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Citation: 1 Protecting America's Intellectual Property A History of the Pro IP Act of 2008 William H. Manz ed. 2009

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INTRODUCTION

The controversial Prioritizing Resources and Organization for Intellectual Property Act of 2008, the "PRO IP Act," is the latest effort in the ongoing struggle to protect America's intellectual property from infringement and counterfeiting, activities which are estimated to have cost the United States between $200 and $250 billion in annual lost sales, as well as 750,000 jobs. Previous efforts to protect intellectual property included: the successful litigation against the music file-sharing service Napster; the RIAA's controversial lawsuits against more than 30,000 alleged infringers, including housewives and college students; the unsuccessful PIRATE Act introduced in the Senate in 2004, and aimed at Internet file-sharing; and the 2004 Intellectual Property Protection and Courts Amendment Act, which strengthened federal laws against trafficking in counterfeit labels.

To deter trademark infringement, the new Act doubles statutory damages to $1,000 to $10,000, and to $2 million if the counterfeiting was "willful." It also extends treble damage liability to persons providing goods and services necessary to an act of infringement if they had knowledge that the recipient would use them for such a purpose. With regard to counterfeit goods, the new law harmonizes all existing provisions relating to their forfeiture, and provides for destruction forfeiture of "[a]ny property used, or intended to be used," in acts of infringement. Transshipment or exportation of goods bearing counterfeit trademarks is prohibited, and exportation, in addition to importation, of copies or phonorecords without the authority of the copyright owner is now regarded as an infringement of the exclusive right to distribute.

In addition, the Act includes provisions to make it easier for the Department of Justice to prosecute copyright infringement cases because criminal copyright infringement actions no longer require pre-registration or registration of the copyright before filing suit. Another section allows copyright owners to impound records "documenting the manufacture, sale, or receipt of things" involved in the infringement, a change from the old law which was limited to infringing copies and articles from which those copies were made.

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In order to develop and implement a Joint Strategic Plan against counterfeiting and infringement, the Act requires the president to appoint an Intellectual Property Enforcement Coordinator (IPEC), the so-called "IP Czar," to serve in the executive branch. It also authorizes the Office of Justice Programs of the Department of Justice to make grants from a $25 million appropriations pool to eligible state and local law enforcement entities for training, prevention, enforcement, and prosecution of IP offenses.

The enacted version of the new law was actually milder than when it was first introduced. An important change was the removal of a provision authorizing the Department of Justice to bring civil actions against criminal copyright infringers, with any resulting civil award to go to the copyright owner. Critics characterized this as a case of the federal government acting as a pro bono lawyer for private copyright owners and the use of public funds to bring actions only for the benefit of private parties.

The Act was strongly supported by pharmaceutical companies, manufacturers, and the entertainment industry, and such groups as the Recording Industry Association of America (RIAA), the Software and Information Industry Association (SIIA), the U.S. Chamber of Commerce, and the AFL-CIO. However, even the milder version of the law as enacted has drawn criticism. It has also been charged that the Act merely creates another layer of federal bureaucracy, and actually won't do much to protect intellectual property rights. Instead, it is claimed that it would make casual and innocent infringers liable for penalties far out of proportion to the offense, similar to a woman who in 2007 was ordered to pay $220,000 in damages for sharing twenty-four songs on the Kazaa network. Critics also expressed concern that the new forfeiture provisions might allow the government to seize the equipment of innocent parties.

This set includes the bill versions prepared prior to the passage of the Act, reports, congressional debate, and hearings. The related hearings section includes those held since the enactment of the Intellectual Property Protection and Courts Amendment Act of 2004. Previous hearings relating to the protection of intellectual property are listed in the bibliography as are a large number of legal periodical articles dealing with copyright infringement, piracy, and counterfeit goods.

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February 2009

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