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Congress. Since my understanding differs from the current implementation, I urge my colleagues to accept this amendment and rectify the situation.

As the origin of all crop production, a stable supply of seeds is an absolute necessity. If seed producers are to continue supplying a valuable product, they must have access to risk management tools, which includes insurance coverage. In my State of Idaho, we are proud to produce the Nation's largest supply of seed for sweet corn, field beans, garden beans, and teff. In addition, Idaho is among the top producers of alfalfa, popcorn, and turf grasses.

Mr. Chair, I urge my colleagues to join me in enabling this industry to utilize the insurance coverage that is provided to other agricultural commodities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1135

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NONINSURED CROP DISASTER ASSISTANCE COVERAGE OF SEED CROPS.

Section 519(a)(2)(B) of the Federal Crop Insurance Act (7 U.S.C. 1519(a)(2)(B)) is amended by inserting "seed crops," after "turfgrass sod,". •

• Mr. KEMPTHORNE. Mr. President, the Idaho delegation today is taking steps to right a wrong. Senator CRAIG and I are joining our colleagues in the House, Representatives CRAPO and CHENOWETH in introducing legislation to clarify congressional intent regarding the Federal crop insurance program reform that the 103d Congress completed.

Implementing crop insurance reform has not always been the smoothest process, as Idaho's agriculture producers can attest. While that reform was a much needed step forward in streamlining the Federal crop insurance program, there is still work to be done. This bill tackles one part of that remaining effort.

When the Federal crop insurance reforms were implemented last year, the agency interpreted the law to be strictly limited to commodities that are consumed directly as foodstuffs. Such an interpretation ignores some crops which had traditionally been covered under the crop insurance umbrella. Among those are seed crops.

I am here today as someone who supported Federal crop insurance reform, to say that such an exclusion was not the intent of Congress. The bill Senator CRAIG and I are introducing today will set the record straight.•

By Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, Mr. BROWN, Mr. KYL, Mr. ABRAHAM, and Mrs. FEINSTEIN):

S. 1136. A bill to control and prevent commercial counterfeiting, and for other purposes; to the Committee on the Judiciary.

THE ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995

Mr. HATCH. Mr. President, I am pleased to be joined today by my colleagues, Senators LEAHY, THURMOND, BROWN, KYL, ABRAHAM, and FEINSTEIN, in introducing legislation to confront a rapidly growing threat to American industry and to the public: trademark counterfeiting. Stated simply, it is time we knock-out the knock-off industry.

We contacted some selected U.S. industries and found that the impact of counterfeiting losses are substantial. Companies invest heavily in developing and maintaining their reputations. And, the jobs of millions of American workers depend on the competitiveness of their employers.

Sales of pirated motion pictures cause losses equal to 8 percent of all movie sales revenue. The pirates are so efficient that tapes of the recently released "Apollo 13" were available the day after the movie's release in theaters. And tapes of the much-hyped "Waterworld", composed mainly of outtakes, was available before the movie's theatrical release.

The software industry is particularly affected, with sales of pirated software accounting for more than 40 percent of total revenues. Some analysts suggest that is more than the industry's total profits.

Perhaps most troubling, however, is the widespread threat counterfeiting poses to public health and safety. Automobile parts are commonly made of substandard material and pose serious risks to consumers. The San Francisco Chronicle reported that a counterfeit GM brake lining composed of wood chips was responsible for an accident that claimed the life of a mother and her child.

Media reports on the seizures in 16 States of a counterfeit version of the popular infant formula Similac underscore our vulnerability. This bogus formula could kill children who may be allergic to it.

Unfortunately, few Americans truly appreciate the significance, scope, or consequences of this crime. Only yesterday, Committee investigators purchased a fake Cartier watch and bogus Ray Ban sunglasses one block from the Capitol. It is hard to perceive the relationship between a cheap, fake watch or handbag and public health risks, money laundering, murder, and—if media reports are true—terrorism. But it is there.

Those who traffic in counterfeit goods can be ruthless members of dangerous businesses, and organized crime is increasingly involved. The leader of the "Born to Kill" crime gang in New York City made an estimated $13 million a year selling fake Cartier and Rolex watches. This revenue stream was probably useful in financing other nefarious business, as well as being profitable in itself. For the criminal, the lure of counterfeiting is not just the billions of dollars in illegal profit. It is the fact that the risk of being caught, prosecuted, and imprisoned is not high.

The time has come to make sure that the law provides the tools necessary to fight today's sophisticated counterfeiters. Our bill will do just that. It is called the "Anticounterfeiting Consumer Protection Act of 1995." I like to call it the "Knock-Out the Knock-Offs" bill.

First, it increases criminal penalties by making trafficking in counterfeit goods or services a RICO offense, thereby providing for increased jail time, criminal fines, and asset forfeiture.

Second, our bill allows greater involvement by all Federal law enforcement in fighting counterfeiting, including enhanced authority to seize counterfeit goods and the tools of the counterfeiter's trade.

Third, it makes it more difficult for these goods to re-enter the stream of commerce once they have been seized.

Fourth, our bill also adds teeth to existing statutes by providing for further civil remedies, including civil fines pegged to the value of genuine goods and statutory damage awards of up to $1,000,000 per mark.

The time has come for us to send the message to the public that counterfeiting is a serious crime that involves domestic and international organized crime rings. It is a crime that robs all Americans. It is time to knock-out the knock-offs.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anticounterfeiting Consumer Protection Act of 1995".

SEC. 2. FINDINGS.

The counterfeiting of trademarked and copyrighted merchandise—

(1) has been connected with organized crime;

(2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill;

(3) poses health and safety threats to American consumers;

(4) eliminates American jobs; and

(5) is a multibillion-dollar drain on the United States economy.

SEC. 3. COUNTERFEITING AS RACKETEERING.

Section 1961(1)(B) of title 18, United States Code, is amended by inserting ", section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2320 (relating to trafficking in goods or services bearing counterfeit marks)" after "sections 2314 and 2315 (relating to interstate transportation of stolen property),".

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SEC. 4. APPLICATION TO COMPUTER PROGRAMS, COMPUTER PROGRAM DOCUMENTATION, OR PACKAGING.

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

(1) in subsection (a), by inserting "a computer program or computer program documentation or packaging or" after "copy of";

(2) in subsection (b)(3), by inserting "'computer program,'" after "'motion picture,'"; and

(3) in subsection (c)(3), by inserting "a copy of a computer program or computer program documentation or packaging," after "enclose,".

SEC. 5. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

Section 2320 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(e) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, on a district by district basis, for all actions involving trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18, an accounting of—

"(1) the number of open investigations;

"(2) the number of cases referred by the United States Customs Service;

"(3) the number of cases referred by other agencies or sources; and

"(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under section 2318, 2319, and 2320 of title 18.".

SEC. 6. SEIZURE OF COUNTERFEIT GOODS.

Section 34(d)(9) of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by striking the first sentence and inserting the following: "The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order.".

SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.

Section 35 of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

"(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) (15 U.S.C. 1116(d)) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in the amount of—

"(1) not less than $500 or more than $100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

"(2) if the court finds that the use of the counterfeit mark was willful, not more than $1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.".

SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.

Section 603(c) of title 17, United States Code, is amended in the second sentence by striking "as the case may be;" and all that follows through the end and inserting "as the case may be.".

SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMERICAN TRADEMARK.

Section 526(e) of the Tariff Act of 1930 (19 U.S.C. 1526(e)) is amended—

(1) in the second sentence, by inserting "destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may" after "shall, after forfeiture,";

(2) by inserting "or" at the end of paragraph (2);

(3) by striking ", or" at the end of paragraph (3) and inserting a period; and

(4) by striking paragraph (4).

SEC. 10. CIVIL PENALTIES.

Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended by adding at the end the following new subsection:

"(f)(1) Any person who directs, assists financially or otherwise, or is in any way concerned in the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

"(2) For the first such seizure, the fine shall be equal to the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

"(3) For the second seizure and thereafter, the fine shall be equal to twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

"(4) The imposition of a fine under this subsection shall be within the discretion of the United States Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.".

SEC. 11. PUBLIC DISCLOSURE OF AIRCRAFT MANIFESTS.

Section 431(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)) is amended—

(1) in the matter preceding subparagraph (A), by inserting "vessel or aircraft" before "manifest";

(2) by amending subparagraph (D) to read as follows:

"(D) The name of the vessel, aircraft, or carrier.";

(3) by amending subparagraph (E) to read as follows:

"(E) The seaport or airport of loading."; and

(4) by amending subparagraph (F) to read as follows:

"(F) The seaport or airport of discharge.".

SEC. 12. CUSTOMS ENTRY DOCUMENTATION.

Section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) is amended—

(1) by striking "Entries" and inserting "(1) Entries"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (60 Stat. 440, chapter 540; 15 U.S.C. 1124) or any other applicable law, including a trademark appearing on the goods or packaging.".

SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFT IN AID OF COMMERCIAL COUNTERFEITING.

Section 80302(a) of title 49, United States Code, is amended—

(1) by striking "or" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(6)(A) A counterfeit label for a phonorecord, computer program or computer program documentation or packaging or copy of a motion picture or other audiovisual work (as defined in section 2318 of title 18);

"(B) a phonorecord or copy in violation of section 2319 of title 18; or

"(C) any good bearing a counterfeit mark (as defined in section 2320 of title 18).".

SEC. 14. REGULATIONS.

Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to implement and enforce this Act.

ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995—SECTION-BY-SECTION ANALYSIS

The Anticounterfeiting Consumer Protection Act of 1995 proposes a number of statutory amendments to strengthen this country's anticounterfeiting laws in three important areas: criminal law enforcement, civil lawsuits, and Customs Service interdiction. A brief section-by-section analysis of the Act follows.

Section 1. Short title.—The proposed legislation is entitled the "Anticounterfeiting Consumer Protection Act of 1995."

Section 2. Findings.—Section 2 summarizes the sigr.ificant harms associated with counterfeiting, including the link between counterfeiting and organized crime, the resulting losses in revenues and goodwill to U.S. copyright and trademark owners, the threat to consumer health and safety, the loss of American jobs, and the overall drain on the U.S. economy.

Section 3. Counterfeiting as racketeering.—Section 3 would make the following crimes "predicate acts" for purposes of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961: (i) trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works, as defined in 18 U.S.C. §2318[1]; (ii) criminal infringement of a copyright in violation of 18 U.S.C. §2319; and (iii) trafficking in counterfeit goods or services, as defined in 18 U.S.C. §2320. This amendment to the RICO statute would allow law enforcement officials in appropriate cases to seize not only counterfeit goods, but also the nonmonetary assets, including both personal and real property (*e.g.*, raw materials, tools, equipment, and manufacturing or storage facilities), associated with the criminal counterfeiting enterprise, just as they now can do for a host of other criminal enterprises. *See* 18 U.S.C. §1963.

Section 4. Application to computer programs, computer program documentation, or packaging.—Section 4 would extend the criminal prohibitions and penalties of 18 U.S.C. §2318 to trafficking in counterfeit labels affixed or designed to be affixed to copies of a computer program or computer program documentation or packaging. This amendment would recognize and address the widespread counterfeiting of computer software and international trafficking in counterfeit labels, holograms and other computer software documentation and packaging. Moreover, the amendment would update existing criminal counterfeiting provisions directed at labels for phonorecords and videos

[1] Section 4 would amend 18 U.S.C. §2318 to prohibit trafficking in counterfeit labels affixed to copies of computer programs or computer program documentation or packaging.

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to take into account the significant advancements in technology and thereby empower federal law enforcement agencies to combat the growing counterfeiting trade in computer programs.

Section 5. Trafficking in counterfeit goods or services.—Section 5 would amend 18 U.S.C. §2320, the statute govering trafficking in counterfeit goods or services, to require the Attorney General to obtain from all United States Attorney's Offices certain statistical information relating to all criminal counterfeiting actions involving (i) trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works; (ii) criminal infringement of copyrights; or (iii) trafficking in goods or services bearing counterfeit marks. The information must then be incorporated into the Attorney General's annual report to Congress mandated by Section 522 of Title 28. This reporting requirement will enable Congress and the American public to assess the extent to which commercial counterfeiting is being vigilantly investigated and prosecuted by our nation's U.S. Attorneys.

Section 6. Seizure of counterfeit goods.—Section 6 would amend 15 U.S.C. §1116 to make clear that, in addition to U.S. marshals and state and local law enforcement officers, *any* federal law enforcement officer may assist in conducting an *ex parte* seizure of counterfeit trademarked merchandise (including, by way of example, an officer or agent of the U.S. Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office). The present statute provides that seizures of counterfeit merchandise may be conducted by "a United States marshal or other law enforcement officer." 15 U.S.C. §1116(d)(9). Clarification of this provision to include other federal law enforcement officers is necessary to ensure that *ex parte* seizure orders are executed in a timely manner. At present, significant delays often occur because the Marshal's Service often lacks the manpower to promptly conduct an *ex parte* seizure. Moreover, the language "other law enforcement officer" has been interpreted to mean only state and local police officers, who are not subject to federal judicial mandate and thus cannot be compelled to execute seizure orders granted under federal trademark law. The amendment would avoid this delay by expressly extending seizure authority to any other federal law enforcement officer.

Section 7. Recovery for violation of rights.—Section 7 would amend 15 U.S.C. §1117 to provide statutory damages as an alternative to actual damages in cases involving the use of counterfeit trademarks. The option to elect statutory damages in counterfeit cases ensures that trademark owners and adequately compensated and that counterfeiters are justly punished, even in cases where the plaintiff is unable to prove actual damages because, for example, the defendant engages in deceptive record-keeping. Section 7 provides that a plaintiff may elect, and a court may approve, statutory damages ranging from $500 to $100,000 per mark for each type of merchandise involved, or up to $1,000,000 per mark for each type of merchandise if the violation is willful.

Section 8. Disposition of excluded articles.—Section 8 would amend 17 U.S.C. §603(c) to eliminate the provision allowing the U.S. Customs Service to re-export piratical merchandise, thus ensuring that such goods are not allowed back into the global marketplace where they continue to violate the rights of American copyright owners and endanger American consumers.

Section 9. Disposition of merchandise bearing American trademark.—Section 9 would amend 19 U.S.C. §1526(e) to require the U.S. Customs Service to destroy all counterfeit merchandise that it seizes, unless the trademark owner consents to some other disposition of the merchandise and the merchandise is not a threat to consumer health or safety.

Section 10. Civil penalties.—Section 10 would add a new subsection to 19 U.S.C. §1526 authorizing the U.S. Customs Service to impose a civil fine on persons who are in any way involved in the importation of counterfeit goods for sale or public distribution. For first offenses, the fine would be equal to the market value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price. For repeat offenses, the fine would be double that value. The imposition of the fine would be subject to the discretion of the U.S. Customs Service, and would be in addition to any other civil or criminal penalty or other remedy authorized by law.

Section 11. Public disclosure of aircraft manifests.—Section 11 would amend section 431(c)(1) of the Tariff Act, 19 U.S.C. §1431(c)(1), to make clear that existing manifest disclosure requirements also extend to information found in aircraft manifests. Under existing regulations, the U.S. Customs Service discloses on a routine basis information relating to shipments by sea, but is not required to disclose information within its possession concerning shipments by air. As a result of this distinction between sea and air information, an entire category of shipping information is shielded from public scrutiny, making it much more difficult to detect and stop numerous counterfeiters and other infringers who ship their merchandise by air. In order to close this informational gap, this amendment would expressly extend these manifest disclosure requirements to aircraft manifests and thus require the Customs Service to amend its regulations accordingly.

Section 12. Customs entry documentation.—Section 12 would amend 19 U.S.C. §1484(d) to require the Secretary of the Treasury, in prescribing regulations governing customs entry documentation, to require importers to disclose on that documentation such information as may be necessary to determine whether the imported merchandise bears an infringing trademark, including, for example, any trademarks appearing on the goods or their packaging. Presently, importers have no obligation to disclose to the Customs Service the identity of any trademark appearing on imported merchandise. By requiring the disclosure of any such trademark or related information, this amendment would facilitate the identification of infringing goods by Customs officials and trademark owners and thus enhance border enforcement of intellectual property rights.

Section 13. Unlawful use of vessels, vehicles, and aircraft in aid of commercial counterfeiting.—Section 13 would amend the definition of "contraband" in 49 U.S.C. App. §781 to include (i) a counterfeit label for a phonorecord, computer program or computer program documentation or packaging or copy of a motion picture or other audiovisual work, as defined in 18 U.S.C. §2318; (ii) a phonorecord or copy in violation of 18 U.S.C. §2319; or (iii) goods bearing counterfeit marks, as defined in 18 U.S.C. §2320. This amendment would allow law enforcement officials to seize the vehicles used by counterfeiters in transporting counterfeit merchandise, just as they are currently allowed to do with respect to counterfeit currency and government securities.

Section 14. Regulations.—Section 14 would require the Secretary of the Treasury to prescribe, within six months after the date of enactment, such regulations or amendments to existing regulations as may be necessary to implement and enforce the provisions of the Act.

By Mr. THOMAS (for himself and Mr. BROWN):

S. 1137. A bill to amend title 17, United States Code, with respect to the licensing of music, and for other purposes; to the Committee on the Judiciary.

SMALL BUSINESS LEGISLATION

• Mr. THOMAS. Mr. President, I introduce legislation designed to help small business owners by exempting them from paying licensing fees for music copyrights relating to radios and televisions used in their establishments. This bill is common-sense approach which would level the playing field for business owners who currently are faced with having to pay huge fees for the incidental broadcast of music played in their business.

The issue of licensing fees for copywritten music is extremely complex. No one disputes the right of performers to be properly compensated for their music or compositions. However, the current law regarding music licensing causes confusion and hardship for many business owners in my State and across the country. Every year, thousands of business owners are charged fees by the performing rights societies for the television and radio programming they present in their establishments. Unfortunately, many times these fees are charged in a confusing or ambiguous manner, without any oversight or controls.

I have heard for folks across Wyoming and the Nation who have experienced trouble with the music licensing organizations. Often the fees charged by the organizations for playing radios or televisions vary greatly from year to year. In addition, businesses are often threatened with legal action or harassed for doing something they did not realize was against the law.

The legislation I am introducing today would exempt these small business operators from being charged fees for playing radios and televisions in their establishments. The bill is designed to address a unique problem these folks are experiencing. It clarifies the law so these individuals can operate their businesses without fear of costly litigation. It is also important to note this bill only deals with performances which are incidental to the main purpose of the establishment. Records, tapes jukeboxes or video recordings are not covered by my bill.

Finally, this legislation would also require the performing rights societies to offer radio broadcasters a per programming period license to perform nondramatic musical works in the repertoire of the performing rights society. Currently, many specialty radio broadcasters such as religious and classical stations are forced to purchase a blanket license for radio broadcasts although they only play a small portion of the repertoire of the performing rights society. My bill would solve this

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