

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.

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## 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

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## 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.

○