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To safeguard the national security and economic health of the United States 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

NOVEMBER 9, 2005

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 national security and economic health of the United States 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 “The Intellectual Prop-
5 erty Rights Enforcement Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) Funds generated from intellectual property
2 theft have financed acts of terrorism.

3 (2) Terrorist groups have advocated the sale of
4 counterfeit goods to finance their activities.

5 (3) Counterfeit medicines and automobile and
6 aviation parts have resulted in serious health prob-
7 lems and death.

8 (4) The greatest economic assets of the United
9 States are its innovators, entrepreneurs, and work-
10 ers.

11 (5) Counterfeiting and piracy costs United
12 States businesses, authors, and artists hundreds of
13 billions of dollars annually.

14 (6) Counterfeiting and piracy has resulted in
15 the loss of hundreds of thousands of American jobs.

16 (7) The World Customs Organization estimates
17 that up to 7 percent of global trade is in counterfeit
18 goods.

19 (8) The World Customs Organization estimates
20 that global trade in counterfeit and pirated goods
21 has increased from \$5,500,000,000 to more than
22 \$600,000,000,000 annually.

23 (9) The domestic and international efforts of
24 the United States to curb intellectual property theft
25 have largely been ineffective.

1 (10) The efforts to enforce intellectual property
2 rights should be elevated to the same level as the ef-
3 forts of the United States to combat other crimes,
4 including money laundering.

5 (11) The domestic and international efforts of
6 the United States to combat money laundering
7 serves as a useful model for strengthening domestic
8 and international intellectual property rights en-
9 forcement.

10 (12) The Financial Crimes Enforcement Net-
11 work (FinCEN) represents a key effort by the
12 United States to combat money laundering and
13 other financial crimes.

14 (13) FinCEN has effectively enhanced the ex-
15 change of information relating to money laundering
16 and terrorist financing, both domestically and inter-
17 nationally.

18 (14) FinCEN combats money laundering inter-
19 nationally by partnering with other enforcement-
20 minded countries through the Financial Action Task
21 Force (FATF) and Egmont.

22 (15) FATF members have established effective
23 standards that they collectively agree to implement
24 and against which they agree to be assessed through
25 peer review.

1 (16) The success of intellectual property rights
2 enforcement requires that United States Government
3 agencies form an effective network to share informa-
4 tion for the purpose of enhancing the enforcement
5 capabilities of each agency.

6 (17) The success of intellectual property en-
7 forcement requires that a network of government
8 agencies work closely with Federal, State, and local
9 law enforcement.

10 (18) The success of international intellectual
11 property rights enforcement requires that the United
12 States partner with other countries that also suffer
13 from extensive intellectual property theft.

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

20 (20) The success of international intellectual
21 property rights enforcement will be enhanced if the
22 United States and other reliable international part-
23 ners engage in joint enforcement operations.

24 (21) An effective exchange of intelligence 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 (22) 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. THE INTELLECTUAL PROPERTY ENFORCEMENT**
8 **NETWORK.**

9 (a) ESTABLISHMENT.—

10 (1) IN GENERAL.—There is established the In-
11 tellectual Property Enforcement Network (in this
12 section referred to as the “Network”).

13 (2) MEMBERSHIP.—The Network shall consist
14 of the following officials:

15 (A) The Deputy Director for Management
16 of the Office of Management and Budget
17 (OMB), who shall serve as the chairperson of
18 the Network.

19 (B) The Deputy Attorney General.

20 (C) The Deputy Secretary for Homeland
21 Security.

22 (D) The Under Secretary of Treasury for
23 Terrorism and Financial Intelligence.

1 (E) The Under Secretary of Commerce for
2 Intellectual Property and Director of the United
3 States Patent and Trademark Office.

4 (F) The Deputy Secretary of State.

5 (G) The Deputy United States Trade Rep-
6 resentative.

7 (H) The Under Secretary of Commerce for
8 International Trade.

9 (I) The Deputy Director of the Central In-
10 telligence Agency.

11 (J) The Coordinator for Intellectual Prop-
12 erty Enforcement.

13 (K) Such other officials as the members of
14 the Network shall consider necessary and ap-
15 propriate.

16 (b) ORGANIZATION.—

17 (1) MEETINGS.—The Network shall meet at
18 least once every 6 months to approve the ongoing
19 operations of the Network, to provide overall direc-
20 tion, to approve the report referred to in subsection
21 (h), and to approve the budget referred to in para-
22 graph (2)(B)(ii).

23 (2) COORDINATOR.—

24 (A) IN GENERAL.—The day-to-day func-
25 tions of the Network shall be carried out by a

1 Coordinator for Intellectual Property Enforce-
2 ment (in this Act referred to as the “Coordi-
3 nator”) who shall be appointed by the Presi-
4 dent.

5 (B) OTHER RESPONSIBILITIES.—In addi-
6 tion to the responsibilities described in subpara-
7 graph (A), the Coordinator shall be responsible
8 for the following:

9 (i) Developing for each fiscal year,
10 with the advice of the officials of the Net-
11 work and any other departments and agen-
12 cies with responsibilities for intellectual
13 property rights protection and intellectual
14 property law enforcement, a budget pro-
15 posal to implement the policies, objectives,
16 and priorities described in subsection (c).

17 (ii) Drafting and transmitting to the
18 President and the Congress the report ref-
19 erenced in subsection (h).

20 (c) DUTIES.—The Network established under sub-
21 section (a) shall be responsible for the following:

22 (1) Establishing policies, objectives, and prior-
23 ities concerning international intellectual property
24 protection and intellectual property law enforcement.

25 The policies, objectives, and priorities shall include—

1 (A) eliminating counterfeit and pirated
2 goods from the international supply chain;

3 (B) identifying individuals, companies,
4 banks, and other entities involved in the financ-
5 ing, production, trafficking, and sale of counter-
6 feit and pirated goods;

7 (C) arresting and prosecuting persons who
8 are knowingly involved in the financing, produc-
9 tion, trafficking, and sale of counterfeit and pi-
10 rated goods;

11 (D) disrupting and shutting down counter-
12 feit and piracy networks;

13 (E) reducing the number of countries that
14 fail to enforce laws that prevent the financing,
15 production, trafficking, and sale of counterfeit
16 and pirated goods; and

17 (F) establishing international standards
18 for effective intellectual property protection and
19 enforcement.

20 (2) Protecting United States intellectual prop-
21 erty rights overseas, including—

22 (A) working with similar networks in for-
23 eign countries to create a small and effective
24 international intellectual property enforcement

1 task force (in this Act referred to as the “inter-
2 national task force”);

3 (B) ensuring the international task force
4 described in subparagraph (A) consists of net-
5 works in countries that—

6 (i) have intellectual property theft
7 problems that are similar to those of the
8 United States;

9 (ii) have adequate and effective laws
10 protecting copyrights, trademarks, and
11 patents;

12 (iii) have legal regimes that permit
13 enforcement, and are taking a serious ap-
14 proach to enforcement, including a track
15 record of arresting and prosecuting intel-
16 lectual property criminals;

17 (iv) have officials who have ex-officio
18 authority to seize, inspect, and destroy pi-
19 rated and counterfeit goods at ports of
20 entry (or are working toward providing
21 their officials with the authority);

22 (v) have officials who can order the
23 seizure of pirated and counterfeit goods (or
24 are working toward providing their officials
25 with the authority);

1 (vi) have laws in place that permit of-
2 ficials to seize property used to produce pi-
3 rated and counterfeit goods (or are work-
4 ing toward providing their officials with
5 the authority);

6 (vii) are not on the Priority Watch
7 List issued by the United States Trade
8 Representative under the Trade Act of
9 1974; and

10 (viii) have met additional standards to
11 be established by the international task
12 force.

13 (C) exchanging intelligence with networks
14 in the international task force relating to indi-
15 viduals and entities involved in financing, pro-
16 duction, trafficking, and sale of pirated and
17 counterfeit goods;

18 (D) utilizing the intelligence to conduct en-
19 forcement activities in cooperation with the net-
20 works of other countries in the international
21 task force; and

22 (E) building a formal process for con-
23 sulting with companies, industry associations,
24 labor unions, and other interested groups in the

1 countries that have networks in the inter-
2 national task force.

3 (3) Coordinating and overseeing implementation
4 by agencies with responsibility for intellectual prop-
5 erty protection and intellectual property law enforce-
6 ment of the policies, objectives, and priorities de-
7 scribed in paragraph (1) and the fulfillment of the
8 responsibilities assigned to such agencies to complete
9 the actions described in paragraph (2).

10 (d) STAFF.—

11 (1) IN GENERAL.—The Coordinator shall, in
12 consultation with affected agencies, appoint, and fix
13 the compensation of, such officers and employees of
14 the Network as may be necessary to carry out the
15 functions of the Network and may request the tem-
16 porary assignment of personnel from any depart-
17 ment or agency.

18 (2) ASSIGNMENT AND COOPERATION OF OTHER
19 FEDERAL EMPLOYEES.—Each member of the Net-
20 work listed in subsection (a) shall designate per-
21 sonnel from their department or agency to work with
22 the Network and shall ensure that all units in their
23 agencies that have responsibility for intellectual
24 property enforcement provide information and per-
25 sonnel to the Network in order for the Network to

1 achieve the priorities, objectives, and policies de-
2 scribed in subsection (c)(1).

3 (3) CENTRAL INTELLIGENCE AGENCY INFORMA-
4 TION AND PERSONNEL.—The Deputy Director of the
5 Central Intelligence Agency shall—

6 (A) provide information to members and
7 employees of the Network with appropriate se-
8 curity clearance; and

9 (B) assign employees of the Central Intel-
10 ligence Agency to work on achieving the prior-
11 ities, objectives, and policies described in sub-
12 section (c).

13 (e) RESPONSIBILITY OF AGENCIES REPRESENTED IN
14 THE NETWORK.—The agencies in the Network shall take
15 the following actions:

16 (1) Share amongst themselves the information
17 they collect to increase the intelligence and effective-
18 ness of law enforcement with respect to intellectual
19 property rights.

20 (2) Coordinate civil and criminal actions with
21 respect to persons who violate intellectual property
22 rights.

23 (3) Utilize information collected domestically,
24 and from other countries in the international task
25 force, to—

1 (A) investigate, arrest, and prosecute enti-
2 ties and individuals involved in financing, pro-
3 ducing, trafficking, and selling counterfeit and
4 pirated goods;

5 (B) aid the United States Bureau of Cus-
6 toms and Border Protection and other agencies
7 in identifying, seizing, and destroying counter-
8 feit and pirated goods;

9 (C) aid the United States Trade Rep-
10 resentative in bringing cases in the World
11 Trade Organization against countries with a
12 poor record of enforcing World Trade Organiza-
13 tion intellectual property rules; and

14 (D) aid the United States Trade Rep-
15 resentative in bringing cases under the dispute
16 settlement procedures of free trade agreements.

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

22 (5) Establish a formal process for consulting
23 with companies, their designated representatives,
24 and industry associations to strengthen enforcement.

1 (6) Establish a formal process for consulting
2 with labor unions, writers and artists (and their or-
3 ganizations and unions), and other interested per-
4 sons and groups that suffer from counterfeiting and
5 piracy.

6 (f) CONSULTATION REQUIRED.—The members of the
7 Network shall consult with the Register of Copyrights on
8 law enforcement matters relating to copyright and related
9 rights and matters.

10 (g) PRIORITY IN INTERNATIONAL TALKS.—Consid-
11 ering the threat that counterfeit and pirated goods pose
12 to the economic health and national security of the United
13 States, the President and relevant agency officers, when
14 meeting with foreign countries described in subsection
15 (c)(2)(B), should—

16 (1) stress the importance of establishing the
17 international task force described in subsection
18 (c)(2)(A);

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

21 (3) strongly encourage countries participating
22 in the international task force to cooperate with the
23 United States in ensuring the success of the inter-
24 national task force.

25 (h) REPORT.—

1 (1) IN GENERAL.—The Director of the Office of
2 Management and Budget and the Coordinator shall
3 report annually on the Network’s enforcement and
4 coordination activities to the President, and to the
5 Committees on Homeland Security and Govern-
6 mental Affairs and Appropriations of the Senate,
7 and the Committees on Government Reform and Ap-
8 propriations of the House of Representatives.

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

11 (A) The progress made toward establishing
12 an international task force described in sub-
13 section (c)(2).

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

20 (C) The manner in which the agencies that
21 are members of the Network are working to-
22 gether and sharing information to strengthen
23 intellectual property enforcement.

24 (D) For each foreign network admitted or
25 denied entry into the international task force,

1 the rationale for admitting or denying entry to
2 that network, including reasons for admitting
3 networks from those countries that are cur-
4 rently on the Watch List issued by the United
5 States Trade Representative.

6 (E) The successes and challenges in shar-
7 ing intelligence with countries in the inter-
8 national task force.

9 (F) The progress of the United States
10 Trade Representative in bringing cases in the
11 World Trade Organization against countries
12 with a poor record of enforcing World Trade
13 Organization intellectual property rules.

14 (G) The progress made in establishing and
15 improving the formal process described in sub-
16 section (e)(4).

17 (H) The progress made in establishing and
18 improving the formal process described in sub-
19 section (e)(5).

20 (I) The progress made in establishing and
21 improving the formal process described in sub-
22 section (e)(6).

23 (i) GOVERNMENT ACCOUNTABILITY OFFICE RE-
24 PORT.—Not later than 1 year after the date of enactment
25 of this Act, the Comptroller General of the United States

1 shall complete a report and submit the report to the Con-
2 gress on the progress made on the items described in sub-
3 section (h).

4 (j) OTHER INTELLECTUAL PROPERTY ACTIVITIES.—
5 If other government intellectual property initiatives in-
6 clude enforcement activities similar or identical to the ac-
7 tivities described in this Act, those activities should be con-
8 solidated into the work of the Network in order to prevent
9 duplication. Other activities that may improve enforce-
10 ment may continue outside of the Network, including ca-
11 pacity building, outreach to countries that would not qual-
12 ify for membership in the international task force, and
13 other bilateral and multilateral cooperative efforts.

14 **SEC. 4. NATIONAL INTELLECTUAL PROPERTY LAW EN-**
15 **FORCEMENT COORDINATION COUNCIL RE-**
16 **PEAL.**

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

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