to indi-
6 viduals and entities involved in financing, pro-
7 duction, trafficking, and sale of pirated and
8 counterfeit goods;

9 (D) utilizing the information to conduct
10 enforcement activities in cooperation with the
11 networks of other countries in the international
12 task force; and

13 (E) building a formal process for con-
14 sulting with companies, industry associations,
15 labor unions, and other interested groups in the
16 countries that have networks in the inter-
17 national task force.

18 (d) STAFF.—

19 (1) IN GENERAL.—The Coordinator shall, in
20 consultation with the relevant agencies, appoint, and
21 fix the compensation of, such officers and employees
22 of the IPEN as may be necessary to carry out the
23 functions of the IPEN and may request the tem-
24 porary assignment of personnel from the relevant
25 agencies.

1 (2) ASSIGNMENT AND COOPERATION OF OTHER
2 FEDERAL EMPLOYEES.—Each member of the IPEN
3 listed in subsection (a) shall designate personnel
4 from the member’s relevant agency to work with the
5 IPEN and shall ensure that all units in the mem-
6 ber’s relevant agency that have responsibility for the
7 protection and enforcement of intellectual property
8 rights provide information and personnel to the
9 IPEN in order for the IPEN to achieve the prior-
10 ities, objectives, and policies described in subsection
11 (c)(2).

12 (e) RESPONSIBILITY OF RELEVANT AGENCIES.—The
13 relevant agencies shall take the following actions:

14 (1) Share information collected to increase the
15 intelligence and effectiveness of the protection and
16 enforcement of intellectual property rights.

17 (2) Coordinate civil and criminal actions with
18 respect to persons who violate intellectual property
19 rights.

20 (3) Utilize information collected domestically,
21 and from other countries in the international task
22 force, to—

23 (A) investigate, arrest, and prosecute enti-
24 ties and individuals involved in financing, pro-

1 ducing, trafficking, and selling counterfeit and
2 pirated goods;

3 (B) provide assistance to the Department
4 of Homeland Security, the Department of Jus-
5 tice, and other relevant agencies in identifying,
6 seizing, and destroying counterfeit and pirated
7 goods;

8 (C) provide assistance to the United States
9 Trade Representative in taking appropriate ac-
10 tion against countries that have violated World
11 Trade Organization rules regarding the protec-
12 tion of intellectual property rights; and

13 (D) provide assistance to the United States
14 Trade Representative in taking appropriate ac-
15 tion under any trade agreement or treaty to
16 which the United States is a signatory.

17 (4) Establish a formal process for consulting
18 and working with State and local government agen-
19 cies to investigate, arrest, and prosecute entities and
20 individuals involved in the financing, production,
21 trafficking, and sale of counterfeit and pirated
22 goods.

23 (5) Establish a formal process for consulting
24 with companies, including small and medium-sized
25 businesses, their designated representatives, and in-

1 industry associations to strengthen enforcement. Such
2 processes shall include the development of resources
3 designed to assist businesses, industry associations,
4 and their representatives in addressing intellectual
5 property issues both domestically and internation-
6 ally.

7 (6) Establish a formal process for consulting
8 with writers and artists (and their organizations and
9 unions), labor unions, and other interested persons
10 and groups that suffer from counterfeiting and pi-
11 racy.

12 (f) CONSULTATION REQUIRED.—The members of the
13 IPEN shall consult with the Register of Copyrights on law
14 enforcement matters relating to copyright and related
15 rights and matters.

16 (g) PRIORITY IN INTERNATIONAL TALKS.—Consid-
17 ering the threat that counterfeit and pirated goods pose
18 to the economic health of the United States, and the
19 health and safety of United States citizens, the President
20 and officers of the relevant agencies, when meeting with
21 foreign countries described in subsection (c)(3)(B),
22 should—

23 (1) stress the importance of establishing the
24 international task force described in subsection
25 (c)(3)(A);

1 (2) strongly encourage countries to participate
2 in the international task force; and

3 (3) strongly encourage countries participating
4 in the international task force to cooperate with the
5 United States in ensuring the success of the inter-
6 national task force.

7 (h) STRATEGIC PLAN.—

8 (1) IN GENERAL.—Within 6 months of the date
9 of the enactment of this Act, and once every 2 years
10 thereafter, the Director of the Office of Management
11 and Budget and the Coordinator shall submit a stra-
12 tegic plan to the President, and to the Committees
13 on the Judiciary, Homeland Security and Govern-
14 mental Affairs, and Appropriations of the Senate,
15 and the Committees on the Judiciary, Oversight and
16 Government Reform, and Appropriations of the
17 House of Representatives.

18 (2) CONTENTS.—The strategic plan required by
19 this subsection shall include the following:

20 (A) A detailed description of the goals, ob-
21 jectives, and priorities of the IPEN, including
22 those described in subsection (c)(2).

23 (B) An analysis of the threat posed by vio-
24 lations of intellectual property rights, including
25 targets, risks, and threats of intellectual prop-

1 erty theft, and the costs to the economy of the
2 United States resulting from violations of intel-
3 lectual property laws.

4 (C) Proposed methods for achieving suc-
5 cess, including through the growth of the inter-
6 national intellectual property enforcement task
7 force described in subsection (c)(3).

8 (D) The performance measures that will be
9 used to monitor results.

10 (E) An estimate of the resources necessary
11 to achieve the goals, objectives, and priorities
12 described in subparagraph (A), and an estimate
13 of the cost of such resources.

14 (F) An identification of the relevant agen-
15 cies that will be involved in coordinating the
16 IPEN and implementing each priority.

17 (G) A strategy for ensuring coordination
18 between the chairperson and vice chairperson of
19 the IPEN, and the relevant agencies, including
20 a process for oversight of, and accountability
21 among, the relevant agencies carrying out the
22 strategy.

23 (H) A description of how the IPEN will
24 carry out its oversight and accountability re-

1 sponsibilities to monitor and implement the
2 strategy.

3 (i) REPORT.—

4 (1) IN GENERAL.—The Director of the Office of
5 Management and Budget and the Coordinator shall
6 report annually on the IPEN's enforcement and co-
7 ordination activities for the fiscal year to the Presi-
8 dent, and to the Committees on the Judiciary,
9 Homeland Security and Governmental Affairs, and
10 Appropriations of the Senate, and the Committees
11 on the Judiciary, Government Reform, and Appro-
12 priations of the House of Representatives.

13 (2) CONTENTS.—The report required by this
14 subsection shall include the following information:

15 (A) The progress made toward establishing
16 an international task force described in sub-
17 section (c)(3).

18 (B) The progress made in working with
19 foreign networks in the international task force
20 to investigate, arrest, and prosecute entities and
21 individuals involved in the financing, produc-
22 tion, trafficking, and sale of counterfeit and pi-
23 rated goods.

24 (C) The manner in which the relevant
25 agencies are working together and sharing in-

1 formation to strengthen the protection and en-
2 forcement of intellectual property rights.

3 (D) For each foreign network admitted or
4 denied entry into the international task force,
5 an explanation of the reasons for admitting or
6 denying entry to the international task force,
7 including reasons for admitting networks from
8 those countries that are currently on the Pri-
9 ority Watch List issued by the United States
10 Trade Representative under title III of the
11 Trade Act of 1974 (19 U.S.C. 2411 et seq.).

12 (E) The progress made in strengthening
13 the capacity of countries denied entry into the
14 international task force to protect and enforce
15 intellectual property rights.

16 (F) The successes and challenges in shar-
17 ing information with countries in the inter-
18 national task force.

19 (G) The progress of the United States
20 Trade Representative in taking appropriate ac-
21 tion under any trade agreement or treaty to
22 which the United States is a signatory.

23 (H) The progress made in establishing and
24 improving the formal process described in sub-
25 section (e)(4).

1 (I) The progress made in establishing and
 2 improving the formal process described in sub-
 3 section (e)(5).

4 (J) The progress made in establishing and
 5 improving the formal process described in sub-
 6 section (e)(6).

7 (K) The progress made in implementing
 8 the strategy in subsection (h)(2).

9 (j) GOVERNMENT ACCOUNTABILITY OFFICE RE-
 10 PORT.—Not later than 1 year after the date of the enact-
 11 ment of this Act, the Comptroller General of the United
 12 States shall complete a report and submit the report to
 13 the Congress on the progress made on the items described
 14 in subsections (h) and (i).

15 (k) OTHER INTELLECTUAL PROPERTY ACTIVI-
 16 TIES.—If other government intellectual property initia-
 17 tives include enforcement activities similar or identical to
 18 the activities described in this Act, those activities should
 19 be consolidated into the work of the IPEN in order to
 20 prevent duplication. Other activities that may improve en-
 21 forcement may continue outside of the IPEN, including—

- 22 (1) capacity building;
 23 (2) outreach to countries that would not qualify
 24 for membership in the international task force; and

1 (3) other bilateral and multilateral cooperative
2 efforts.

3 (1) PROHIBITED ACTIONS.—This section shall not be
4 construed to require any act, measure, or other conduct
5 by any department, agency, or other instrumentality of the
6 United States that is prohibited by any law, regulation,
7 or rule of procedure.

8 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated for each fis-
10 cal year such sums as may be necessary to carry out this
11 Act.

12 **SEC. 6. EFFECTIVE DATE.**

13 This Act shall take effect on the date of the enact-
14 ment of this Act.

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DOCUMENT NO. 14

