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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

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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.

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 "Intellectual Property Enforcement Act of 2007".

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SEC. 2. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCEMENT BY ATTORNEY GENERAL.

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

"§ 506a. Civil penalties for violations of section 506

"(a) IN GENERAL.—In lieu of a criminal action under section 506, the Attorney General may commence a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 506. Upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty under section 504 which shall be in an amount equal to the amount which would be awarded under section 3663(a)(1)(B) of title 18 and restitution to the copyright owner aggrieved by the conduct.

"(b) OTHER REMEDIES.—

"(1) IN GENERAL.—Imposition of a civil penalty under this section does not preclude any other criminal or civil statutory, injunctive, common law, or administrative remedy, which is available by law to the United States or any other person.

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

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civil action by that copyright owner for the conduct that gave rise to the civil action brought under this section.".

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

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting ", or the Attorney General in a civil action," after "The copyright owner"; and

(ii) by striking "him or her" and inserting "the copyright owner"; and

(B) in the second sentence by inserting ", or the Attorney General in a civil action," after "the copyright owner"; and

(2) in subsection (c)—

(A) in paragraph (1), by inserting ", or the Attorney General in a civil action," after "the copyright owner"; and

(B) in paragraph (2), by inserting ", or the Attotrney General in a civil action," after "the copyright owner".

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

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States Code, is amended by inserting after the item relating to section 506 the following:

"506a. Civil penalties for violation of section 506.".

SEC. 3. IMPROVED INVESTIGATIVE AND FORENSIC RESOURCES FOR ENFORCEMENT OF LAWS RELATED TO INTELLECTUAL PROPERTY CRIMES.

(a) IN GENERAL.—The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to the theft of intellectual property—

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

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

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

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

(2) ensure that any unit in the Department of Justice responsible for investigating computer hacking or intellectual property crimes is assigned at

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least 2 agents of the Federal Bureau of Investigation (in addition to any agent assigned to such unit as of the date of the enactment of this Act) to support such unit for the purpose of investigating or prosecuting intellectual property crimes; and

(3) implement a comprehensive program—

(A) the purpose of which is to train agents of the Federal Bureau of Investigation in the investigation and prosecution of such crimes and the enforcement of laws related to intellectual property crimes;

(B) that includes relevant forensic training related to investigating and prosecuting intellectual property crimes; and

(C) that requires such agents who investigate or prosecute intellectual property crimes to attend the program annually.

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

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

(c) ORGANIZED CRIME TASK FORCE.—Not later than 120 days after the date of the enactment of this Act, the Attorney General, through the United States Attorneys' Offices, the Computer Crime and Intellectual Property section, and the Organized Crime and Racketeering section of the Department of Justice, and in consultation with the Federal Bureau of Investigation and other Federal law enforcement agencies, shall create a Task Force to develop and implement a comprehensive, long-range plan to investigate and prosecute international organized crime syndicates engaging in or supporting crimes relating to the theft of intellectual property.

(d) AUTHORIZATION.—There are authorized to be appropriated to carry out this section $12,000,000 for each of fiscal years 2008 through 2011.

SEC. 4. ADDITIONAL FUNDING FOR RESOURCES TO INVESTIGATE AND PROSECUTE CRIMINAL ACTIVITY INVOLVING COMPUTERS.

(a) ADDITIONAL FUNDING FOR RESOURCES.—

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

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

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

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

(2) AVAILABILITY.—Any amounts appropriated under paragraph (1) shall remain available until expended.

(b) USE OF ADDITIONAL FUNDING.—Funds made available under subsection (a) shall be used by the Director of the Federal Bureau of Investigation and the Attorney General, for the Federal Bureau of Investigation and the Criminal Division of the Department of Justice, respectively, to—

(1) hire and train law enforcement officers to—

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

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

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

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SEC. 5. REGISTRATION IN CIVIL INFRINGEMENT ACTIONS.

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

(1) in the section heading, by inserting "**civil**" before "**infringement**";

(2) in subsection (a)—

(A) in the first sentence, by striking "no action" and inserting "no civil action"; and

(B) in the second sentence, by striking "an action" and inserting "a civil action";

(3) in subsection (b)—

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

(B) by striking "506 and sections 509 and" and inserting "505 and section"; and

(4) by inserting after subsection (a) the following:

"(b)(1) A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

"(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

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"(B) the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

"(2) In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 412 of title 17, United States Code, is amended by striking "411(b)" and inserting "411(c)".

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

"411. Registration and civil infringement actions.".

SEC. 6. CIVIL REMEDIES FOR INFRINGEMENT.

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

(1) by striking "and of all plates" and inserting ", of all plates"; and

(2) by striking the period and inserting ", and of records documenting the manufacture, sale, or receipt of things involved in such violation. The court shall enter an appropriate protective order with respect to discovery of any records that have been

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seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to any party.".

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

SEC. 7. CRIMINAL INFRINGEMENT.

(a) FORFEITURE AND DESTRUCTION; RESTITUTION.—Section 506(b) of title 17, United States Code, is amended to read as follows:

"(b) FORFEITURE, DESTRUCTION, AND RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323 of title 18,

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

(b) SEIZURES AND FORFEITURES.—

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

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 509.

SEC. 8. IMPORTATION AND EXPORTATION.

(a) IMPORTATION AND EXPORTATION OF INFRINGING ITEMS.—Section 602(a) of title 17, United States Code, is amended—

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

(2) in the first sentence, by striking "Importation" and inserting "(1) Importation";

(3) by striking "106, actionable" and inserting "106 and is actionable";

(4) by striking "This subsection does not apply to—" and inserting the following:

"(2) Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an

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infringement of copyright or would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106 and is actionable under sections 501 and 506.

"(3) This subsection does not apply to—";

(5) in subparagraph (A), as redesignated, by inserting "or exportation" after "importation";

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

(A) by striking ", for the private use of the importer" and inserting "or exportation, for the private use of the importer or exporter"; and

(B) by inserting "or departing from the United States" after "outside the United States".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The section heading for section 602 of title 17, United States Code, is amended by inserting "**or exportation**" after "**importation**".

(2) The table of sections for chapter 6 of title 17, United States Code, is amended by inserting "or exportation" after "importation".

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

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"CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION".

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

"6. Manufacturing Requirements, Importation, and Exportation ..... 601".

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

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

(1) in subsection (a)—

(A) in paragraph (2), by striking "import,"; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking "and" after the semicolon;

(ii) in subparagraph (B), by striking the period and inserting "; and";

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

"(B) the term 'financial gain' includes receipt, or expectation of receipt, of anything of

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value, including the receipt of other copyrighted works;"; and

(iv) by adding at the end the following:

"(C) the term 'traffic in' means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of."; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "import,"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking "and" after the semicolon;

(ii) in subparagraph (B), by striking the period and inserting "; and";

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

"(B) the term 'financial gain' includes receipt, or expectation of receipt, of anything of

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value, including the receipt of other copyrighted works;"; and

(iv) by adding at the end the following:

"(D) the term 'traffic in' means to transport, transfer, or otherwise dispose of, to another, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of.".

SEC. 10. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.

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

"§ 1834. Criminal forfeiture

"Forfeiture, destruction, and restitution relating to this chapter shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.".

SEC. 11. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED.

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

(1) Subsection (a) is amended—

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(A) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respectively;

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

(C) by striking "Whoever" and inserting "(1) Whoever".

(2) Section 2318(d) is amended to read as follows:

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

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

SEC. 12. UNAUTHORIZED RECORDING OF MOTION PICTURES.

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

"(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323,

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

SEC. 13. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

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

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

SEC. 14. FORFEITURE, DESTRUCTION, AND RESTITUTION.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding at the end the following:

"§ 2323. Forfeiture, destruction, and restitution

"(a) CIVIL FORFEITURE.—

"(1) PROPERTY SUBJECT TO FORFEITURE.—The following property is subject to forfeiture to the United States:

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

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"(B) Any property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A).

"(C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).

"(2) PROCEDURES.—The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, unless otherwise requested by an agency of the United States, the court shall order that any property forfeited under paragraph (1) be destroyed, or otherwise disposed of according to law.

"(b) CRIMINAL FORFEITURE.—

"(1) PROPERTY SUBJECT TO FORFEITURE.—The court, in imposing sentence on a person convicted of an offense under section 506 or 1204 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, shall order, in addition to any other sentence imposed, that the person forfeit to the United States any property subject to forfeiture under subsection (a) for that offense.

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"(2) PROCEDURES.—

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

"(B) DESTRUCTION.—At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States—

"(i) shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law; and

"(ii) shall order that any infringing items or other property described in subsection (a)(1)(A) and forfeited under paragraph (1) of this subsection be destroyed or otherwise disposed of according to law.

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

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2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, the court, pursuant to sections 3556, 3663A, and 3664 of this title, shall order the person to pay restitution to any victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii) of this title.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 18, United States Code, is amended by adding at the end the following:

"2323. Forfeiture, destruction, and restitution.".

SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) Section 109 (b)(4) of title 17, United States Code, is amended by striking "505, and 509" and inserting "and 505".

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

(A) in subsection (b), by striking "and 509";

(B) in subsection (c)—

(i) in paragraph (2), by striking "and 509";

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(ii) in paragraph (3), by striking "sections 509 and 510" and inserting "section 510"; and

(iii) in paragraph (4), by striking "and section 509"; and

(C) in subsection (e)—

(i) in paragraph (1), by striking "sections 509 and 510" and inserting "section 510"; and

(ii) in paragraph (2), by striking "and 509".

(3) Section 115(c) of title 17, United States Code, is amended—

(A) in paragraph (3)(G)(i), by striking "and 509"; and

(B) in paragraph (6), by striking "and 509".

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

(A) in paragraph (6), by striking "sections 509 and 510" and inserting "section 510";

(B) in paragraph (7)(A), by striking "and 509";

(C) in paragraph (8), by striking "and 509"; and

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(D) in paragraph (13), by striking "and 509".

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

(A) in subsection (d), by striking "and 509";

(B) in subsection (e), by striking "sections 509 and 510" and inserting "section 510"; and

(C) in subsection (f)(1), by striking "and 509".

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

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

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