



501 - Tackling Counterfeit & Gray Market Goods

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Philip Jones is a shareholder at the Chicago office of Brinks Hofer Gilson & Lione, one of the largest intellectual property law firms in the United States. Mr. Jones practices in the fields of trademark and unfair competition law and copyright law. His experience includes litigation in federal courts and before the Trademark Trial and Appeal Board, analyzing clearance opinions, client counseling, trademark and copyright prosecution and licensing.

Mr. Jones has represented clients in the fields of air transportation, internet search engines, financial services, toys, consumer products, restaurant and retail services, telecommunications and alternative newspapers. Mr. Jones has also handled domain name arbitration proceedings.

Mr. Jones received his B.A., magna cum laude, from Princeton University and his J.D., cum laude, from the Boston University School of Law.

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Scott Slavick is a shareholder with Brinks Hofer Gilson & Lione, in Chicago, one of the largest intellectual property law firms in the United States. Mr. Slavick's practice focuses primarily on trademark prosecution and trademark litigation. His relevant experience includes litigation in numerous federal courts and before the Trademark Trial and Appeal Board. In addition, he analyzes trademark searches and drafts trademark use opinions, and provides a great deal of client counseling. Mr. Slavick has expanded his practice to include a growing expertise in trade secret law with a focus on its use in the employment area in connection with non-compete agreements and restrictive covenants. He has written several articles on the subject, conducted numerous trade secret audits and prepared several best practices manuals for his varied clients.

In addition, Mr. Slavick possesses a great deal of experience in handling international trademark matters. His practice includes international trademark litigation, licensing and prosecution, including determination of international filing strategies, negotiating worldwide co-existence agreements and effective enforcement strategies to defend trademarks and prevent infringements.

Mr. Slavick has represented clients in the fields of air transportation, Internet search engines, financial services, toys, consumer products, restaurant and retail services, telecommunications and health and fitness clubs. Mr. Slavick has also handled domain name arbitration proceedings, trademark licensing projects, filed copyright applications, drafted numerous non-disclosure agreements and prepared many corporate intellectual property compliance manuals.

Mr. Slavick received his J.D. from Georgetown University Law Center and a B.A. from Northwestern University.

Course Materials

Session 501 – Tackling Counterfeit and Gray Market Goods



I. Checklists

- A. Essential Tools for Enforcement
- B. Checklist for Recording Trademarks with U.S. Customs
- C. Checklist for Obtaining an Ex Parte Seizure Order
- D. Checklist for Reporting Counterfeit Goods to the Corporate Law Department
- E. Commonly Charged Intellectual Property Crimes
- F. Intellectual Property Contact List

II. Forms

- A. U.S. Customs and Border Protection Trademark Application Template
- B. Form USM-285
- C. National IPR Coordination Center Complaint Referral Form

III. Specific Web Site Terms of Use and Dispute Resolution Information

- A. Craigslist Terms of Use
- B. How eBay Protects Intellectual Property (VeRO)
- C. Reporting Intellectual Property Infringements (VeRO)
- D. Notice of Claimed Infringement to eBay Inc.
- E. Yahoo! Copyright and Intellectual Property Policy
- F. Google Infringement Notification for Web Search and all other products
- G. Google Trademark Complaint Procedures
- H. Google AdWords Trademark Complaint Procedures
- I. Google AdWords Trademark Complaint Form

- J. Google AdSense for Domains Trademark Complaint Procedure

IV. Legislative Materials

- A. Prepared Remarks for Attorney General Alberto R. Gonzales to the U.S. Chamber of Commerce Coalition against Counterfeiting and Piracy
- B. "Intellectual Property Protection Act of 2007" Legislative Proposal
- C. Department of Homeland Security Enforcement Statistics

ESSENTIAL TOOLS FOR ENFORCEMENT

1. Complete/updated list of all your registrations and customs recordations
2. List of sources and contacts to help identify product authenticity
3. Guidelines for identifying genuine products
4. Templates for form letters, supporting affidavits, witness statements, settlement agreements, undertakings, and all other regularly used enforcement documents
5. Database of all enforcement matters/actions
 - a. should be as detailed as possible
 - b. will be critical for
 - i. budget planning and cost benefit analysis
 - ii. tracking recidivism
 - iii. tying together various counterfeiters
 - iv. client/licensee update memos
 - v. problem area analysis
 - vi. future registrations or recordations
6. Effective enforcement counsel
 - a. should have prior enforcement experience
 - b. ideally will know your marks and products
7. Packet of essential ready to go materials regarding your trademark registrations, your products, and your enforcement guidelines
8. Compilation of counterfeiting laws and statutes from all your relevant markets
9. Maintain an up to date list of your network resources, including:
 - a. investigators, agents, and informants in relevant markets
 - b. law enforcement agencies
 - i. District Attorneys
 - ii. US attorney
 - iii. Customs and ICE
 - iv. FBI
 - v. Police departments
 - vi. OCID/Task Forces
 - vii. Sheriff Departments
 - viii. State Police
 - c. Licensees and manufacturers
 - d. Importers and exporters
 - e. distributors
 - f. In house departments
 - g. Brand owners sharing location or same problem areas (consider forming coalitions, i.e., NYC task force)
 - h. Trademark Enforcement agencies/associations
 - i. International anticounterfeiting coalition – www.iacc.org
 - ii. Global anti-counterfeiting network – www.gacg.org
 - iii. International chamber of commerce – www.iccwbo.org
 - iv. Coalition against counterfeiting and piracy – www.thecacp.com
 - v. US chamber of commerce – www.uschamber.com and www.thetruecosts.com
 - vi. Business action to stop counterfeiting and piracy – www.uscib.org

10. Investigation Resources
 - i. www.domaintools.com
 - ii. www.networksolutions.com
 - iii. www.infospace.com
 - iv. www.google.com
 - v. www.yahoo.com
 - vi. www.einet.net
 - vii. www.looksmart.com
 - viii. www.knowx.com
 - ix. www.thomasregister.com
 - x. ebay vero program
 - xi. D&B report
 - xii. Various websites for states
 - xiii. Secretaries of State
11. Never give all your product identification features away
12. Consider implementing a toll free number to receive information on possible counterfeits
13. Create dedicated Inbox for e-mail from US Customs for your recordals
14. Scan copies of registration certificates for easy e-mailing
15. Chart of samples for your most counterfeited products and their price ranges for easy access
16. Technique aimed specifically at stopping gray market goods include:
 - i. Place gray market mitigation on your corporate board agenda and review distributor compliance with the audit committee
 - ii. Develop a solid strategy and policies for appropriate use of the broker network
 - iii. Train key employees to help avoid gray market problems
 - iv. Empower a dedicated compliance function to monitor partner agreements
 - v. Ensure that partner agreements keep up with changes to the law on gray market
 - vi. Manage product distribution through tools and processes that meet industry best-practices standards
 - vii. Integrate sales and incentive data to better control incentive claims
 - viii. Understand and take advantage of positive legal protections

**CHECKLIST FOR RECORDING
TRADEMARKS WITH U.S. CUSTOMS**

You will need the following information for recording your trademark with U.S. Customs:

1. Trademark registration certificate or information from U.S. Patent and Trademark Office TARR Status (see uspto.gov).
2. Country of manufacture of genuine goods bearing the trademark.
3. Name(s) of any parent companies, subsidiaries, or other entities, that are under common control with, or share ownership with, the U.S. trademark owner.
4. Go to <http://apps.cbp.gov/e-recordations/> for instructions and form to electronically record your trademark with U.S. Customs.

Things to consider when recording your trademark with U.S. Customs:

- Do we have priority over others? When is our first use date?
- Have we successfully enforced the mark?
- Are we aware of any unauthorized use of the mark?
- What is the nature of the unauthorized use of the mark?
 - When did the unauthorized use begin?
 - Is the unauthorized mark the subject of a trademark registration or application?
 - What is the extent of the unauthorized use, such as, Internet, brochures, catalogs, retail?

- Who is the unauthorized user?
 - A competitor?
 - A critic?
 - A small player in the distribution of unauthorized goods?
 - A fan or loyal customer?
 - A business partner or licensee?
- Do we have any contact information for the unauthorized user?
- Do we have any specific information concerning port of entry or specific shipments of the unauthorized goods?

**CHECKLIST FOR OBTAINING AN
EX PARTE SEIZURE ORDER**

1. Contact bank, insurance company, bonding company or bail bondsman in advance to prepare for posting of appropriate bond.
2. Contact computer forensics expert, if necessary, who can copy infringer's computer hard drives during seizure if computers themselves will not be seized.
3. Contact local U.S. Attorney's Office to ascertain whether the U.S. Attorney wants to be involved and bring criminal counterfeiting charges.
4. Prepare and file ex parte and under seal:
 - a. Civil cover sheet
 - b. Attorney appearance form
 - c. Motions for admission of attorneys, if necessary (e.g., pro hac vice)
 - d. Disclosure statement under Fed. R. Civ. P. 7.1 identifying parent corporation of plaintiff or any publicly held corporation that owns 10% or more of the plaintiff's stock
 - e. Check for filing fee
 - f. Summons for each defendant (to be served by U.S. Marshal Service at time of seizure)

- g. Notice that claim involves trademarks, if required by local rules
- h. Application to seal file and proposed order granting motion and sealing file
- i. Motion for a Substitute Custodian and proposed order granting the motion and naming the Substitute Custodian
- j. Verified complaint that alleges counterfeiting under 15 U.S.C. § 1116, along with additional counts such as infringement, dilution and related state law counts
- k. Ex Parte Motion for Seizure Order
- l. Memorandum of Law supporting Ex Parte Motion for Seizure Order (where necessary – cite to declarations and exhibits listed below)
 - i. Demonstrate to court that less drastic order would be inadequate
 - ii. State plaintiff has not publicized the seizure
 - iii. Show defendant used counterfeit mark
 - iv. Demonstrate plaintiff faces immediate and irreparable injury without the seizure
 - v. Describe material to be seized, attaching specimens or photographs.
 - vi. Describe each location where material is to be seized
 - vii. Provide specific evidence that material to be seized will be at place named in the application
 - viii. Show that harm to plaintiff of denying the motion for a seizure order outweighs the harm to any legitimate interests of the defendant

- ix. Show that defendant is likely to destroy, move, hide or otherwise make the counterfeit materials inaccessible if given prior notice of seizure
 - x. Suggest amount for bond
 - xi. Request plaintiff's attorney, corporate representative, and electronic experts accompany the U.S. Marshal during the seizure
- m. Ex Parte Motion for Temporary Restraining Order
- n. Memorandum of Law supporting Ex Parte Motion for TRO
- i. Demonstrate irreparable and immediate injury to plaintiff
 - ii. Explain why notice should not be given to defendant
 - iii. Describe facts and why plaintiff is likely to succeed on the merits of its claim
 - iv. Show balance of hardships favors plaintiff
 - v. Show granting TRO is in the public interest
- o. Supporting Declarations and Exhibits
- i. Plaintiff's attorney certifying, and showing how, each factor under 15 U.S.C. § 1116 has been met.
 - ii. Plaintiff's representative supporting use and registration of plaintiff's trademarks, and their value to plaintiff, and any facts concerning counterfeiting not known to investigator.
 - iii. Investigator describing where counterfeit merchandise was obtained and where counterfeit merchandise is located.
 - iv. Any witnesses who complained to plaintiff about counterfeit merchandise
- p. Proposed seizure order
- i. Specific description of where counterfeit material is to be found and what material is to be seized
 - ii. Time period for executing seizure (no later than 7 days after issuance of order -- 15 U.S.C. § 1116(d)(5)(D))
 - iii. Blank date for post-seizure hearing
 - iv. Name individuals to accompany the U.S. Marshal to the seizure
- q. Proposed Temporary Restraining Order

**CHECKLIST FOR REPORTING
COUNTERFEIT GOODS TO THE
CORPORATE LAW DEPARTMENT**

If you believe our company has become the victim of counterfeit products, please fill out the information as indicated below and contact a member of the Law Department to report the offense.

Background and Contact Information:

- 1. Name:
- 2. Title:
- 3. Address/Department:
 Phone: _____ Fax: _____
 Email: _____ Pager/Mobile: _____

Description of the Intellectual Property

- 4. Identify trademark (e.g., product brand name or logo):
- 5. Identify the type of goods counterfeited
- 6. Identify the approximate retail price of the genuine branded good.
- 7. Identify the primary locations where genuine branded goods are sold.
- 8. Provide a link to the company's website showing the genuine branded good.

Description of the Intellectual Property Crime

- 9. Describe how the counterfeiting was discovered:
- 10. Do you have any examination reports of the infringing or counterfeit goods?
 YES NO. (If so, please provide to the Law Department).
- 11. Describe the scope of the counterfeiting operation, including the following information:
 - a. Estimated quantity of illegal distribution:
 - b. Estimated time period of illegal distribution:
 - c. Is the illegal distribution national or international? Which states or countries?
- 12. Identify where the counterfeiting occurred, and describe the location.
- 13. Identify the name(s) or location(s) of potential counterfeiters and businesses selling the counterfeit goods, including the following information:

Name (Suspect #1):

- Phone number:
- Email address:
- Physical address:
- Current employer, if known:

Reason for suspicion:

Name (Suspect #2):

Phone number:

Email address:

Physical address:

Current employer, if known:

Reason for suspicion:

14. If the distribution of infringing or counterfeit goods involves the Internet (e.g., World Wide Web, FTP, email, online auction site chat rooms), identify the following:
 - a. The type of Internet theft:
 - b. Internet address, including linking sites (domain name, URL, IP address, email):
 - c. Login or password for site:
 - d. Operators of site, if known:
15. If you have conducted an internal investigation into the counterfeiting activities, please describe any evidence acquired.

Please attach photographs of actual samples of counterfeit goods

**Prosecuting Intellectual Property Crimes
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**Appendix A
Commonly Charged
Intellectual Property Crimes**

This overview provides the elements, defenses, penalties, and sentencing guideline sections concerning most of the intellectual property crimes and alternative charges discussed in this Manual, as well as an index indicating which section of the Manual that discusses each crime.

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Trafficking in Counterfeit Trademarks, Service Marks, or Certification Marks

18 U.S.C. § 2320(a)

Chapter III

Elements

1. That the defendant trafficked, or attempted to traffic, in [goods] [services]
 - [offenses committed on or after March 16, 2006, can include labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature]
2. That such trafficking, or attempt to traffic, was intentional;
3. That the defendant
 - [knowingly used a counterfeit mark on or in connection with the [goods] [services]]
 - [offenses on or after March 16, 2006, can also include: knew that counterfeit marks had been applied to the labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging]

in which the defendant trafficked, or attempted to traffic; and
4. That the use of the counterfeit marks was likely to cause confusion, to cause mistake, or to deceive

Counterfeit mark: "a spurious mark—(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature; (ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered; (iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended

to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and (iv) the use of which is likely to cause confusion, to cause mistake, or to deceive"

Defense

Overrun goods: Had authorization but exceeded it (i.e., authorized to make 1,000 copies but made 5,000)

Gray market goods: Goods legitimately manufactured and sold overseas and then imported into U.S. outside traditional distribution channels

Repackaging genuine goods: Genuine goods repackaged with genuine marks or reproduced marks, with no intent to deceive or confuse

Statutory maximum penalties

First offenses: 10 years' imprisonment and fine of \$2,000,000 or twice the gain/loss (individual); fine of \$5,000,000 or twice the gain/loss (organization)

Subsequent offenses: 20 years' imprisonment and \$5,000,000 fine or twice the gain/loss (individual); \$15,000,000 fine or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B5.3

Criminal Copyright Infringement (Felony & Misdemeanor)
 17 U.S.C. § 506(a) & 18 U.S.C. § 2319

Chapter II

Elements for prosecutions under subsections 506(a)(1)(A) and (a)(1)(B)

1. That the works that the defendant is alleged to have [reproduced] [distributed] were protected by copyright
2. That the defendant infringed the copyrights of the works by [reproducing] [distributing to the public] one or more copies of [each of] the copyrighted works
3. That the defendant willfully infringed the copyrights [and]
4. That the defendant, during a 180-day period, reproduced or distributed ten (10) or more copies of one or more copyrighted works which have a total retail value of more than \$2,500 [and]
- [5. [optional] That the act of infringement was for the purpose of commercial advantage or private financial gain]

Elements for prosecutions under subsection 506(a)(1)(C)

1. That copyrights exist for the works that the defendant is alleged to have distributed
2. That the defendant infringed the copyrights of the works by distributing to the public one or more copies of [each of] the copyrighted works
3. That the defendant willfully infringed the copyrights
4. That the works distributed by the defendant were being prepared for commercial distribution
5. That the defendant knew or should have known that the works were intended for commercial distribution [and]
6. That the defendant distributed the works by making them available on a computer network accessible to members of the public [and]
- [7. Optional: That the act of infringement was for the purpose of commercial advantage or private financial gain]

Elements for Misdemeanor Copyright Infringement

Elements 1, 2 & 3 are the same as the base felony elements except that any infringement of the copyright is covered, not just infringement by reproduction or distribution.

4. The defendant infringed EITHER

(a) for purposes of commercial advantage or private financial gain, (17 U.S.C. § 506(a)(1)(A) (numbered § 506(a)(1) by the Apr. 27, 2005 amendments) & 18 U.S.C. § 2319(b)(3)); OR

(b) by reproduction or distribution of one or more copyrighted works with a total retail value of more than \$1,000 within a 180-day period, (17 U.S.C. § 506(a)(1)(B) & 18 U.S.C. § 2319(c)(3)).

Defenses

First sale: The first purchaser and any subsequent purchaser of a specific copy of a copyrighted work may sell, display (privately), or dispose of their copy, but may not reproduce and distribute additional copies made from that work.

Fair use: Allows otherwise infringing use of a work for purposes such as (but not limited to) criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.

Archival exception for computer software: Owner of a copy of a computer program may copy the program as necessary to use the program or do machine maintenance or repair, and as an archival backup, subject to certain limitations.

Statutory maximum penalties

Section 506(a)(1)(A)

First offense: 5 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Subsequent offense: 10 years imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Section 506(a)(1)(B)

First offense: 3 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Subsequent offense: 6 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Section 506(a)(1)(C)

First offense: Same as § 506(a)(1)(A) if purpose was for commercial advantage or private financial gain; if not, same as § 506(a)(1)(B)

Misdemeanor: 1 year's imprisonment and fine of \$100,000 or twice the gain/loss

Guideline citation: United States Sentencing Guideline § 2B5.3

Unauthorized Recording of a Motion Picture (Camcording)

18 U.S.C. § 2319B

Section 11.F.

Elements

1. That the defendant used, or attempted to use, an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work from a performance of such work in a motion picture facility, specifically [describe use or attempted use]
2. That such use, or attempted use of the device, was done knowingly
3. That such use, or attempted use of the device, was without the authorization of the copyright owner
4. That [describe motion picture or audiovisual work] is protected by copyright

Statutory maximum penalties

First offense: 3 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Subsequent offense: 6 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Guideline citation: United States Sentencing Guideline § 2B5.3

Trafficking in Illicit Labels or Counterfeit Labels, Documentation or Packaging for Copyrighted Works
18 U.S.C. § 2318
Chapter VI

Elements

1. That the defendant trafficked in
[labels affixed to/enclosing/accompanying/ designed to be affixed to, to enclose, to accompany] *[describe work/ documentation/ packaging]*
[documentation/packaging]
2. That the
[labels were counterfeit/illicit]
[documentation/packaging was counterfeit]
3. That the defendant acted knowingly
4. Federal jurisdiction is satisfied because:
the offense occurred in special maritime territories or other areas of special jurisdiction of the United States;
the offense used or intended to use the mail or a facility of interstate or foreign commerce;
the counterfeit or illicit labels were affixed to, enclosed, or accompanied copyrighted materials (or were designed to); or
the documentation or packaging is copyrighted.

Statutory maximum penalties: 5 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B5.3

Trafficking in Recordings of Live Musical Performances (Bootlegging)
18 U.S.C. § 2319A
Section 11E.

Offense

Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—

- (1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;
- (2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or
- (3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States.

Statutory maximum penalties

First offense: 5 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Second offense: 10 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B5.3

Digital Millennium Copyright Act (Anti-Circumvention)

17 U.S.C. §§ 1201(a)(1)(A), 1204(a)

Section 7.B.

Elements for Unauthorized Circumvention of Access Controls

1. The defendant acted willfully
2. The defendant circumvented a technological measure
3. The technological measure effectively controls access (i.e., access control)
4. The access control was to a copyrighted work
5. The act of circumvention was for the purpose of commercial advantage or private financial gain

Defenses

Regulatory: The Librarian of Congress promulgates regulatory exemptions every three years that apply only to § 1201(a)(1)(A)'s prohibitions against circumventing access controls.

Certain nonprofit entities: Nonprofit libraries, archives, educational institutions, or public broadcasting entities exempted from criminal prosecution in many cases.

Information security: "[A]ny lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee" or contractor of the federal government or a state government is exempt from all three of § 1201's prohibitions for information security work on "government computer, computer system, or computer network."

Reverse engineering and interoperability of computer programs: Three reverse engineering or "interoperability" defenses for individuals using circumvention technology are provided by statute. These defenses are limited to computer programs.

Encryption research: Activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products.

Restricting minors' access to internet: Courts may waive violations of subsections 1201(a)(1)(A) and 1201(a)(2) to allow parents to protect

their children from inappropriate material available on the Internet, or to prohibit manufacturers from producing products designed to enable parents to protect their children.

Protection of personally identifying information: Circumventing an access control to disable files that collect personally identifiable information.

Security testing: No violation of § 1201(a)(1)(A) occurs if testing does not constitute copyright infringement or a violation of other applicable law such as the Computer Fraud and Abuse Act of 1986.

Statutory maximum penalties

First offense: 5 years' imprisonment and fine of \$500,000 or twice the gain/loss

Second offense: 10 years' imprisonment and \$1,000,000 fine or twice the gain/loss

Guideline Section: United States Sentencing Guidelines § 2B5.3

Commercial Theft of Trade Secrets
 18 U.S.C. § 1832
 Chapter IV

Elements

1. The defendant misappropriated a trade secret from its owner
2. The defendant knew or had a firm belief that the item/information was a trade secret
3. The item/information was in fact a trade secret (except in cases of attempt or conspiracy)
4. The defendant intended to convert the trade secret to the economic benefit of anyone other than the owner
5. The defendant intended or knew the theft would injure the owner of the trade secret
6. The trade secret was related to or was included in a product that was produced for or placed in interstate or foreign commerce

Defenses

Parallel development: Others may discover information underlying a trade secret through their own independent efforts.

Reverse engineering: Others may discover information underlying a trade secret by taking a thing that incorporates the trade secret apart to determine how it works or how it was made or manufactured.

Impossibility: Impossibility is no defense to charges of attempt or conspiracy.

Advice of counsel: May negate *mens rea*.

Claim of right—public domain and proprietary rights: *Mens rea* might be negated if defendant believed in good faith that he had a right to use the information, either because it was in the public domain or because it belonged to him.

Trade secret: All forms and types of financial, business, scientific, technical, economic, or engineering information, if (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

Jury: Courts required to take any action necessary to protect the confidentiality of the trade secret during litigation.

Statutory maximum penalties: 10 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); \$5,000,000 fine or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B1.1

Foreign Economic Espionage
18 U.S.C. § 1831
Chapter IV

Elements

1. The defendant misappropriated a trade secret from its owner
2. The defendant knew or had a firm belief that the item/information was a trade secret
3. The item/information was in fact a trade secret (except in cases of attempt or conspiracy)
4. The defendant intended or knew the theft would benefit any foreign government, foreign instrumentality or foreign agent

Defense: See **Commercial Theft of Trade Secrets** (18 U.S.C. § 1832).

Pre-Judgment Approval Required

Statutory maximum penalty: 15 years' imprisonment and fine of \$500,000 or twice the gain/loss (individual); \$10,000,000 fine or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B1.1

Unauthorized Access of a Computer
18 U.S.C. § 1030(a)(2), (a)(4)
Section IV.F.

Offense under § 1030 (a)(2)—Unlawfully accessing or attempting to access a computer to obtain information

Whoever intentionally accesses [or attempts to access] a computer without authorization or exceeds authorized access, and thereby obtains—

(A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*)

(B) information from any department or agency of the United States OR

(C) information from any protected computer if the conduct involved an interstate or foreign communication ...

Enhancement pursuant to 18 U.S.C. § 1030(g)(2)(B)

(i) the offense was committed for purposes of commercial advantage or private financial gain;

(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or

(iii) the value of the information obtained exceeds \$5,000.

Statutory maximum penalty: 1 year's imprisonment and fine of \$100,000

Enhanced statutory maximum penalties: 5 years' imprisonment (second offense: 10 years' imprisonment) and fine of \$250,000 or twice the gain/loss (individual), fine of \$500,000 or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B1.1

Offense under § 1030 (a)(4) — Unlawfully accessing or attempting to access a protected computer to further a fraud

Whoever knowingly and with intent to defraud, accesses [or attempts to access] a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than \$5,000 in any 1-year period

Statutory maximum penalties: 5 years' imprisonment and fine of \$250,000 or twice the gain/loss (first offense), 10 years' imprisonment and fine of \$250,000 (second offense)

Guideline section: United States Sentencing Guideline § 2B1.1

Interstate Transportation, Sale, or Receipt of Stolen Property

18 U.S.C. §§ 2314, 2315

Sections II.F. & IV.F.

Transportation offense under § 2314

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of \$5,000 or more

Sale or receipt offense under § 2315

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken

Statutory maximum penalties: 10 years' imprisonment and fine of \$250,000 (\$500,000 for organizations) or twice the gain/loss

Guideline section: United States Sentencing Guidelines §§ 2B1.1, 2B1.5

Mail and Wire Fraud Statutes
18 U.S.C. §§ 1341, 1343, 1346
Sections II.F., III.F., IV.F., VI.F.

Mail Fraud Offense Under § 1341

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing ...

Wire Fraud Offense Under § 1343

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice ...

Theft of Honest Services Under § 1346

[T]he term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

Statutory maximum penalties

Base offense: 20 years' imprisonment and fine of \$250,000 or twice the gain/loss (individual); fine of \$500,000 or twice the gain/loss (organization)

If affecting a financial institution: 30 years' imprisonment and fine of \$1,000,000 or twice the gain/loss
Guideline section: United States Sentencing Guideline §§ 2B1.1, 2C1.1

Prohibition on Devices to Intercept Communications
18 U.S.C. § 2512

Offense

Any person who intentionally—

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce

Statutory maximum penalties: 5 years' imprisonment and fine of \$250,000 (\$500,000 for organizations) or twice the gain/loss

Guideline section: United States Sentencing Guideline § 2H3.2

Unauthorized Reception of Cable Service
47 U.S.C. § 553
Section 11.F.

Offense

No person shall [willfully] intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

Enhancement: Done for purposes of commercial advantage or private financial gain

Statutory maximum base penalties: 6 months' imprisonment and fine of \$5,000 or twice the gain/loss (individual); fine of \$10,000 or twice the gain/loss (organization)

Enhanced penalties: 2 years' imprisonment (5 years' for subsequent offense) and fine of \$250,000 or twice the gain/loss; fine of \$500,000 or twice the gain/loss (organization)

Guideline section: United States Sentencing Guideline § 2B5.3

Trafficking in Satellite Decryption Devices

47 U.S.C. § 605(c)(4)

Section I.I.F.

Offense

Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services ...

Statutory maximum penalty: 5 years' imprisonment and fine of \$500,000 or twice the gain/loss

Guideline section: United States Sentencing Guideline §§ 2B5.3, 2H3.1

**Prosecuting Intellectual Property Crimes
Third Edition September 2006
CCIPS Criminal Division**

Appendix G

**Intellectual Property
Contact List**

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1. **Federal Law Enforcement Contacts**
 2. **Federal International Contacts**
 3. **Trademark Organization Contacts**
 4. **Copyright Organization Contacts**
-

1. Federal Law Enforcement Contacts

Computer Crime and Intellectual Property Section (CCIPS)
Criminal Division, U.S. Department of Justice
1301 New York Avenue NW, Suite 600
Washington, DC 20530
Tel: 202-514-1026
Fax: 202-514-6113
<http://www.cybercrime.gov>
<http://www.usdoj.gov>

Prosecution of, and guidance, support, resources, and materials for prosecuting domestic and international criminal intellectual property offenses; development of intellectual property enforcement policy; and support and oversight of the federal prosecution of intellectual property crimes.

National Intellectual Property Rights Coordination Center
U.S. Immigration and Customs Enforcement (ICE)
1300 Pennsylvania Avenue NW, Room 3.5A
Washington, DC 20229
<http://www.ice.gov>
Tel: 202-344-2410
Fax: 202-344-1920
E-mail: ipcenter@dhs.gov

Joint center to coordinate interagency efforts on criminal intellectual property enforcement by ICE and the FBI.

Federal Bureau of Investigation
 Cyber Crime Fraud Unit
 Leslie Bryant - Chief
 J. Edgar Hoover FBI Building
 935 Pennsylvania Avenue NW
 Washington, DC 20535
<http://www.fbi.gov>
 Tel: 202-524-5613
 Fax: 202-324-9197
 E-mail: leslie.bryant@ic.fbi.gov

Responsible for all IPR and Internet fraud investigations; support and oversight of the FBI's IPR enforcement program.

Department of Homeland Security (DHS)
 Customs and Border Patrol (CBP)
 1300 Pennsylvania Avenue NW
 Washington, DC 20229
<http://www.cbp.gov/>

- **Office of Regulations and Rulings—IPR Branch**
 Tel: 202-572-8710
 Fax: 202-572-8744
 E-mail: hqiprbranch@dhs.gov

Develops and administers legal and policy components of the agency's IPR enforcement program.

- **IPR E-Recordation (IPRR) Application**
 E-mail: iprr.questions@dhs.gov
http://www.cbp.gov/xp/cgov/import/commercial_enforcement/iprr_intro.xml

Online application for intellectual property owners to record their trademarks and copyrights with CBP to protect against the importation of infringing products.

- **Office of Trade Relations**
 Tel: 202-344-1440
 Fax: 202-344-1969
 E-mail: traderelations@dhs.gov
http://www.cbp.gov/xp/cgov/toolbox/about/organization/comm_staff_off/trade_relations.xml

Liaison between industry and Customs officials. Reviews concerns voiced by individuals or trade groups and furnishes recommendations to resolve justified complaints.

- **Cyber Crime Center**
 Cyber Crimes Unit
 1320 Random Hills Road, Suite 400
 Fairfax, VA 22030
 Tel: 703-293-8005
 Fax: 703-293-9127

Investigates and coordinates investigation of Internet crimes, including intellectual property rights violations.

U.S. Postal Inspection Service
 Mail Fraud Group
 475 L'Enfant Plaza SW, Room 3411
 Washington, DC 20260
 Tel: 202-268-4267
 Fax: 202-268-7316
<http://www.usps.com/postalinspectors/>

Support and oversight of Postal Inspection Service's mail fraud enforcement nationwide, including investigation of intellectual property crimes committed by use of the mails.

Food and Drug Administration (FDA)
 Office of Criminal Investigations
 7500 Standish Place, Suite 250N
 Rockville, MD 20855
 Tel: 301-294-8030
 Fax: 301-594-1971
<http://www.fda.gov/ora/>

Support and oversight of FDA's enforcement of violations of laws related to mislabeled foods, drugs, and cosmetics.

Consumer Product Safety Commission (CPSC)

4330 East West Highway
 Bethesda, MD 20814
 Tel: 301-504-7923; 800-638-2772
 Fax: 301-504-0124
<http://www.cpsc.gov>
 E-mail: info@cpsc.gov

Dennis Blasius
 Special Assistant to the Deputy Director
 Office of Compliance and Field Operations
 U.S. Consumer Product Safety Commission
 2331 Silvertail Road #24
 Pewaukee, WI 53072
 Tel: 262-650-1216
 Fax: 262-650-1217
 Cell: 414-899-8802
 E-mail: dblasius@cpsc.gov

Has jurisdiction over approximately 15,000 types of consumer products, including coffee makers, electrical cords, toys, baby seats and cribs. Investigates leads into possible hazardous products; develops voluntary standards with industry, issues and enforces mandatory standards; and bans products if no feasible standard will adequately protect the public.

National White Collar Crime Center (NW3C)

Internet Crime Complaint Center (IC3)
 1 Huntington Way
 Fairmont, WV 26554
 Tel: 800-251-3221; 304-363-4312; complaint center: 800-251-7581
 Fax: 304-363-9065
<http://www.ic3.gov>

Partnership between NW3C and FBI. Allows victims to report fraud over the Internet; alerts authorities of suspected criminal or civil violations; offers law enforcement and regulatory agencies a central repository for complaints related to Internet fraud.

2. Federal International Contacts

U.S. Department of Justice

- **International Coordinator in Each U.S. Attorney's Office**
 Office of International Affairs, Department of Justice
 Tel.: 202-514-0000
- **Computer Crime & Intellectual Property Section**
 Tel.: 202-514-1026
- **Office of International Affairs, Department of Justice**
 Legal Attache program
 Tel.: 202-514-0900
- **Office of Overseas Prosecutorial Development & Training**
 Resident Legal Advisor program
 Tel.: 202-514-1323
- **Federal Bureau of Investigation Legal Attache Program**
<http://www.fbi.gov/contact/legst/legat.htm>

State Department Information on Mutual Legal Assistance Treaties

http://travel.state.gov/law/info/judicial/judicial_690.html

U.S. Trade Representative's List of Nations that Fail to Provide Adequate IP Protection
 Annual Special 301 Report
http://ustr.gov/Trade_Sectors/Intellectual_Property/Section_Index.html

3. Trademark Organization Contacts

United States Patent and Trademark Office (USPTO)
 Director of the USPTO
 P.O. Box 1450
 Alexandria, VA 22313-1450
 Tel.: 800-786-9199
<http://www.uspto.gov/>

Provides information on obtaining certified copies of trademark registration. To obtain a copy of a certified trademark registration:

- Office of Public Records
South Tower Building, 2nd Floor
2900 Crystal Drive
Arlington, VA 22202
Tel: 800-972-6382
Fax: 571-273-3250
<http://www.aspro.gov>

International Anti-Counterfeiting Coalition (IACC)

Niles Montan
President
1725 K Street NW, Suite 411
Washington, DC 20006
Tel: 202-223-6667
Fax: 202-223-6668
<http://www.iacc.org>

Represents trademark industries affected by counterfeiting.

International Trademark Association (INTA)

Saisal Dasgupta
External Relations Coordinator, Anti-Counterfeiting
655 Third Avenue, 10th Floor
New York, NY 10017-5617
Tel: 212-642-1739
Fax: 212-768-7796
<http://www.inta.org>

Represents trademark owners in all industries.

4. Copyright Organization Contacts

Library of Congress Copyright Office

Certifications & Documents
LM 402
101 Independence Avenue SW
Washington, DC 20559
Tel: 202-707-4787
<http://www.loc.gov/>

Retains files of registered copyrights and unpublished works;
provides information on obtaining copies of copyright registrations.

The Independent Film & Television Alliance (I.F.T.A.)

Susan Cleary
Vice President & General Counsel
10850 Wilshire Boulevard, 9th Floor
Los Angeles, CA 90024-4321
Tel: 310-446-1000
Fax: 310-446-1600
<http://www.ifta-online.org/>

Represents the independent motion picture and television industry.

Association of American Publishers (AAP)

Patricia L. Judd
Executive Director
International Copyright Enforcement and Trade Policy
50 F Street NW, 4th Floor
Washington, DC 20001
Tel: 202-220-4541
Fax: 202-347-3690
<http://www.publishers.org>

Represents publishers of reference works, scientific medical, technical, professional, and scholarly books and journals; and classroom instructional and testing materials in print and electronic formats.

Business Software Alliance (BSA)

John Wolfe
Director Internet Enforcement
1130 18th Street NW, Suite 700
Washington, DC 20036
Tel: 202-872-5500, 202-872-5122
Fax: 202-872-5501
E-mail: johnw@bsa.org
<http://www.bsa.org>

Represents major software and e-commerce developers. Assists in identifying and locating victims, identifying and valuing infringing products; technical assistance with copyright and copyright protection technologies; assists in obtaining copyright registration certificates.

Entertainment Software Association (ESA)

Chun T. Wright
Senior Anti-Piracy Counsel
575 7th Street NW, Suite 300
Washington, DC 20004
Tel: 202-223-2400 ext. 108
Fax: 202-223-2401
E-mail: chun@theFSA.com

New York office
Tel: 917-522-3250
<http://www.theFSA.com>

Represents companies that publish video and computer games for video consoles, personal computers and the Internet. Assists in identifying and locating victims, identifying and valuing infringing products; technical assistance with copyright and copyright protection technologies; assists in obtaining copyright registration certificates.

International Intellectual Property Alliance (IIPA)

Steve Menalza
Senior Vice President
1747 Pennsylvania Avenue NW, Suite 825
Washington, DC 20006-4637
Tel: 202-833-4198
Fax: 202-872-0546
<http://www.iipa.com>

Coalition of seven U.S. associations working to improve international copyright protection and enforcement.

International Intellectual Property Institute (IIPI)

Eric Garduno
Executive Director
1100 H Street NW, Suite 1100
Washington, DC 20005
Tel: 202-544-6610
Fax: 202-478-1955
<http://www.iipl.org>

Organization dedicated to improving intellectual property systems around the world.

Intellectual Property Owners Association (IPO)

Mr. Dana Robert Celarelli
Government Relations and Legislative Counsel
1255 23rd Street NW, Suite 200
Washington, DC 20037
E-mail: dana@ipo.org
Tel: 202-466-2396
Fax: 202-466-2893
<http://www.ipo.org>
E-mail: info@ipo.org

Represents owners of intellectual property.

Motion Picture Association of America (MPAA)

Mike Robinson
Director of U.S. Anti-Piracy
15503 Ventura Boulevard
Encino, CA 91436
Tel: 818-995-6600
Fax: 818-382-1795

Bill Shannon
Deputy Director U.S. Anti-Piracy
Tel: 718-518-8800 ext. 108
Cell: 917-731-5783
<http://www.mpaa.org>

Represents the film and entertainment industry. Assists in identifying and locating victims, identifying and valuing infringing products, technical assistance with copyright and copyright protection technologies; assists in obtaining copyright registration certificates.

Recording Industry Association of America (RIAA)

Jonathan Whitehead
Senior Vice President, Online Copyright Protection
Anti-Piracy Unit
1330 Connecticut Avenue NW, Suite 300
Washington, DC 20036
Tel: 202-857-9602
Fax: 202-775-7253
<http://www.riaa.org>

Represents the United States recording industry. Assists in identifying and locating victims, identifying and valuing infringing products, technical assistance with copyright and copyright protection technologies; assists in obtaining copyright registration certificates.

International Federation of the Phonographic Industry (IFPI)

Jeremy Banks
Vice President of Internet Anti-Piracy
IFPI Secretariat
54 Regent Street
London
W1B 5RE
United Kingdom
Tel: 011-44-207-876-6804
E-mail: jeremy.banks@ifpi.org
<http://www.ifpi.org/>

Represents the worldwide recording industry's international organizations, legal strategies, litigation, and public relations. Coordinates international strategies in anti-piracy enforcement, technology, and lobbying of governments. IFPI and RIAA work closely together. RIAA recommends contacting it before contacting the IFPI.

Software & Information Industry Association (SIIA)

1050 Vermont Avenue NW, 6th Floor
Washington, DC 20005-4095
Tel: 202-289-7442
Fax: 202-289-7097
<http://www.sii.net>

Keith Kupferschmid
Vice President, Intellectual Property Policy & Enforcement
Tel: 202-789-4442
E-mail: keithk@sii.net

Jason Allen
Manager, Internet Anti-Piracy
Tel: 202-789-4477
E-mail: jallen@sii.net

SIIA represents software companies and publishers of magazines, books, newspapers, databases and other digital publications. SIIA's mission is to protect, promote, and inform the software and content industry. Assists in identifying and locating victims, identifying and valuing infringing products, technical assistance with copyright and copyright protection technologies; assists in obtaining copyright registration certificates.

U.S. Customs and Border Protection¹ (CBP) Trademark Recordation Application Template

To facilitate the filing of trademark recordations with the CBP, the following electronic template has been created.

The filing of a recordation application will begin the administrative recordation process with the CBP and lead to faster processing of applications.

At this time, CBP cannot accept the electronic submission of this template; therefore, electronic filing is not currently available.

A separate application is required for each recordation sought. Applications will be processed in the order received. In addition to the application in accordance with 19 CFR 133.2 and 133.3, recordants must provide the CBP with a "status copy"² (or "certified copy") of the certificate of registration issued by the U.S. Patent & Trademark Office showing title to be in the name of the applicant; five photocopies of the "status copy" (or "certified copy"), and an application fee of \$190 to cover each class for which trademark recordation is sought.

After the application template below, you will find a checklist of information and documents that should accompany your new recordation application.

All documentation concerning recordations should be submitted to:

Department of Homeland Security
U.S. Customs and Border Protection
Office of Regulations & Rulings
Intellectual Property Rights Branch
1300 Pennsylvania Ave., NW
Mint Annex Building
Washington DC 20229

PLEASE NOTE: YOU MUST PROVIDE CBP WITH ONE ACTUAL CERTIFIED COPY OF YOUR CERTIFICATE OF REGISTRATION FOR EACH TRADEMARK YOU WISH TO RECORD. APPLICATIONS WHICH LACK THE ACTUAL CERTIFIED COPY ISSUED BY THE U.S. PATENT & TRADEMARK OFFICE WILL BE RETURNED.

¹ Note: On March 1, 2003 the U.S. Customs Service became U.S. Customs and Border Protection.

² A status copy or certified copy is an official copy of the registration certificate issued by the U.S. Patent & Trademark Office, not a photocopy of said certificate.

Trademark Recordation Application Template:

1. Name/Description of trademark registered with the U.S. Patent & Trademark Office:
2. Name and complete business address of trademark owner(s):
3. Citizenship (corporate or personal) of trademark owner(s):
4. Is the applicant the trademark owner(s)? If not, what is the applicant's relationship to the trademark owner?
5. Has this trademark previously been recorded with U.S. Customs and Border Protection (CBP) (formerly, the U.S. Customs Service)?
Yes No
6. If so, what is the previous recordation number?
7. Is the trademark a typed "word mark" (i.e., does it appear stylized, or does it incorporate a design)?
Yes No
8. U.S. Patent & Trademark Registration No:
9. International class(es) (IC) of goods covered by the trademark registration³:
10. International class(es) (IC) of goods for which recordation is sought and a complete description of the merchandise within the class(es) of goods:
11. Date of issuance of trademark registration:
12. Date of expiration of trademark registration:
13. Place(s) of manufacture of goods bearing the trademark:

³ Includes certification marks, service marks and collective marks.

⁴ Note that a fee of \$190 is required for each class of goods for which recordation is requested.

14. Name(s) and address(es) of licensees who use the trademark (if there are 25 or fewer licensees please list them here, if over 25 attach separately, but please indicate below that the information is attached):

15. The names and principal business addresses of any persons or business entities, foreign or domestic, who use the trademark and a description as to those use(s):

16. Is the subject trademark now, or has it ever been, owned, used, or otherwise claimed by the trademark owner outside the United States (this may include a pending registration abroad)?
Yes No

17. The name(s) of any parent companies, subsidiaries, or other entities, foreign or domestic, that are under common control³ with, or share any type of ownership⁴ interest or relationship with, the U.S. trademark owner:

18. Is the subject trademark owned, used, or otherwise claimed by any parent company, subsidiary, or other entity, foreign or domestic, that is under common control or common ownership with, or shares any common control or common ownership with, the U.S. trademark owner?
Yes No

19. If "Yes" in Question 18, provide the name of the foreign owner, user or claimant(s):

20. Provide the name, address, telephone number, facsimile number, and email address of the contact person to whom CBP should send inquiries regarding potentially infringing merchandise and notices of detention and seizure pursuant to 19 CFR 133.24.

21. Do you wish to inform us of any potentially infringing merchandise that is being imported?
Yes No

³ Common control includes effective control as to policy or operations and is not necessarily synonymous with common ownership.

⁴ Common ownership includes individual or aggregate ownership of more than 50 percent of the business entity.

22. If yes, do you have samples of the allegedly infringing merchandise that can be submitted for CBP review, or digital images of the merchandise?

23. Do you have the name, and address of the manufacturer, importer, and/or consignee of the allegedly infringing merchandise? Do you have any other pertinent information, such as ports of entry, tariff classification, or dates of importation?

Signature of Applicant date

Signature of Owner date

Notice: The discovery of any false statements, omissions, and/or inaccurate information provided to BCBP in any application for trademark, trade name or copyright recordation may lead to invalidation of any such applications and/or recordations and may result in fines and/or prosecution under 18 U.S.C. 1001.

RECORDATION APPLICATION CHECKLIST:

- ___ Did you include a status copy of certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the applicant? **In order to record the trademark we need a certified certificate affixed with the U.S. Patent and Trademark Office's gold seal. A photocopy of the trademark registration is not sufficient for U.S. Customs and Border Protection (CBP) recordation.**
 - ___ Is your trademark ineligible to be recorded with CBP because it is registered on the SUPPLEMENTAL Register of the U.S. Patent and Trademark Office rather than on the PRINCIPAL Register? CBP can only enforce federally registered trademarks on the Principal Register.
 - ___ Has all of the required information in the recordation application, which is based on 19 CFR 133.2 through 133.7 been provided?
 - ___ Are you sure the certificate of registration is current, or has it expired?
 - ___ Have you included three photocopies of the status copy of certificate of registration?
 - ___ Have you submitted the correct fee? Submission of fee (\$190) is for the recordation of **one** trademark for **one** international class(C) of goods?
 - ___ If this is a renewal of a recordation, have you submitted the required fee of (\$80)?
 - ___ Are you sure the trademark has not already been recorded with CBP (formerly, U.S. Customs Service), and therefore does not need to be recorded at this time?
 - ___ Are you renewing your recordation (\$80), or has it previously expired and you are instead re-recording (\$190) your trademark?
 - ___ Have you attached your check?
 - ___ Have you made your check payable to "U.S. Customs and Border Protection?"
 - ___ Is your check negotiable or is it void because it is over 6-months old?
- Please consult 19 CFR Part 133 for further information. If you need further assistance, we can be reached at (202) 572-8710. Upon receipt of your complete application, your recordation will be assigned and processed.

USM-285 is a 5-part form. Fill out the form and print 5 copies. Sign as needed and route as specified below.

U.S. Department of Justice United States Marshals Service		PROCESS RECEIPT AND RETURN <i>See "Instructions for Service of Process by U.S. Marshal"</i>	
PLAINTIFF		COURT CASE NUMBER	
DEFENDANT		TYPE OF PROCESS	
SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)			
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW		Number of process to be served with this Form 285	
		Number of parties to be served in this case	
		Check for service on U.S.A.	
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE: <i>(Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service)</i>			
Signature of Attorney other Originator requesting service on behalf of:		<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER DATE
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE			
I acknowledge receipt for the total number of process indicated. <i>(Sign only for USM 285 if more than one USM 285 is submitted)</i>	Total Process	District of Origin	District to Serve
	No. _____	No. _____	No. _____
Signature of Authorized USMS Deputy or Clerk		Date	
I hereby certify and return that I <input type="checkbox"/> have personally served, <input type="checkbox"/> have legal evidence of service, <input type="checkbox"/> have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.			
<input type="checkbox"/> I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above <i>(See remarks below)</i>			
Name and title of individual served <i>(if not shown above)</i>		<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode	
Address <i>(complete only different than shown above)</i>		Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm
		Signature of U.S. Marshal or Deputy	
Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges
			Advance Deposits
		Amount owed to U.S. Marshal* or (Amount of Refund*)	
REMARKS:			
PRINT 5 COPIES: 1. CLERK OF THE COURT 2. USMS RECORD 3. NOTICE OF SERVICE 4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal. 5. ACKNOWLEDGMENT OF RECEIPT			
PRIOR EDITIONS MAY BE USED			
Form USM-285 Rev. 12/15/80 Automated 01/00			

INSTRUCTIONS FOR SERVICE OF PROCESS BY U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES. Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

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CRAIGSLIST TERMS OF USE

1. ACCEPTANCE OF TERMS

craigslist provides a collection of online resources, including classified ads, forums, and various email services, (referred to hereafter as "the Service") subject to the following Terms of Use ("TOU"). By using the Service in any way, you are agreeing to comply with the TOU. In addition, when using particular craigslist services, you agree to abide by any applicable posted guidelines for all craigslist services, which may change from time to time. Should you object to any term or condition of the TOU, any guidelines, or any subsequent modifications thereto or become dissatisfied with craigslist in any way, your only recourse is to immediately discontinue use of craigslist.

2. MODIFICATIONS TO THIS AGREEMENT

We reserve the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such modifications shall become effective immediately upon the posting thereof. You must review this agreement on a regular basis to keep yourself apprised of any changes. You can find the most recent version of the TOU at:

<http://www.craigslist.org/about/terms.of.use.html>

3. CONTENT

You understand that all postings, messages, text, files, images, photos, video, sounds, or other materials ("Content") posted on, transmitted through, or linked from the Service, are the sole responsibility of the person from whom such Content originated. More specifically, you are entirely responsible for each individual item ("Item") of Content that you post, email or otherwise make available via the Service. You understand that craigslist does not control, and is not responsible for Content made available through the Service, and that by using the Service, you may be exposed to Content that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. Furthermore, the craigslist site and Content available through the Service may contain links to other websites, which are completely independent of craigslist. craigslist makes no representation or warranty as to the accuracy, completeness or authenticity of the information contained in any such site. Your linking to any other websites is at your own risk. You agree that you must evaluate, and bear all risks associated with, the use of any Content, that you may not rely on said Content, and that under no circumstances will craigslist be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise made available via the Service. You acknowledge that craigslist does not pre-screen or approve Content, but that craigslist shall have the right (but not the obligation) in its sole discretion to refuse, delete or move any Content that is available via the Service, for violating the letter or spirit of the TOU or for any other reason.

4. THIRD PARTY CONTENT, SITES, AND SERVICES

The craigslist site and Content available through the Service may contain features and functionalities that may link you or provide you with access to third party content which is completely independent of craigslist, including web sites, directories, servers, networks, systems, information

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and databases, applications, software, programs, products or services, and the Internet as a whole.

Your interactions with organizations and/or individuals found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties.

You agree that craigslist shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on this site, or between users and any third party, you understand and agree that craigslist is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release craigslist, its officers, employees, agents and successors in rights from claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and / or our service. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

5. NOTIFICATION OF CLAIMS OF INFRINGEMENT

If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please notify craigslist's agent for notice of claims of copyright or other intellectual property infringement ("Agent"), at

abuse@craigslist.org

or:

Copyright Agent
craigslist
1381 9th Avenue
San Francisco, CA
94122

Please provide our Agent with the following Notice:

- a) Identify the material on the craigslist site that you claim is infringing, with enough detail so that we may locate it on the website;
- b) A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- c) A statement by you declaring under penalty of perjury that (1) the above information in your Notice is accurate, and (2) that you are the owner of the copyright interest involved or that you are authorized to act on behalf of that owner;
- d) Your address, telephone number, and email address; and
- e) Your physical or electronic signature.

craigslist will remove the infringing posting(s), subject to the the procedures outlined in the Digital Millenium Copyright Act (DMCA).

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6. PRIVACY AND INFORMATION DISCLOSURE

craigslist has established a Privacy Policy to explain to users how their information is collected and used, which is located at the following web address:

<http://www.craigslist.org/about/privacy.policy.html>

Your use of the craigslist website or the Service signifies acknowledgement of and agreement to our Privacy Policy. You further acknowledge and agree that craigslist may, in its sole discretion, preserve or disclose your Content, as well as your information, such as email addresses, IP addresses, timestamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: comply with legal process; enforce the TOU; respond to claims that any Content violates the rights of third-parties; respond to claims that contact information (e.g. phone number, street address) of a third-party has been posted or transmitted without their consent or as a form of harassment; protect the rights, property, or personal safety of craigslist, its users or the general public.

7. CONDUCT

You agree not to post, email, or otherwise make available Content:

- a) that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way;
- b) that is pornographic or depicts a human being engaged in actual sexual conduct including but not limited to (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or (ii) bestiality, or (iii) masturbation, or (iv) sadistic or masochistic abuse, or (v) lascivious exhibition of the genitals or pubic area of any person;
- c) that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- d) that violates the Fair Housing Act by stating, in any notice or ad for the sale or rental of any dwelling, a discriminatory preference based on race, color, national origin, religion, sex, familial status or handicap (or violates any state or local law prohibiting discrimination on the basis of these or other characteristics);
- e) that violates federal, state, or local equal employment opportunity laws, including but not limited to, stating in any advertisement for employment a preference or requirement based on race, color, religion, sex, national origin, age, or disability.
- f) with respect to employers that employ four or more employees, that violates the anti-discrimination provision of the Immigration and Nationality Act, including requiring U.S. citizenship or lawful permanent residency (green card status) as a condition for employment, unless otherwise required in order to comply with law, regulation, executive order, or federal, state, or local government contract.
- g) that impersonates any person or entity, including, but not limited to, a craigslist employee, or falsely states or otherwise misrepresents your affiliation with a person or entity (this provision does not apply to Content

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that constitutes lawful non-deceptive parody of public figures.);

h) that includes personal or identifying information about another person without that person's explicit consent;

i) that is false, deceptive, misleading, deceitful, misinformative, or constitutes "bait and switch";

j) that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, or Content that you do not have a right to make available under any law or under contractual or fiduciary relationships;

k) that constitutes or contains "affiliate marketing," "link referral code," "junk mail," "spam," "chain letters," "pyramid schemes," or unsolicited commercial advertisement;

l) that constitutes or contains any form of advertising or solicitation if: posted in areas of the craigslist sites which are not designated for such purposes; or emailed to craigslist users who have not indicated in writing that it is ok to contact them about other services, products or commercial interests.

m) that includes links to commercial services or web sites, except as allowed in "services";

n) that advertises any illegal service or the sale of any items the sale of which is prohibited or restricted by any applicable law, including without limitation items the sale of which is prohibited or regulated by California law. A partial list of prohibited items for sale and prohibited services offered is provided at the following web address for your convenience:
<http://craigslist.org/about/prohibited.items.html>

o) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

p) that disrupts the normal flow of dialogue with an excessive amount of Content (flooding attack) to the Service, or that otherwise negatively affects other users' ability to use the Service; or

q) that employs misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Service.

Additionally, you agree not to:

r) contact anyone who has asked not to be contacted;

s) "stalk" or otherwise harass anyone;

t) collect personal data about other users for commercial or unlawful purposes;

u) use automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Service - unless expressly permitted by craigslist;

v) post non-local or otherwise irrelevant Content, repeatedly post the same or similar Content or otherwise impose an unreasonable or disproportionately large load on our infrastructure;

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w) post the same item or service in more than one classified category or forum, or in more than one metropolitan area;

x) attempt to gain unauthorized access to craigslist's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service or the craigslist website; or

y) use any form of automated device or computer program that enables the submission of postings on craigslist without each posting being manually entered by the author thereof (an "automated posting device"), including without limitation, the use of any such automated posting device to submit postings in bulk, or for automatic submission of postings at regular intervals.

8. POSTING AGENTS

A "Posting Agent" is a third-party agent, service, or intermediary that offers to post Content to the Service on behalf of others. To moderate demands on craigslist's resources, you may not use a Posting Agent to post Content to the Service without express permission or license from craigslist. Correspondingly, Posting Agents are not permitted to post Content on behalf of others, to cause Content to be so posted, or otherwise access the Service to facilitate posting Content on behalf of others, except with express permission or license from craigslist.

9. NO SPAM POLICY

You understand and agree that sending unsolicited email advertisements to craigslist email addresses or through craigslist computer systems, which is expressly prohibited by these TOU, will use or cause to be used servers located in California. Any unauthorized use of craigslist computer systems is a violation of the TOU and certain federal and state laws, including without limitation the Computer Fraud and Abuse Act (18 U.S.C. § 1030 et seq.), Section 502 of the California Penal Code and Section 17538.45 of the California Business and Professions Code. Such violations may subject the sender and his or her agents to civil and criminal penalties.

10. PAID POSTINGS

We may charge a fee to post Content in some areas of the Service. The fee is an access fee permitting Content to be posted in a designated area. Each party posting Content to the Service is responsible for said Content and compliance with the TOU. All fees paid will be non-refundable in the event that Content is removed from the Service for violating the TOU.

11. LIMITATIONS ON SERVICE

You acknowledge that craigslist may establish limits concerning use of the Service, including the maximum number of days that Content will be retained by the Service, the maximum number and size of postings, email messages, and other Content that may be transmitted or stored by the Service, and the frequency with which you may access the Service. You agree that craigslist has no responsibility or liability for the deletion or failure to store any Content maintained or transmitted by the Service. You acknowledge that craigslist reserves the right at any time to modify or discontinue the Service (or any part thereof) with or without notice, and that craigslist shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

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12. ACCESS TO THE SERVICE

craigslist grants you a limited, revocable, nonexclusive license to access the Service for your own personal use. This license does not include: (a) access to the Service by Posting Agents; or (b) any collection, aggregation, copying, duplication, display or derivative use of the Service nor any use of data mining, robots, spiders, or similar data gathering and extraction tools for any purpose unless expressly permitted by craigslist. A limited exception to (b) is provided to general purpose internet search engines and non-commercial public archives that use such tools to gather information for the sole purpose of displaying hyperlinks to the Service, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. "General purpose internet search engine" does not include a website or search engine or other service that specializes in classified listings or in any subset of classified listings such as jobs, housing, for sale, services, or personals, or which is in the business of providing classified ad listing services.

craigslist permits you to display on your website, or create a hyperlink on your website to, individual postings on the Service so long as such use is for noncommercial and/or news reporting purposes only (e.g., for use in personal web blogs or personal online media). If the total number of such postings displayed or linked to on your website exceeds one hundred (100) postings, your use will be presumed to be in violation of the TOU, absent express permission granted by craigslist to do so. You may also create a hyperlink to the home page of craigslist sites so long as the link does not portray craigslist, its employees, or its affiliates in a false, misleading, derogatory, or otherwise offensive matter.

craigslist offers various parts of the Service in RSS format so that users can embed individual feeds into a personal website or blog, or view postings through third party software news aggregators. craigslist permits you to display, excerpt from, and link to the RSS feeds on your personal website or personal web blog, provided that (a) your use of the RSS feed is for personal, non-commercial purposes only, (b) each title is correctly linked back to the original post on the Service and redirects the user to the post when the user clicks on it, (c) you provide, adjacent to the RSS feed, proper attribution to 'craigslist' as the source, (d) your use or display does not suggest that craigslist promotes or endorses any third party causes, ideas, web sites, products or services, (e) you do not redistribute the RSS feed, and (f) your use does not overburden craigslist's systems. craigslist reserves all rights in the content of the RSS feeds and may terminate any RSS feed at any time.

Use of the Service beyond the scope of authorized access granted to you by craigslist immediately terminates said permission or license. In order to collect, aggregate, copy, duplicate, display or make derivative use of the Service or any Content made available via the Service for other purposes (including commercial purposes) not stated herein, you must first obtain a license from craigslist.

13. TERMINATION OF SERVICE

You agree that craigslist, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Service (or any part thereof), immediately and without notice, and remove and discard any Content within the Service, for any reason, including, without limitation, if craigslist believes that you have acted inconsistently with the letter or spirit of the TOU. Further, you agree that craigslist shall not be liable

to you or any third-party for any termination of your access to the Service. Further, you agree not to attempt to use the Service after said termination. Sections 2, 4, 6 and 12-18 shall survive termination of the TOU.

14. PROPRIETARY RIGHTS

The Service is protected to the maximum extent permitted by copyright laws and international treaties. Content displayed on or through the Service is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions. Any reproduction, modification, creation of derivative works from or redistribution of the site or the collective work, and/or copying or reproducing the sites or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of craigslist. You further agree not to reproduce, duplicate or copy Content from the Service without the express written consent of craigslist, and agree to abide by any and all copyright notices displayed on the Service. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Service. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Service. CRAIGSLIST is a registered mark in the U.S. Patent and Trademark Office.

Although craigslist does not claim ownership of content that its users post, by posting Content to any public area of the Service, you automatically grant, and you represent and warrant that you have the right to grant, to craigslist an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sublicensees (through multiple tiers) of the foregoing. Furthermore, by posting Content to any public area of the Service, you automatically grant craigslist all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Content on the Service by any party for any purpose.

15. DISCLAIMER OF WARRANTIES

YOU AGREE THAT USE OF THE CRAIGSLIST SITE AND THE SERVICE IS ENTIRELY AT YOUR OWN RISK. THE CRAIGSLIST SITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIGSLIST DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY, AND PERFORMANCE OF THE CRAIGSLIST SITE AND THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIGSLIST DISCLAIMS ANY WARRANTIES FOR OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE CRAIGSLIST SITE OR THE SITES OR SERVICE, OR ACCESSED THROUGH ANY LINKS ON THE CRAIGSLIST SITE. TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIGSLIST DISCLAIMS ANY WARRANTIES FOR VIRUSES OR OTHER HARMFUL COMPONENTS IN CONNECTION WITH THE CRAIGSLIST SITE OR THE SERVICE. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, some of the foregoing disclaimers may not apply to you insofar as they relate to implied warranties.

16. LIMITATIONS OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL CRAIGSLIST BE LIABLE FOR DIRECT, INDIRECT,

INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF CRAIGSLIST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY ASPECT OF YOUR USE OF THE CRAIGSLIST SITE OR THE SERVICE, WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE CRAIGSLIST SITE OR THE SERVICE, FROM INABILITY TO USE THE CRAIGSLIST SITE OR THE SERVICE, OR THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE CRAIGSLIST SITE OR THE SERVICE. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE CRAIGSLIST SITE OR THE SERVICE OR ANY LINKS ON THE CRAIGSLIST SITE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE CRAIGSLIST SITE OR THE SERVICE OR ANY LINKS ON THE CRAIGSLIST SITE. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. In some jurisdictions, some of the foregoing limitation may not apply to you.

17. INDEMNITY

You agree to indemnify and hold craigslist, its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers, suppliers and employees, harmless from any claim or demand, including reasonable attorney fees and court costs, made by any third party due to or arising out of Content you submit, post or make available through the Service, your use of the Service, your violation of the TOU, your breach of any of the representations and warranties herein, or your violation of any rights of another.

18. GENERAL INFORMATION

The TOU constitute the entire agreement between you and craigslist and govern your use of the Service, superseding any prior agreements between you and craigslist. The TOU and the relationship between you and craigslist shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and craigslist agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Francisco, California. The failure of craigslist to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any provision of the TOU is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOU remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOU must be filed within one (1) year after such claim or cause of action arose or be forever barred.

19. VIOLATION OF TERMS AND LIQUIDATED DAMAGES

Please report any violations of the TOU, by flagging the posting(s) for review, or by emailing to:

abuse@craigslist.org

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

You understand and agree that, because damages are often difficult to quantify, if it becomes necessary for craigslist to pursue legal action to enforce the TOU, you will be liable to pay craigslist the following amounts as liquidated

damages, which you accept as reasonable estimates of craigslist's damages for the specified breaches of the TOU:

a. If you post a message that (1) impersonates any person or entity; (2) falsely states or otherwise misrepresents your affiliation with a person or entity; or (3) that includes personal or identifying information about another person without that person's explicit consent, you agree to pay craigslist one thousand dollars (\$1,000) for each such message. This provision does not apply to messages that are lawful non-deceptive parodies of public figures.

b. If craigslist establishes limits on the frequency with which you may access the Service, or terminates your access to or use of the Service, you agree to pay craigslist one hundred dollars (\$100) for each message posted in excess of such limits or for each day on which you access craigslist in excess of such limits, whichever is higher.

c. If you send unsolicited email advertisements to craigslist email addresses or through craigslist computer systems, you agree to pay craigslist twenty five dollars (\$25) for each such email.

d. If you post Content in violation of the TOU, other than as described above, you agree to pay craigslist one hundred dollars (\$100) for each Item of Content posted. In its sole discretion, craigslist may elect to issue a warning before assessing damages.

e. If you are a Posting Agent that uses the Service in violation of the TOU, in addition to any liquidated damages under clause (d), you agree to pay craigslist one hundred dollars (\$100) for each and every Item of Content posted in violation of the TOU. A Posting Agent will also be deemed an agent of the party engaging the Posting Agent to access the Service (the "Principal"), and the Principal (by engaging the Posting Agent in violation of the TOU) agrees to pay craigslist an additional one hundred dollars (\$100) for each Item of Content posted by the Posting Agent on behalf of the principal in violation of the TOU.

f. If you aggregate, display, copy, duplicate, reproduce, or otherwise exploit for any purpose any Content (except for your own Content) in violation of the TOU without craigslist's express written permission, you agree to pay craigslist three thousand dollars (\$3,000) for each day on which you engage in such conduct.

Otherwise, you agree to pay craigslist's actual damages, to the extent such actual damages can be reasonably calculated. Notwithstanding any other provision of the TOU, craigslist retains the right to seek the remedy of specific performance of any term contained in the TOU, or a preliminary or permanent injunction against the breach of any such term or in aid of the exercise of any power granted in the TOU, or any combination thereof.

20. FEEDBACK

We welcome your questions and comments on this document in the craigslist feedback forum:

<http://forums.craigslist.org/?forumID=8>

Notice of Claimed Infringement

Date: _____

eBay Inc.
 Attn: eBay VeRO Program
 2145 Hamilton Ave.
 San Jose, CA 95125
 Fax Number: (408) 516-8811

Dear eBay:

I, the undersigned, state **UNDER PENALTY OF PERJURY** that

- I am the owner, or an agent authorized to act on behalf of the owner, of certain intellectual property rights ("IP Owner");
- I have a good faith belief that the listings identified (by item number) in the addendum attached hereto, offer items or contain materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and
- The information in this notice is accurate.

Please act expeditiously to remove the listings identified in the addendum.

I May Be Contacted At (*required)

Name of IP Owner:* _____
 Name and Title:* _____
 Company: _____
 Address:* _____
 City, State, and Zip:* _____
 email address (for correspondence with eBay): _____
 email address (to be given to eBay sellers)*: _____
 Telephone:* _____
 Fax: _____

In addition to the undersigned, the following persons have the proper authority to sign future Notices of Claimed Infringement on behalf of the IP Owner:

Name: _____ Email: _____
 Name: _____ Email: _____
 Name: _____ Email: _____

Truthfully,

 Signature

Addendum to Notice of Claimed Infringement
List of Allegedly Infringing Listings, Items, or Materials

A Note on Reason Codes: When identifying item numbers please use the reasons below. When removing items from the site, eBay will inform sellers of the specific reason for the removal of their items. We believe providing sellers with this information benefits all parties.

Select the most appropriate reason. Please associate each item you report with only one reason code.

<p>Reason Codes (Note that the numbers may not be sequential everywhere. This is not a mistake, but simply reflects that some reason codes are not legally applicable in all countries.)</p> <p>Trademark - Item Infringement</p> <p>1.1. Trademark owner doesn't make this type of product 1.2. Item(s) is an unlawful replica of a product made by the trademark owner 1.3. Item(s) is an unlawful importation of product bearing trademark</p> <p>Trademark - Listing content infringement</p> <p>2.1. Listing(s) contains unlawful comparison to trademark owner's brand name 2.2. Listing(s) contains unlawful use of trademark owner's logo</p> <p>Copyright - Item Infringement</p> <p>3.1. Software offered for sale in violation of a license 3.2. Item(s) is a bootleg recording of live performance 3.3. Item(s) is an unlawful copy of media (software, games, movies, etc.) 3.4. Item(s) is unlawful duplication of printed material 3.5. Item(s) is an unlawful copy of other copyrighted work (paintings, sculptures, etc.)</p> <p>Copyright - Listing content infringement</p> <p>4.1. Listing(s) uses unauthorized copy of copyrighted text 4.2. Listing(s) uses unauthorized copy of copyrighted image 4.3. Listing(s) uses unauthorized copy of copyrighted image and text</p> <p>Other Infringement</p> <p>5.1. Item(s) infringes a valid patent (requires patent registration number) 5.3. Item(s) violates a celebrity's right of publicity 5.4. Listing(s) content violates a celebrity's right of publicity</p>

<p>Reason Code: _____</p> <p>Work(s) Infringed: _____</p> <p>Item Number(s): _____</p> <hr/> <p>Reason Code: _____</p> <p>Work(s) Infringed: _____</p> <p>Item Number(s): _____</p>

Furthermore, please be aware that we do not take any action in situations where an advertisement is being triggered by non-trademarked terms even though the search query contains a trademarked term. This stems from the fact that Google allows advertisers to use a broad matching system to target their ads. For example, if an advertiser has selected the keyword shoes, that advertiser's ad will appear when a user enters the word "shoes" as a search query, regardless of other search terms that may be used. So, the ad would show if the user entered any of the following search queries: "tennis shoes," "red shoes," or "Nike shoes." This system eliminates the need for the advertiser to specify individually the many different search query combinations that are relevant to their ad.

If you are a trademark owner (or represent a trademark owner) and have an objection to an advertiser's use of a term corresponding to your trademark as a keyword or in ad text that is consistent with the foregoing, please fill out the following form:

[Trademark complaint form](#)

- To submit your complaint online, complete the required fields and use the submit button provided.
- To submit your complaint via mail, please provide all of the information requested in our Trademark complaint, press submit, print the email confirmation and send it to one of the following addresses:

Google Inc.
Attn: Google AdWords, Trademark Complaints
1600 Amphitheatre Parkway
Mountain View, CA 94043

Or via fax to: 1-650-649-1774
Attn: Google Trademark Complaints

Or via email to: ads-trademarks@google.com

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documenting the manufacture, sale, or receipt of things involved in such violation." 15 U.S.C. 1116(d)(1)(A). The Copyright Act lacks a parallel provision permitting the seizure of records or evidence, although the risk exists in copyright cases as much as in trademark cases that such evidence will be destroyed. Accordingly, subsection 3(a) of the Administration's legislative proposal would amend 17 U.S.C. § 503(a) to provide for the impoundment in civil copyright cases of "records documenting the manufacture, sale, or receipt of things involved in such violation" under an appropriate protective order.

Criminalizing Attempted Copyright Crimes

Subsection 4(a) of the Administration's legislative proposal would create a new Federal offense of attempting to commit criminal copyright infringement. Currently, the completed crime is defined in 17 U.S.C. § 506(a). Subsection 4(a) would not change the elements of completed copyright infringement crimes. However, it would criminalize any attempt to commit this offense.

It is a general tenet of the criminal law that those who attempt to commit a crime but do not complete it are as morally culpable as those who succeed in doing so. Therefore, subsection 4(a) would amend 17 U.S.C. §§ 506(a)(1)(A) and (B) to include attempts. A final amendment for the purpose of criminalizing copyright attempts is included in section 9 of the Administration's legislative proposal, which is discussed below.

Harmonizing and Modernizing Criminal Intellectual Property Forfeiture and Restitution Laws

Current intellectual property forfeiture laws lack uniformity, both in the items subject to civil forfeiture and the procedures for criminal forfeiture. A consistent, uniform set of standards governing the seizure and forfeiture of contraband, facilitating equipment, and proceeds for each variety of intellectual property crime would enhance law enforcement efforts, as well as reduce confusion and reinforce protections for innocent third parties and the public. The Administration's legislative proposal would amend the forfeiture provisions for copyright and other intellectual property offenses to provide a consistent set of forfeiture options and procedures for intellectual property crimes.

Subsection 4(b) of the Administration's legislative proposal would amend the forfeiture provisions of 17 U.S.C. § 506(b). It would subject to forfeiture in criminal copyright cases any copies of phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a). It also would subject to forfeiture any property that constituted or was derived from any proceeds obtained directly or indirectly as a result of Federal copyright infringement offenses. Finally, subsection 4(b) would subject to forfeiture any property used or intended to be used in any manner or part to commit or facilitate the commission of a Federal copyright infringement offense, including any plates,

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molds, matrices, masters, tapes, film negatives, or other articles by means of which the infringed copies or phonorecords may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

Under the Administration's proposal, the procedures for civil forfeiture outlined in chapter 46 of title 18 would apply to seizures or civil forfeitures under section 506. The Administration's legislative proposal also would harmonize the procedures for criminal forfeiture under these provisions to conform with the forfeiture provisions of other statutes. Forfeiture of property covered by this section, as well as any seizure and distribution of the property and any related judicial or administrative proceeding, would 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 (specific to certain drug-related cases). The procedures for forfeiture proceedings referenced at 21 U.S.C. § 853(f) apply to criminal forfeiture proceedings under section 506.

While current 17 U.S.C. § 506(b) allows for civil forfeiture only of property "used in the manufacture of such infringing copies or phonorecords," subsection 4(b) of the Administration's legislative proposal also would authorize forfeiture of "property . . . intended to be used" in the commission of the offense, such as blank media or polycarbonate intended for use in producing counterfeit CDs and DVDs.

Subsection 4(b) of the Administration's legislative proposal expressly provides for restitution as well as forfeiture. When a person is convicted of an offense under section 506 of the Administration's legislative proposal, the court would be required to order the person to pay restitution to the copyright owner and any other victim of the offense.

The Administration's legislative proposal would consolidate sections 506 and 509 of title 17, therefore, subsection 4(c) of the proposal would repeal existing 17 U.S.C. § 509. Under the Administration's proposal, section 506 would provide for both civil and criminal forfeiture of all of the types of property that currently are made civilly forfeitable under section 509, although in some instances, the amended subsection 506(b) refers to such property in broader, more general terms, rather than more specific enumerated lists of items.

These proposed amendments to the forfeiture provisions for copyright offenses are consistent with, and nearly identical to, amendments to the forfeiture provisions for counterfeiting offenses that were enacted last year as part of the Stop Counterfeiting in Manufactured Goods Act, Pub. L. No. 109-181 (enacted March 16, 2006). In order to harmonize the forfeiture and restitution laws provisions for criminal intellectual property offenses generally, other sections of the Administration's legislative proposal also would apply similar amendments to other criminal intellectual property statutes.

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Importation and Exportation of Infringing Copies of Copyrighted Works

Section 5 amends 17 U.S.C. § 602 to ensure that the export of infringing copies is treated as an infringement of the distribution right, just as importation of infringing copies is now treated under current law, and to make clear that both import and export of infringing copies is subject to criminal as well as civil penalties. Currently, § 602 only addresses the importation of infringing copies.

Under the Copyright Act, the importation or exportation of infringing copies is, in most cases, an infringement of the copyright owner's distribution right, which grants the owner of a copyrighted work the exclusive right to distribute copies of the work to the public. A question arises in situations involving a shipment from one party to himself across a border whether such an importation would constitute a "distribution to the public" for purposes of copyright law. Under current law, 17 U.S.C. § 602 clarifies that in most cases importing infringing copies into the United States violates the distribution right and is itself an infringement of copyright.

Section 5 expands 17 U.S.C. § 602 to make clear that the export of infringing copies should be treated as an infringing distribution, just as the importation of infringing copies is now treated. Further, section 5 clarifies that both import and export of infringing copies are not only actionable civilly, but also may form the basis for a criminal copyright prosecution in certain cases. At the same time, Section 5 maintains the existing exemptions or safe harbors for importation of certain copies currently provided in 17 U.S.C. § 602, and also provides essentially identical provisions for exports. The bill does not change the rule in current 17 U.S.C. § 602(a) that provides only civil remedies against the importation of noninfringing copies that were acquired outside the country. Nor does it affect the criminal remedies against smuggling pirated works into the United States or a foreign country under sections 545 and 546 of title 18.

Counterfeit and stolen intellectual property should not be permitted to flow into or out of the United States. Given the central role that international distribution plays in intellectual property crimes and the importance of not contributing to intellectual property violations in other countries, the shipping of infringing products across the nation's borders should be expressly prohibited. Further, especially in light of the growing importance of intellectual property exports from the United States, overseas purchasers should have confidence that they are receiving legitimate materials, and copyright owners should not lose export sales to copyright infringers, no matter the country in which they operate.

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Adding Forfeiture and Restitution Remedies to the DMCA Criminal Provisions Consistent with Those Remedies Available for Other Intellectual Property Crimes

Section 6 of the Administration's proposal would create new forfeiture, destruction, and restitution provisions for the offenses contained in the Digital Millennium Copyright Act ("DMCA"). This provision has been harmonized with the other forfeiture and restitution provisions contained in the bill, as described in the discussion of subsection 4(b), and is also consistent with the forfeiture, destruction, and restitution provisions for counterfeiting cases that were enacted in 2006 as part of the Stop Counterfeiting in Manufactured Goods Act. Although a violation of the DMCA does not require an underlying infringement of a copyright as an element of the offense, the restitution provision is tailored to provide for restitution to copyright holders in those cases where the offense conduct does involve violation of a copyright owner's rights.

Harmonizing the Economic Espionage Act's Forfeiture and Restitution Remedies

Section 7 of the Administration's proposal would amend 18 U.S.C. § 1834 (forfeiture for violations of the Economic Espionage Act) by creating a new subsection 1834(a) setting forth three categories of property that would be subject to forfeiture to the United States: 1) any property consisting of or incorporating any trade secret that was the subject of a violation of the Economic Espionage Act; 2) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of the Economic Espionage Act; and 3) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of the Economic Espionage Act. These changes are designed to harmonize forfeiture law concerning intellectual property offenses and are outlined in more detail in the discussion of subsection 4(b) of the bill, above.

Section 7 of the proposal also would create a new restitution provision for the Economic Espionage Act, providing for restitution to the owner of the trade secret.

Harmonizing the Forfeiture, Restitution, and Trafficking Provisions of 18 U.S.C. § 2318

Section 8 of the proposal would amend 18 U.S.C. § 2318(d) to harmonize the forfeiture provisions applicable to section 2318 offenses with those applicable to other intellectual property offenses, as described with respect to section 4(b) of the Administration's proposal. The restitution provision in proposed new 18 U.S.C. § 2318(d)(4) would add, as an explicit recipient for the award of restitution, the owner of the copyright in the underlying work.

Strengthening the Penalties Against Repeat Criminal Copyright Offenders and Clarifying the Penalties For Attempted Criminal Copyright Offenses

Section 9 of the Administration's proposal would amend the repeat offender provisions of 18 U.S.C. § 2319 (criminal infringement of a copyright) two respects. First, it would amend

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the law governing repeat offenses by changing the statutory offenses that, if repeated, subject the offender to stiffer penalties. There are three major criminal acts contained within the criminal copyright statute. Under current law, the repeat offender penalties apply only if a subsequent copyright infringement charge is identical to the earlier offense. A prior violation of any other of the three subsection 506(a) offenses does not trigger the repeat offender penalties, although each violation was a copyright crime and each was done, by definition, willfully.

Section 9 of the Administration's proposal would redress this disparity by amending 18 U.S.C. § 2319 to impose repeat-offender penalties when the copyright infringer committed any two copyright felonies under 17 U.S.C. § 506(a), regardless of the particular type of offense (including attempt offenses as proposed in Section 6(a) of the Administration's proposal).

Harmonizing the Forfeiture and Restitution Provisions of 18 U.S.C. § 2319A

The changes made in section 10(a) of the Administration's proposal are essentially technical. Former 18 U.S.C. § 2319A(c) would be amended and codified in subsection 18 U.S.C. § 2319A(b)(3). Section 10(b) of the proposal would harmonize the forfeiture and restitution provisions of section 2319A with those applicable to other intellectual property offenses in the same manner as section 4(b), discussed more fully above.

Harmonizing the Forfeiture and Restitution Provisions of 18 U.S.C. § 2319B

Section 11 of the Administration's proposal would amend 18 U.S.C. § 2319B(b) to harmonize the forfeiture provisions of § 2319B with those applicable to other intellectual property offenses as described in the discussion of section 4(b) of the proposal.

Strengthening Penalties for Counterfeiting Offenses that Threaten Public Health and Safety

Some counterfeit goods create serious risks to public health and safety. For example, a counterfeit pharmaceutical may be ineffective or harmful, or a substandard electrical cord bearing a counterfeit UL certification mark may pose a fire hazard. Such threats to health and safety are among the principal factors considered in deciding whether to prosecute intellectual property cases criminally, and the Department's Task Force on Intellectual Property has identified these types of cases as being a prosecution priority. To better reflect the seriousness of IP offenses that pose health and safety dangers and to provide greater deterrence against such crimes, it is appropriate to provide increased penalties for counterfeiters who deal in dangerous products.

Accordingly, section 12(a)(1)-(2) provides enhanced maximum statutory penalties for counterfeiting offenses that endanger public health and safety. The proposal increases the maximum penalties for § 2320 offenses from 10 to 20 years imprisonment where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury, and increases the

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maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death. Both the *mens rea* standard ("knowingly" or "recklessly") and the level of enhanced penalties are consistent with other existing federal criminal statutes that provide enhanced penalties for offenses resulting in serious injury or death. See, e.g., 18 U.S.C. §§ 1030(c)(5) (computer hacking) and 1365(a) (product tampering).

Harmonizing the Forfeiture Provisions of 18 U.S.C. § 2320

Section 12(a)(3)-(4) proposes a minor amendment to the forfeiture provisions of 18 U.S.C. § 2320 (trafficking in counterfeit goods or services) to provide for civil forfeiture of the proceeds from criminal trademark offenses. As a result of 2006 amendments to § 2320's forfeiture provisions by the Stop Counterfeiting in Manufactured Goods Act, § 2320 now expressly provides authority and procedures for the *criminal* forfeiture of not only counterfeit goods (and labeling components) themselves, but also any property used to commit a trademark counterfeiting offense, and any proceeds of such crime. Section 2320 also provides authority and procedures for civil forfeiture of counterfeit goods and labels, and of property used in the commission of a counterfeiting offense. However, the amendments to 18 U.S.C. § 2320 did not expressly provide for *civil* forfeiture of the proceeds of trademark counterfeiting offenses.

We believe this omission was inadvertent. Civil forfeiture of proceeds is a powerful tool in deterring counterfeiting crime, and while civil forfeiture of the proceeds may already be available pursuant to a combination of money laundering statutes, expressly including in § 2320 itself the authority and procedures for civil forfeiture of proceeds would correct this omission. Further, it would make clear that law enforcement may use this powerful tool against counterfeiters, improving both efficiency and deterrence.

Authority for Voice Intercepts in Investigations of Criminal Trademark and Copyright Offenses

Section 13 of the Administration's proposal would amend 18 U.S.C. § 2516 by adding two intellectual property crimes to the predicate offenses for which law enforcement officers may intercept wire or oral communications for investigation: 1) 18 U.S.C. § 2319 (criminal infringement of copyright); and 2) 18 U.S.C. § 2320 (trafficking in counterfeit goods or services).

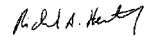
Law enforcement officers should have access to the full range of lawful investigative tools when they investigate intellectual property crimes. Currently, a Federal court may issue an order authorizing the use of a voice intercept (otherwise known as a "wiretap") in the investigations of a host of Federal crimes; copyright and trademark counterfeiting crimes are not among them. This is unacceptable. Some trademark crimes involve dangerous counterfeit pharmaceuticals, pesticides, or auto parts that have the potential to cause widespread consumer injuries. Moreover, the economic impact of criminal copyright infringement cases has increased rapidly in recent years, and such cases increasingly involve sophisticated and organized criminal

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groups. Accordingly, section 13 provides for voice intercept authority for offenses that are equivalent, if not greater, in impact to other predicate offenses that already give rise to such authority.

Thank you for the opportunity to present this proposal. A more detailed section-by-section analysis is also attached. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Richard A. Hertling
Principal Deputy Assistant Attorney General

AN IDENTICAL LETTER IS BEING SENT TO THE SPEAKER OF THE HOUSE.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 14, 2007

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

We are transmitting herewith a legislative proposal entitled the "Intellectual Property Protection Act of 2007." Because intellectual property is critical to not only our economy but also to the public's health and safety, the Attorney General is strongly committed to the protection of intellectual property rights, the safeguarding of our citizens, and the punishment of those who violate the law. The provisions of the legislative proposal are described below.

Clarifying the Authority of the United States to Prosecute Criminal Copyright Offenses Before the Pirated Works Have Been Registered

Section 411 of title 17 currently provides that, with certain exceptions not applicable here, "[n]o action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made." Section 2 of the Administration's legislative proposal would amend section 411 to clarify that this rule applies only to civil infringement actions and not to criminal prosecutions.

A copyright "subsists from [the work's] creation," 17 U.S.C. § 302(a), even if the work is not registered. Registration is an administrative formality, and although this formality has — and should have — certain consequences in civil cases, it should not in criminal cases. Prosecutors cannot control whether or when a copyrighted work is registered. Because prosecutors work for the public good, they should be able to institute an infringement prosecution even if the copyright has not yet been registered.

Harmonizing Copyright and Trademark Law with Respect to Seizing Evidence in Civil Cases

Section 3 of the Administration's legislative proposal addresses the absence of a provision in copyright law that exists in trademark law under the Lanham Act. The Lanham Act provides that under appropriate circumstances, a court may issue an *ex parte* order for the seizure of not only counterfeit goods and marks and the means of making them, but also of "records

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documenting the manufacture, sale, or receipt of things involved in such violation." 15 U.S.C. 1116(d)(1)(A). The Copyright Act lacks a parallel provision permitting the seizure of records or evidence, although the risk exists in copyright cases as much as in trademark cases that such evidence will be destroyed. Accordingly, subsection 3(a) of the Administration's legislative proposal would amend 17 U.S.C. § 503(a) to provide for the impoundment in civil copyright cases of "records documenting the manufacture, sale, or receipt of things involved in such violation" under an appropriate protective order.

Criminalizing Attempted Copyright Crimes

Subsection 4(a) of the Administration's legislative proposal would create a new Federal offense of attempting to commit criminal copyright infringement. Currently, the completed crime is defined in 17 U.S.C. § 506(a). Subsection 4(a) would not change the elements of completed copyright infringement crimes. However, it would criminalize any attempt to commit this offense.

It is a general tenet of the criminal law that those who attempt to commit a crime but do not complete it are as morally culpable as those who succeed in doing so. Therefore, subsection 4(a) would amend 17 U.S.C. §§ 506(a)(1)(A) and (B) to include attempts. A final amendment for the purpose of criminalizing copyright attempts is included in section 9 of the Administration's legislative proposal, which is discussed below.

Harmonizing and Modernizing Criminal Intellectual Property Forfeiture and Restitution Laws

Current intellectual property forfeiture laws lack uniformity, both in the items subject to civil forfeiture and the procedures for criminal forfeiture. A consistent, uniform set of standards governing the seizure and forfeiture of contraband, facilitating equipment, and proceeds for each variety of intellectual property crime would enhance law enforcement efforts, as well as reduce confusion and reinforce protections for innocent third parties and the public. The Administration's legislative proposal would amend the forfeiture provisions for copyright and other intellectual property offenses to provide a consistent set of forfeiture options and procedures for intellectual property crimes.

Subsection 4(b) of the Administration's legislative proposal would amend the forfeiture provisions of 17 U.S.C. § 506(b). It would subject to forfeiture in criminal copyright cases any copies of phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a). It also would subject to forfeiture any property that constituted or was derived from any proceeds obtained directly or indirectly as a result of Federal copyright infringement offenses. Finally, subsection 4(b) would subject to forfeiture any property used or intended to be used in any manner or part to commit or facilitate the commission of a Federal copyright infringement offense, including any plates,

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molds, matrices, masters, tapes, film negatives, or other articles by means of which the infringing copies or phonorecords may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

Under the Administration's proposal, the procedures for civil forfeiture outlined in chapter 46 of title 18 would apply to seizures or civil forfeitures under section 506. The Administration's legislative proposal also would harmonize the procedures for criminal forfeiture under these provisions to conform with the forfeiture provisions of other statutes. Forfeiture of property covered by this section, as well as any seizure and distribution of the property and any related judicial or administrative proceeding, would 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 (specific to certain drug-related cases). The procedures for forfeiture proceedings referenced at 21 U.S.C. § 853(j) apply to criminal forfeiture proceedings under section 506.

While current 17 U.S.C. § 506(b) allows for civil forfeiture only of property "used in the manufacture of such infringing copies or phonorecords," subsection 4(b) of the Administration's legislative proposal also would authorize forfeiture of "property . . . intended to be used" in the commission of the offense, such as blank media or polycarbonate intended for use in producing counterfeit CDs and DVDs.

Subsection 4(b) of the Administration's legislative proposal expressly provides for restitution as well as forfeiture. When a person is convicted of an offense under section 506 of the Administration's legislative proposal, the court would be required to order the person to pay restitution to the copyright owner and any other victim of the offense.

The Administration's legislative proposal would consolidate sections 506 and 509 of title 17; therefore, subsection 4(c) of the proposal would repeal existing 17 U.S.C. § 509. Under the Administration's proposal, section 506 would provide for both civil and criminal forfeiture of all of the types of property that currently are made civilly forfeitable under section 509, although in some instances, the amended subsection 506(b) refers to such property in broader, more general terms, rather than more specific enumerated lists of items.

These proposed amendments to the forfeiture provisions for copyright offenses are consistent with, and nearly identical to, amendments to the forfeiture provisions for counterfeiting offenses that were enacted last year as part of the Stop Counterfeiting in Manufactured Goods Act, Pub. L. No. 109-181 (enacted March 16, 2006). In order to harmonize the forfeiture and restitution laws provisions for criminal intellectual property offenses generally, other sections of the Administration's legislative proposal also would apply similar amendments to other criminal intellectual property statutes.

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Importation and Exportation of Infringing Copies of Copyrighted Works

Section 5 amends 17 U.S.C. § 602 to ensure that the export of infringing copies is treated as an infringement of the distribution right, just as importation of infringing copies is now treated under current law, and to make clear that both import and export of infringing copies is subject to criminal as well as civil penalties. Currently, § 602 only addresses the importation of infringing copies.

Under the Copyright Act, the importation or exportation of infringing copies is, in most cases, an infringement of the copyright owner's distribution right, which grants the owner of a copyrighted work the exclusive right to distribute copies of the work to the public. A question arises in situations involving a shipment from one party to himself across a border whether such an importation would constitute a "distribution to the public" for purposes of copyright law. Under current law, 17 U.S.C. § 602 clarifies that in most cases importing infringing copies into the United States violates the distribution right and is itself an infringement of copyright.

Section 5 expands 17 U.S.C. § 602 to make clear that the export of infringing copies should be treated as an infringing distribution, just as the importation of infringing copies is now treated. Further, section 5 clarifies that both import and export of infringing copies are not only actionable civilly, but also may form the basis for a criminal copyright prosecution in certain cases. At the same time, Section 5 maintains the existing exemptions or safe harbors for importation of certain copies currently provided in 17 U.S.C. § 602, and also provides essentially identical provisions for exports. The bill does not change the rule in current 17 U.S.C. § 602(a) that provides only civil remedies against the importation of noninfringing copies that were acquired outside the country. Nor does it affect the criminal remedies against smuggling pirated works into the United States or a foreign country under sections 545 and 546 of title 18.

Counterfeit and stolen intellectual property should not be permitted to flow into or out of the United States. Given the central role that international distribution plays in intellectual property crimes and the importance of not contributing to intellectual property violations in other countries, the shipping of infringing products across the nation's borders should be expressly prohibited. Further, especially in light of the growing importance of intellectual property exports from the United States, overseas purchasers should have confidence that they are receiving legitimate materials, and copyright owners should not lose export sales to copyright infringers, no matter the country in which they operate.

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Adding Forfeiture and Restitution Remedies to the DMCA Criminal Provisions Consistent with Those Remedies Available for Other Intellectual Property Crimes

Section 6 of the Administration's proposal would create new forfeiture, destruction, and restitution provisions for the offenses contained in the Digital Millennium Copyright Act ("DMCA"). This provision has been harmonized with the other forfeiture and restitution provisions contained in the bill, as described in the discussion of subsection 4(b), and is also consistent with the forfeiture, destruction, and restitution provisions for counterfeiting cases that were enacted in 2006 as part of the Stop Counterfeiting in Manufactured Goods Act. Although a violation of the DMCA does not require an underlying infringement of a copyright as an element of the offense, the restitution provision is tailored to provide for restitution to copyright holders in those cases where the offense conduct does involve violation of a copyright owner's rights.

Harmonizing the Economic Espionage Act's Forfeiture and Restitution Remedies

Section 7 of the Administration's proposal would amend 18 U.S.C. § 1834 (forfeiture for violations of the Economic Espionage Act) by creating a new subsection 1834(a) setting forth three categories of property that would be subject to forfeiture to the United States: 1) any property consisting of or incorporating any trade secret that was the subject of a violation of the Economic Espionage Act; 2) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of the Economic Espionage Act; and 3) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of the Economic Espionage Act. These changes are designed to harmonize forfeiture law concerning intellectual property offenses and are outlined in more detail in the discussion of subsection 4(b) of the bill, above.

Section 7 of the proposal also would create a new restitution provision for the Economic Espionage Act, providing for restitution to the owner of the trade secret.

Harmonizing the Forfeiture, Restitution, and Trafficking Provisions of 18 U.S.C. § 2318

Section 8 of the proposal would amend 18 U.S.C. § 2318(d) to harmonize the forfeiture provisions applicable to section 2318 offenses with those applicable to other intellectual property offenses, as described with respect to section 4(b) of the Administration's proposal. The restitution provision in proposed new 18 U.S.C. § 2318(d)(4) would add, as an explicit recipient for the award of restitution, the owner of the copyright in the underlying work.

Strengthening the Penalties Against Repeat Criminal Copyright Offenders and Clarifying the Penalties For Attempted Criminal Copyright Offenses

Section 9 of the Administration's proposal would amend the repeat offender provisions of 18 U.S.C. § 2319 (criminal infringement of a copyright) in two respects. First, it would amend

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the law governing repeat offenses by changing the statutory offenses that, if repeated, subject the offender to stiffer penalties. There are three major criminal acts contained within the criminal copyright statute. Under current law, the repeat offender penalties apply only if a subsequent copyright infringement charge is identical to the earlier offense. A prior violation of any other of the three subsection 506(a) offenses does not trigger the repeat offender penalties, although each violation was a copyright crime and each was done, by definition, willfully.

Section 9 of the Administration's proposal would redress this disparity by amending 18 U.S.C. § 2319 to impose repeat-offender penalties when the copyright infringer committed any two copyright felonies under 17 U.S.C. § 506(a), regardless of the particular type of offense (including attempt offenses as proposed in Section 6(a) of the Administration's proposal).

Harmonizing the Forfeiture and Restitution Provisions of 18 U.S.C. § 2319A

The changes made in section 10(a) of the Administration's proposal are essentially technical. Former 18 U.S.C. § 2319A(c) would be amended and codified in subsection 18 U.S.C. § 2319A(b)(5). Section 10(b) of the proposal would harmonize the forfeiture and restitution provisions of section 2319A with those applicable to other intellectual property offenses in the same manner as section 4(b), discussed more fully above.

Harmonizing the Forfeiture and Restitution Provisions of 18 U.S.C. § 2319B

Section 11 of the Administration's proposal would amend 18 U.S.C. § 2319B(b) to harmonize the forfeiture provisions of § 2319B with those applicable to other intellectual property offenses as described in the discussion of section 4(b) of the proposal.

Strengthening Penalties for Counterfeiting Offenses that Threaten Public Health and Safety

Some counterfeit goods create serious risks to public health and safety. For example, a counterfeit pharmaceutical may be ineffective or harmful, or a substandard electrical cord bearing a counterfeit UL certification mark may pose a fire hazard. Such threats to health and safety are among the principal factors considered in deciding whether to prosecute intellectual property cases criminally, and the Department's Task Force on Intellectual Property has identified these types of cases as being a prosecution priority. To better reflect the seriousness of IP offenses that pose health and safety dangers and to provide greater deterrence against such crimes, it is appropriate to provide increased penalties for counterfeiters who deal in dangerous products.

Accordingly, section 12(a)(1)-(2) provides enhanced maximum statutory penalties for counterfeiting offenses that endanger public health and safety. The proposal increases the maximum penalties for § 2320 offenses from 10 to 20 years imprisonment where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury, and increases the

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maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death. Both the *mens rea* standard ("knowingly" or "recklessly") and the level of enhanced penalties are consistent with other existing federal criminal statutes that provide enhanced penalties for offenses resulting in serious injury or death. See, e.g., 18 U.S.C. §§ 1030(c)(5) (computer hacking) and 1365(a) (product tampering).

Harmonizing the Forfeiture Provisions of 18 U.S.C. § 2320

Section 12(a)(3)-(4) proposes a minor amendment to the forfeiture provisions of 18 U.S.C. § 2320 (trafficking in counterfeit goods or services) to provide for civil forfeiture of the proceeds from criminal trademark offenses. As a result of 2006 amendments to § 2320's forfeiture provisions by the Stop Counterfeiting in Manufactured Goods Act, § 2320 now expressly provides authority and procedures for the *criminal* forfeiture of not only counterfeit goods (and labeling components) themselves, but also any property used to commit a trademark counterfeiting offense, and any proceeds of such crime. Section 2320 also provides authority and procedures for civil forfeiture of counterfeit goods and labels, and of property used in the commission of a counterfeiting offense. However, the amendments to 18 U.S.C. § 2320 did not expressly provide for *civil* forfeiture of the proceeds of trademark counterfeiting offenses.

We believe this omission was inadvertent. Civil forfeiture of proceeds is a powerful tool in deterring counterfeiting crime, and while civil forfeiture of the proceeds may already be available pursuant to a combination of money laundering statutes, expressly including in § 2320 itself the authority and procedures for civil forfeiture of proceeds would correct this omission. Further, it would make clear that law enforcement may use this powerful tool against counterfeiters, improving both efficiency and deterrence.

Authority for Voice Intercepts in Investigations of Criminal Trademark and Copyright Offenses

Section 13 of the Administration's proposal would amend 18 U.S.C. § 2516 by adding two intellectual property crimes to the predicate offenses for which law enforcement officers may intercept wire or oral communications for investigation: 1) 18 U.S.C. § 2319 (criminal infringement of copyright); and 2) 18 U.S.C. § 2320 (trafficking in counterfeit goods or services).

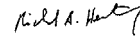
Law enforcement officers should have access to the full range of lawful investigative tools when they investigate intellectual property crimes. Currently, a Federal court may issue an order authorizing the use of a voice intercept (otherwise known as a "wiretap") in the investigations of a host of Federal crimes; copyright and trademark counterfeiting crimes are not among them. This is unacceptable. Some trademark crimes involve dangerous counterfeit pharmaceuticals, pesticides, or auto parts that have the potential to cause widespread consumer injuries. Moreover, the economic impact of criminal copyright infringement cases has increased rapidly in recent years, and such cases increasingly involve sophisticated and organized criminal

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groups. Accordingly, section 13 provides for voice intercept authority for offenses that are equivalent, if not greater, in impact to other predicate offenses that already give rise to such authority.

Thank you for the opportunity to present this proposal. A more detailed section-by-section analysis is also attached. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Richard A. Hertling
Principal Deputy Assistant Attorney General

AN IDENTICAL LETTER IS BEING SENT TO THE PRESIDENT OF THE SENATE.

H.R. ____

Intellectual Property Protection Act

110th Congress

1st Session

H.R. ____

To strengthen the protection of intellectual property, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

_____, 2007

M. _____ introduced the following bill, which was referred to the Committee on the Judiciary.

A BILL

To strengthen 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

(a) SHORT TITLE- This Act may be cited as the "Intellectual Property Protection Act of 2007."

SECTION 2. REGISTRATION IN CIVIL INFRINGEMENT ACTIONS.

(a) AMENDMENT- Section 411 of title 17, United States Code, is amended-

- (1) in the section heading, by inserting "civil" before "infringement";
- (2) in subsection (a), by inserting "civil" before "action" the second time it appears; and
- (3) in subsection (b), by striking "506 and sections 509 and" and inserting "505 and section".

SECTION 3. CIVIL REMEDIES FOR INFRINGEMENT.

(a) AMENDMENT- Section 503 of title 17, United States Code, is amended-

(1) in subsection (a), by striking the final period and inserting "and 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 by the applicant 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 the applicant."

SECTION 4. CRIMINAL INFRINGEMENT

(a) IN GENERAL- Section 506(a)(1) of title 17, United States Code, is amended-

- (1) by inserting "or attempts to infringe" before "a copyright" and
- (2) by striking the comma and "if the infringement was committed" after "18";
- (3) by striking subparagraph (A) and inserting "(A) if the infringement was committed or attempted for purposes of commercial advantage or private financial gain";
- (4) in subparagraph (B), by striking "by the reproduction or distribution" and inserting "if the infringement was committed or attempted by the reproduction or distribution"; and
- (5) by inserting at the beginning of subparagraph (C) "if the infringement was committed".

(b) FURTHER AMENDMENT- Section 506(b) of title 17, United States Code, is amended by striking that subsection and inserting the following:

"(b) Forfeiture and destruction; restitution.-

"(1) The following property is subject to forfeiture to the United States-

"(A) any copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a);

"(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of a violation of subsection (a), including any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the copies or phonorecords described in subparagraph (A) may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

“(2) The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States-

“(i) any infringing copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a);

“(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of a violation of subsection (a), including any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the copies or phonorecords described in subparagraph (A) may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

“(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such infringing copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664 of Title 18, United States Code, shall order the

person to pay restitution to the copyright owner and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).”

(c) SEIZURE AND FORFEITURE- Section 509 of title 17, United States Code, is repeated.

SECTION 5. IMPORTATION AND EXPORTATION

(a) IN GENERAL- Chapter 6 of Title 17, United States Code, is amended to read “Manufacturing Requirements, Importation, and Exportation”

(b) AMENDMENT- Section 602(a) of Title 17, United States Code, is amended-

- (1) By striking “(1)” and inserting “(A)”;
- (2) By striking “(2)” and inserting “(B)”;
- (3) By striking “(3)” and inserting “(C)”;
- (4) By inserting before “Importation” “(1)”;
- (5) By striking, “This subsection does not apply to-”;
- (6) By inserting before subparagraph (A) 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 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, actionable under sections 501 and 506.

“(3) Exceptions.—This subsection does not apply to—

- (7) By inserting “or exportation” before the first “of” in clause (A);
- (8) By inserting in clause (B) “or exportation” before the first comma;
- (9) By inserting in clause (B) “or exporter” before “and”;
- (10) By inserting in clause (B) “or departing from the United States” before the second “with”;

(c) FURTHER AMENDMENT- Section 602 of Title 17, United States Code, is amended in the section heading by inserting "or exportation" before "of copies or phonorecords".

SECTION 6. DIGITAL MILLENNIUM COPYRIGHT ACT

(a) IN GENERAL- Section 1204 of title 17, United States Code, is amended by inserting at the end the following:

"(d) Forfeiture and destruction; restitution--

"(1) The following property is subject to forfeiture to the United States--

"(A) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

"(B) any property used or intended to be used in any manner or part to commit or facilitate the commission of a violation of subsection (a).

"(2) The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any property forfeited pursuant to paragraph (1)(B) be destroyed or otherwise disposed of according to law.

"(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States--

"(i) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

"(ii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any implement, device, or equipment used in any manner or part to commit or facilitate the commission of a violation of subsection (a), be destroyed or otherwise disposed of according to law."

"(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664 of title 18, United States Code, shall order the person to pay restitution to any copyright owner whose rights under this title were violated by the offense, as an offense against property referred to in section 3663A(c)(1)(A)(ii)."

SECTION 7. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT

(a) IN GENERAL- Section 1834 of title 18, United States Code, is amended--

(1) by striking "(a)" and inserting "(c)";

(2) by striking "(b)" and inserting "(d)";

(3) in paragraph (d) as amended, by striking "this section" and inserting "paragraph (c)"; and

(4) by inserting at the beginning the following:

"(a) The following property is subject to forfeiture to the United States:

"(1) any property that consists of or incorporates any trade secret that is the subject of a violation of this chapter;

"(2) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of this chapter; and

"(3) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter.

"(b) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (a)."; and

(5) by inserting at the end the following:

"(e) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the trade secret and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii)."

SECTION 8. TRAFFICKING IN COUNTERFEIT LABELS

(a) IN GENERAL- Section 2318 of title 18, United States Code, is amended-

(1) by making subsection (d) read as follows:

“(d) Forfeiture and destruction; restitution.

“(1) The following property is subject to forfeiture to the United States-

“(A) any counterfeit documentation or packaging, and any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying;

“(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used, or intended to be used, in any manner or part to commit or facilitate the commission of a violation of subsection (a).

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (1). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited counterfeit labels or illicit labels and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States-

“(i) any counterfeit documentation or packaging, and any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying;

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“(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

“(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the marks or copyrighted works involved in the offense and any other victim of the offense as an offense against property referred to in section 3663(A)(c)(1)(A)(ii).”.

SECTION 9. CRIMINAL INFRINGEMENT OF A COPYRIGHT

(a) IN GENERAL- Section 2319 of title 18, United States Code, is amended as follows-

(1) in subparagraph (b)(1), by inserting “or was intended to consist of” before “reproduction”;

(2) in subparagraph (b)(2), by inserting “felony” before “offense” and by striking “1” and inserting “a”;

(3) in subparagraph (c)(1), by inserting “or was intended to consist of” before “reproduction”;

(4) in subparagraph (c)(2), by inserting “felony” before “offense” and by striking “1” and inserting “a”;

(5) in subparagraph (d)(3), by inserting “felony” before “offense” and inserting “under paragraph (a)” before the semi-colon; and

(6) in subparagraph (d)(4), by inserting “felony” before “offense”.

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SECTION 10 . UNAUTHORIZED FIXATION AND TRAFFICKING

(a) **IN GENERAL.** Section 2319A of title 18, United States Code, is amended--

- (1) by striking subsection (c);
- (2) in subsection (d), by striking "(d)" and inserting "(c)";
- (3) in subsection (e), by striking "(e)" and inserting "(d)";
- (4) in subsection (f), by striking "(f)" and inserting "(e)".

(b) **FORFEITURE AND DESTRUCTION.** Section 2319A(b) of title 18, United States Code, is amended to read as follows:

"(b) Forfeiture and destruction; restitution.--

"(1) The following property is subject to forfeiture to the United States--

"(A) any unauthorized copies or phonorecords of a live musical performance, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made;

"(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

"(C) any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a);

"(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (1). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States--

"(i) all unauthorized copies or phonorecords of live musical performances, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made;

"(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

"(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(4) Notification of importation.-- The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

"(5) When a person is convicted of an offense under this chapter, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the performer or performers, and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii)."

(c) **APPLICABILITY.** At the end of section 2319A(e), as renumbered, insert before the period the following:

" , except that the criminal forfeiture provisions in subparagraph (b)(3) shall apply only where the underlying act or acts occur on or after the effective date of that subparagraph".

SECTION 11. UNAUTHORIZED RECORDING OF MOTION PICTURES

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

"(b) Forfeiture and destruction; restitution.--

"(1) The following property is subject to forfeiture to the United States--

"(A) any unauthorized copies of a motion picture or other audiovisual work protected under title 17, or part thereof;

"(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

"(C) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

"(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States--

"(i) any unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof;

"(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offense; and

"(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(4) When a person is convicted of an offense under this chapter, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the copyright in the motion picture or other audiovisual work and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii)."

SECTION 12. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES

(a) IN GENERAL. Section 2320 of title 18, United States Code, is amended--

(1) in subsection (a), by inserting before "Whoever" the following:

"Offense--
(1) In general --"

(2) by adding at the end of subsection (a) the following:

"(2) SERIOUS BODILY HARM OR DEATH--

(A) If the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for not more than 20 years, or both.

(B) If the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for any term of years or for life, or both."

(3) in subsection (b)(1), by inserting after subsection (b)(1)(A) the following:

"(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a), and"

(4) in subsection (b)(1)(B), by striking "(B)" and inserting "(C)";

SECTION 13. INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS

(a) IN GENERAL- Section 2516(1)(c) of title 18, United States Code, is amended-

(1) by striking "sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property," and inserting "sections 2312, 2313, 2314, and 2315 (relating to interstate transportation of stolen property), section 2319 (relating to criminal infringement of a copyright), section 2320 (relating to trafficking in counterfeit goods or services)."

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 provides that the short title of the legislation is the Intellectual Property Protection Act of 2007.

Section 2

Section 2 amends 17 U.S.C. § 411 to make clear that registration of a copyright with the Copyright Office is not a prerequisite to a criminal prosecution for copyright infringement. Currently, § 411 provides that, with certain exceptions not applicable here, "[n]o action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made." To clarify that this rule applies only to civil infringement actions and not to criminal prosecutions, section 2 amends § 411 to explicitly limit the registration prerequisite to civil actions.

A copyrightable work's copyright "subsists from [the work's] creation." 17 U.S.C. § 302(a). The copyright exists, even if the work is not registered. Registration is largely a formality, albeit a formality with significant procedural consequences. See 17 U.S.C. §§ 410(a)-(b) (requiring Register of Copyrights to determine whether work is copyrightable before registering the work), 410(c) (making a certificate of registration in most cases prima facie evidence that the work's copyright is valid), 411 (conditioning certain suits upon registration), 412 (conditioning certain remedies upon registration). Although this formality has — and should have — certain consequences in civil cases, in criminal cases it should not. Prosecutors do not control whether or when a copyrighted work is registered. Because prosecutors work for the public good, they should be able to institute an infringement prosecution even if the copyright has not yet been registered. This is especially true now that a typical criminal prosecution for copyright piracy over the Internet commonly involves hundreds, if not thousands, of copyrighted works. The burden of checking whether each work was registered would substantially slow down investigations and hinder the government's ability to prosecute these violations, especially infringement of works owned by small businesses that have not had the time or resources to register.

Because this provision is a clarification, it works no change on existing practice of how and when prosecutors prove the existence of a copyright in an infringement case, and does not affect any pending cases. However, as certificates of registration generally provide the most expedient means of proving the existence, validity, and ownership of a copyright (see, e.g., 17 U.S.C. § 410(c)), the Department of Justice will continue to advise federal prosecutors that the recommended course in most cases is to prosecute with a copyright registration in hand, both as a matter of public policy and as matter of practicality at trial.

Section 3

Section 3(a) amends 17 U.S.C. § 503 to allow for *ex parte* seizure of documentary evidence in civil copyright cases, similar to authority already provided for in civil trademark counterfeiting cases under the Lanham Act. The Lanham Act provides that under appropriate circumstances, a court may issue an *ex parte* order for the seizure of not only counterfeit goods and marks and the means of making them, but also of "records documenting the manufacture, sale, or receipt of things involved in such violation." 15 U.S.C. § 1116(d)(1)(A). However, the Copyright Act does not contain a parallel provision permitting the seizure of records or evidence in civil cases, even though the risk exists in copyright cases as much as in trademark cases that such evidence will be destroyed.

Many potential infringers of trademarks and copyrights are unscrupulous operators who know full well that their actions are illegal. If they become aware that legal action is being taken against them, many will disappear or hide or destroy their infringing goods and the evidence of their infringement.

Accordingly, Congress recognized the need in certain circumstances for right holders to be able to institute legal actions *ex parte*. 15 U.S.C. § 1116(d) trademark actions; Fed. R. Civ. P. 65(f) (copyright actions). The legislative history of the Lanham Act's *ex parte* provision explains that its purpose is to provide victims of trademark counterfeiting a means of ensuring court jurisdiction in counterfeiting cases to thwart the practice of destroying or transferring counterfeit merchandise when court action approaches, while ensuring ample procedural protections for persons against whom such orders are issued. 130 Cong. Rec. H12076 (Oct. 10, 1984). Although copyright owners may institute *ex parte* actions under Fed. R. Civ. P. 65(f), the Copyright Act does not specifically provide for the seizure of evidence as the Lanham Act does for trademark actions. However, some copyright pirates are just as likely to destroy evidence as trademark counterfeiters, and in fact, it is not uncommon for copyright pirates to also be engaged in trademark counterfeiting. Therefore, Section 3(a) amends the Copyright Act to put its *ex parte* seizure provisions for civil cases on equal footing with those of the Lanham Act.

Section 4

Section 4(a) creates a new federal offense of attempting to infringe a copyright. The completed crime is currently defined in 17 U.S.C. § 506(a). Section 4(a) makes no change to the elements of the offense of copyright infringement. It does, however, criminalize attempts to commit this offense.

Section 4(a) is needed because, as with other criminal intellectual property laws, such as the criminal counterfeit goods and services statute, 18 U.S.C. § 2320, an attempt to violate the criminal copyright statute should be counted an offense whether it is successful or not. It is a general tenet of the criminal law that those who attempt to commit a crime but do not complete it are as morally culpable as those who succeed in doing so.

Although two federal criminal laws generally punish the aiding-and-abetting or conspiracy to violate any federal crime (see 18 U.S.C. §§ 2 and 371), no general law does the

same for attempts. Consequently, the problem must be fixed by specifically amending the criminal copyright statutes. Section 4(a) therefore amends 17 U.S.C. §§ 506(a)(1)(A) and (B) to include attempts. Section 506(a)(1)(C) is not amended because that clause includes a number of elements that would make an attempt difficult to prove or investigate.

A final amendment for the purpose of criminalizing copyright attempts is included in section 13, which is discussed below. It amends 18 U.S.C. § 2319, which sets forth the penalty for violations of 17 U.S.C. §§ 506(a)(1)(A) and (B), to clarify that the penalties that apply when the offense "consists of" reproduction or distribution, also apply when reproduction or distribution is intended but not completed.

Section 4(b) amends the forfeiture provisions of 17 U.S.C. § 506(b) to expressly provide for both civil and criminal forfeiture of not only infringing items, but also the proceeds of copyright offenses and the equipment used or intended to be used to commit them. Section 4(b) also amends § 506(b) to expressly provide for restitution in copyright cases. These amendments essentially parallel amendments made last year to the forfeiture and restitution provisions of 18 U.S.C. § 2320 (trademark counterfeiting) pursuant to the Stop Counterfeiting in Manufactured Goods Act (Pub. L. 109-181, enacted Mar. 16, 2006).

Large-scale piracy of copyrighted works relies on the use of various materials and tools to produce and distribute such works. Although it is important that law enforcement officials be able to seize counterfeit items and pirated works themselves, effective anti-piracy efforts can be significantly enhanced by allowing for the seizure and forfeiture of illicit proceeds and the materials and tools being used to engage in large-scale piracy. Therefore, Section 4(b) subjects to forfeiture any copies of phonorecords manufactured, reproduced, distributed, sold or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a). It also subjects to forfeiture any property that constitutes or is derived from any proceeds obtained directly or indirectly as a result of federal copyright infringement offenses. Finally, it subjects to forfeiture any property used or intended to be used in any manner or part to commit or facilitate the commission of a federal copyright infringement offense, including any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the infringed copies or phonorecords may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

In conjunction with changes to forfeiture provisions for trademark counterfeiting offenses enacted in 2006, as well as amendments elsewhere in the bill, the amendments in Section 4(b) will create a more consistent structure and uniform set of procedures for forfeiture in intellectual property cases. Current forfeiture laws in the intellectual property area vary widely. Although many types of property involved in intellectual property offenses are subject to forfeiture under current law, in many situations the availability of forfeiture is not set forth in the offense statute itself, and the actual process of forfeiture, even where available, involves reliance on a complex web of money laundering and other statutory provisions. All the criminal intellectual property provisions in U.S. law are designed to serve the common goals of fostering and protecting creativity, innovation, the integrity of commercial transactions and markets, and public health and safety. A consistent, uniform set of standards governing the seizure and forfeiture of contraband, facilitating equipment, and proceeds for each variety of intellectual property crime

will enhance law enforcement efforts, as well as reduce confusion and reinforce protections for innocent third parties and the public.

The amendments in section 4(b) help to harmonize not only the classes of property subject to forfeiture in intellectual property cases, but the procedures for forfeiture as well. For example, with regard to civil forfeiture, section 4(b) makes clear that the procedures for civil forfeiture outlined in chapter 46 of title 18, including those designed to protect innocent third-party owners of affected property, apply to seizures or civil forfeitures under section 506. At the conclusion of the forfeiture proceeding, the court is required to issue an order to destroy or otherwise dispose of any forfeited infringing copies or phonorecords, as well as any property used to commit (in any manner or part) or facilitate commission of the offense, including any plates, molds, matrices, masters, tapes, and film negatives by means of which unauthorized copies or phonorecords may be made.

Likewise, the procedures for criminal forfeiture under this section have also been harmonized to conform with the recently-amended forfeiture provisions of 18 U.S.C. § 2320 (trademark counterfeiting) as well as those of other statutes outside the IP area. Forfeiture of property covered by this section, as well as any seizure and distribution of the property and any related judicial or administrative proceeding, is to 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 (specific to certain drug-related cases). The procedures for forfeiture proceedings referenced at 21 U.S.C. § 853(j) therefore apply to criminal forfeiture proceedings under this section.

Although the current section 506(b) allows for civil forfeiture only of property "used in the manufacture of such infringing copies or phonorecords," Section 4(b) also allows for forfeiture of "property . . . intended to be used" in the commission of the offense. For example, where law enforcement officials raided a facility engaged in production of counterfeit CDs and DVDs, this change allows civil forfeiture of not only counterfeit discs that had already been produced, and the equipment used to produce them, but also such items as blank media or polycarbonate intended for use in producing additional discs. This change also makes the enumerated types of property subject to civil forfeiture consistent with those subject to criminal forfeiture, as well as consistent with civil forfeiture provisions elsewhere in Federal law.

Section 4(b) provides for restitution as well as forfeiture. When a person is convicted of an offense under section 506, the court, pursuant to sections 3556, 3663A, and 3664 of title 18, United States Code, shall order the person to pay restitution to the copyright owner and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(i). Section 4(b) adds "restitution" to the captions in the subsection that governs restitution as well as forfeiture and destruction to better reflect that restitution is a concept separate from forfeiture.

Sections 506 and 509 have been consolidated, and therefore, Section 4(c) repeals existing section 509. As rewritten, section 506 now provides for both civil and criminal forfeiture of all of the types of property that are currently made civilly forfeitable under section 509, although in some instances, the amended section 506(b) refers to such property in broader, more general terms, rather than more specific enumerated lists of items. For example, while existing § 509

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provides for the forfeiture of certain types of property "intended for use, or possessed with intent to use in violation of subsection 506(a)," section 506(b) as amended covers all of these same types of property, and others as well, by referring to "any property used, or intended for use [in committing the offense]."

Section 5

Section 5 amends 17 U.S.C. § 602 to ensure that the export of infringing copies is treated as an infringement of the distribution right subject to criminal as well as civil penalties, and to clarify how the importation and exportation of copyrighted goods affect the distribution right and related criminal remedies. Currently, § 602 only addresses the importation of infringing copies.

Under the Copyright Act, among a copyright owner's exclusive rights with respect to a work is the right to distribute the work "to the public" by various means. 17 U.S.C. § 106(3). Violation of this exclusive right is copyright infringement, for which civil remedies and criminal penalties may be available. In many situations, the importation or exportation of infringing works constitutes an infringing distribution because the transaction involves the importation or exportation from one party to the public. But when the importation or exportation is not done "to the public," as when the transaction involves shipment from one party to itself across the border, the distribution right might not be implicated. Section 4 therefore clarifies that both the importation or exportation of pirated copyrighted works is subject to both the civil and criminal remedies in sections 501 and 506 of title 17.

Where the current § 602 allows certain exemptions or safe harbors for importation of works, section 5 provides essentially identical provisions for exports. The bill does not change the rule in current 17 U.S.C. § 602(a) that provides only civil remedies against the importation of noninfringing copyrighted works that were acquired outside the country. Nor does it affect the criminal remedies against smuggling pirated works into the United States or a foreign country under sections 545 and 546 of title 18.

Counterfeit and stolen intellectual property should not be permitted to flow into or out of the United States. Given the central role that international distribution plays in intellectual property crimes and the importance of not contributing in any way to intellectual property violations in other countries, the shipping of infringing products across the nation's borders should be expressly prohibited. Further, because intellectual property is the largest category of exported materials from the United States, overseas purchasers should have confidence that they are receiving legitimate materials, and copyright owners should not lose export sales to copyright infringers, no matter the country in which they operate.

Section 6

Section 6 creates new forfeiture, destruction, and restitution provisions for the offenses contained in the Digital Millennium Copyright Act (18 U.S.C. § 1201 *et seq.*). This provision has been harmonized with the other forfeiture and restitution provisions contained in the bill, as described in section 4(b). Although a violation of the Digital Millennium Copyright Act does not require an underlying infringement of a copyright as an element of the offense, the restitution

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provision is tailored to provide for restitution to copyright holders in those cases where the offense conduct does involve violation of a copyright owner's rights.

Section 7

Section 7 amends section 18 U.S.C. § 1834, the forfeiture provision for violations of the Economic Espionage Act. These amendments are designed to harmonize the forfeiture provisions for intellectual property offenses, and are consistent with those proposed in Section 4(b) for copyright offenses, as well as those enacted for trademark offenses in 18 U.S.C. § 2320 last year.

Section 7 creates a new section 1834(a) that sets forth three categories of property that are subject to forfeiture to the United States: (1) any property that consists of or incorporates any trade secret that is the subject of a violation of the Economic Espionage Act; (2) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of the Economic Espionage Act; and (3) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of the Economic Espionage Act. These changes are outlined in detail in the discussion of section 4(b) of the bill. As with the proposed amendments designed to harmonize other intellectual property forfeiture provisions, the new section 1834(b) makes applicable to any seizure or civil forfeiture arising under new section 1834(a) the procedural provisions of chapter 46, relating to civil forfeiture.

Section 7 also creates a new restitution provision for the Economic Espionage Act, providing for restitution to the owner of the trade secret underlying the offense.

Section 8

Section 8 amends 18 U.S.C. § 2318(d) to harmonize the forfeiture provisions applicable to § 2318 offenses with those applicable to other intellectual property offenses, as described more fully in the analysis of Section 4(b). Section 8 also improves the restitution provision in § 2318(d)(4) by adding to the list of those victims eligible for restitution, the owner of the copyright in the underlying work, such as the copyright owner of the work to which a counterfeit or illicit label was affixed or designed to be affixed.

Section 9

Section 9 amends the repeat-offender provisions of 18 U.S.C. § 2319 (criminal infringement of a copyright) in two respects. First, it amends the law governing repeat offenses by changing the statutory offenses that, if repeated, subject the offender to stiffer penalties. Currently, there are three major criminal acts contained within the criminal copyright statute: infringement for commercial advantage or private financial gain, 17 U.S.C. § 506(a)(1)(A); infringement for non-commercial purposes above a certain threshold, 17 U.S.C. § 506(a)(1)(B); and infringement of pre-release works over a publicly-accessible computer network, 17 U.S.C. § 506(a)(1)(C). Under current law, if an offender commits, for example, infringement for commercial advantage or private financial gain (§ 506(a)(1)(A)) and then commits another offense for commercial advantage or private financial gain (§ 506(a)(1)(A)), he is subject to

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more stringent penalties for the second offense. On the other hand, an offender who, for example, commits infringement for commercial advantage or private financial gain (§ 506(a)(1)(A)) and then commits the offense of copyright infringement for non-commercial purposes above a certain threshold (§ 506(a)(1)(B)) under current law would elude the penalties for repeat offenders. In other words, under current law, the repeat-offender penalties apply only if the subsequent copyright infringement offense is identical to the earlier offense. A later conviction for any other § 506(a) offense does not trigger the repeat penalties, even though it is a copyright crime and was done, by definition, willfully.

Section 9 redresses this disparity by amending § 2319 to impose repeat-offender penalties when the copyright infringer commits any two copyright felonies under 17 U.S.C. § 506(a), regardless of the particular type of offense. This will treat all repeat felony copyright infringers similarly, regardless of the form that their crimes took. It is accomplished by replacing the references to the specific copyright infringement offenses in current subsections (b)(2), (c)(2), and (d)(3) with the general copyright offense set forth in subsection (a), i.e., any felony violation of § 506(a).

The second change made in Section 9 criminalizes attempts to commit the underlying offenses. For the reasons set forth in describing Section 4(a), attempts to commit copyright infringement offenses should be punishable just like the completed crime. Section 9 accomplishes this goal by amending section 2319 to clarify that the penalties that apply when the offense "consists of" reproduction or distribution also apply when reproduction or distribution were intended but not completed.

Section 10

The changes made in section 10(a) are largely technical. The relevant portions of former subsection (c), addressing seizure and forfeiture, are now amended and codified in § 2319A(b).

Section 10(b) harmonizes the forfeiture provisions of section 2319A with those applicable to other intellectual property offenses in the same manner as Section 4(b).

Section 11

Section 11 amends 18 U.S.C. § 2319B(f) to harmonize its forfeiture provisions with those applicable to other intellectual property offenses as described more fully in Section 4(b).

Section 12

Section 12 contains two sets of amendments to 18 U.S.C. § 2320 (trafficking counterfeit marks in connection with goods and services): a minor change to its forfeiture provisions, and a more substantial change to increase the maximum penalties for offenses causing serious bodily harm or death.

Subsections 12(a)(1)-(2) amend 18 U.S.C. § 2320 to harmonize the forfeiture provisions under that section with those in other intellectual property offenses described above. As a result of the enactment of the Protecting American Goods and Services Act of 2006 (part of the Stop

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Counterfeiting in Manufactured Goods Act, Pub. L. 109-181, enacted Mar. 16, 2006), the forfeiture provisions of § 2320 are largely consistent with those proposed above in Section 4(b). However, the drafters of the PAGES/SCMGA did not expressly provide for civil forfeiture of the proceeds of § 2320 offenses. Sections 12(a)(1)-(2) correct that omission.

Section 12(b) provides enhanced maximum statutory penalties for counterfeiting offenses that endanger public health and safety. Section 12(b) increases the maximum penalties for § 2320 offenses from 10 years imprisonment to 20 years where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury, and increases the maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death. Both the *mens rea* standard ("knowingly" or "recklessly") and the level of enhanced penalties (up to 20 years for offenses resulting in serious injury; up to life imprisonment for offenses resulting in death) are consistent with other existing federal criminal statutes that provide enhanced penalties for offenses resulting in serious injury or death. See, e.g., 18 U.S.C. §§1030(c)(5) (computer hacking) and 1365(a) (product tampering).

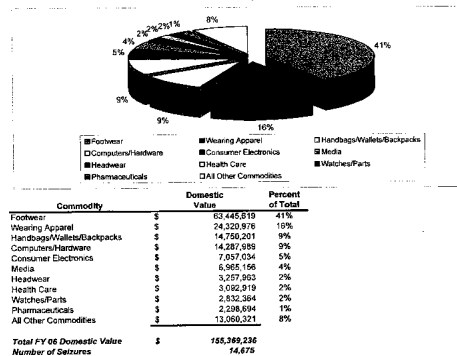
Some counterfeit goods create serious risks to public health and safety—for example, a counterfeit pharmaceutical may be ineffective or harmful, or a substandard electrical cord bearing a counterfeit UL certification mark may pose a fire hazard. Such threats to health and safety are among the principal factors considered in deciding whether to prosecute intellectual property cases criminally, and the Department's Intellectual Property Task Force has identified these types of cases as being of particular concern to the Department. To better reflect the seriousness of IP offenses that pose health and safety dangers and to provide greater deterrence against such crimes, it is appropriate to provide increased penalties for counterfeiters who deal in dangerous products.

Section 13

Section 13 amends 18 U.S.C. § 2516 by adding two intellectual property crimes to the predicate offenses for which law enforcement officers may obtain a wire or oral communication for investigation: 18 U.S.C. § 2319, criminal infringement of copyright, and 18 U.S.C. § 2320, trafficking in counterfeit goods or services.

Law enforcement officers should have access to the full range of accepted law enforcement tools when they investigate intellectual property crimes. A federal court may issue an order authorizing the use of a voice intercept, otherwise known as a "wiretap," in the investigation of many federal crimes, but not for copyright and trademark counterfeiting crimes. This is unacceptable. Some trademark crimes involve dangerous counterfeits: counterfeit pharmaceuticals, pesticides, or auto parts that have the potential to cause widespread consumer injuries. Moreover, the economic impact of criminal copyright infringement cases has increased rapidly in recent years, and such cases increasingly involve sophisticated and organized criminal groups. Accordingly, section 13 provides for voice intercept authority for offenses that are equivalent, if not greater, in impact to other predicate offenses that already give rise to such authority.

Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2006 Top IPR Commodities Seized

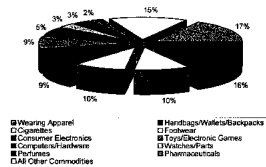


Note: Media includes motion pictures on tape, laser disc, and DVD; interactive and computer software on CD-ROM, and floppy disc; and music on CD or tape. Consumer Electronics includes cell phones and accessories, radios, power strips, electrical tools and appliances.

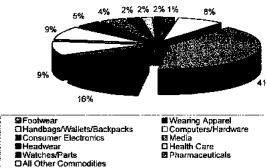
Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2005 and FY 2006 Top IPR Commodities Seized

FY 2005 Commodity	Domestic Value	% of Total Value
Wearing Apparel	\$ 16,039,343	17%
Handbags/Wallets/Backpacks	\$ 14,954,525	16%
Cigarettes	\$ 9,648,876	10%
Footwear	\$ 8,941,185	10%
Consumer Electronics	\$ 8,793,700	9%
Toys/Electronic Games	\$ 8,558,925	9%
Computers/Hardware	\$ 4,708,862	5%
Watches/Parts	\$ 3,070,832	3%
Perfumes	\$ 2,713,695	3%
Pharmaceuticals	\$ 2,294,352	2%
All Other Commodities	\$ 13,660,028	15%
Total FY 05 Domestic Value	\$ 83,234,510	
Number of Seizures	8,022	

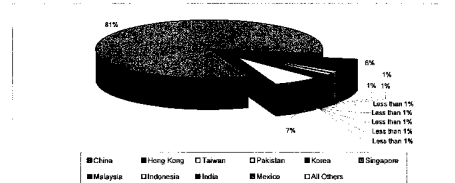


FY 2006 Commodity	Domestic Value	% of Total Value
Footwear	\$ 83,445,919	41%
Wearing Apparel	\$ 24,320,076	10%
Handbags/Wallets/Backpacks	\$ 14,750,201	9%
Computers/Hardware	\$ 14,287,869	9%
Consumer Electronics	\$ 7,037,034	5%
Media	\$ 6,985,156	4%
Headwear	\$ 3,257,863	2%
Health Care	\$ 3,002,819	2%
Watches/Parts	\$ 2,532,364	2%
Pharmaceuticals	\$ 2,296,394	1%
All Other Commodities	\$ 13,660,021	8%
Total FY 06 Domestic Value	\$ 155,389,236	
Number of Seizures	14,675	



Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2006 Top Trading Partners for IPR Seizures



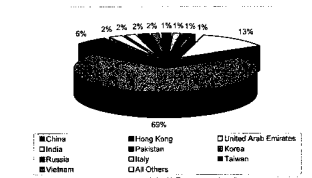
Trading Partner	Domestic Value	Percent of Total
China	\$ 125,533,844	81%
Hong Kong	\$ 9,399,464	6%
Taiwan	\$ 8,843,764	6%
Pakistan	\$ 1,933,815	1%
Korea	\$ 1,810,140	1%
Singapore	\$ 1,190,735	Less than 1%
Malaysia	\$ 1,174,011	Less than 1%
Indonesia	\$ 933,425	Less than 1%
India	\$ 852,541	Less than 1%
Mexico	\$ 632,505	Less than 1%
All Others	\$ 10,166,611	7%
Total FY 06 Domestic Value	\$ 155,389,236	
Number of Seizures	14,675	

Figures for trading partners are based on country of origin and/or country of export as listed in the seizure report.

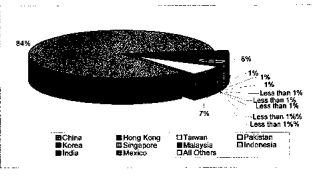
Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2005 and FY 2006 Top Trading Partners for IPR Seizures

FY 2005 Trading Partner	Domestic Value	% of Total Value
China	\$ 63,958,416	69%
Hong Kong	\$ 5,798,112	6%
United Arab Emirates	\$ 2,115,403	2%
India	\$ 1,960,633	2%
Pakistan	\$ 1,763,154	2%
Korea	\$ 1,410,000	2%
Russia	\$ 1,377,835	1%
Italy	\$ 1,289,188	1%
Taiwan	\$ 1,091,873	1%
Vietnam	\$ 780,644	1%
All Others	\$ 11,692,181	13%
Total FY 05 Domestic Value	\$ 92,224,910	
Number of Seizures	8,622	

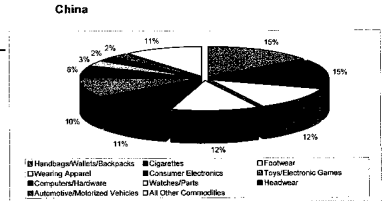


FY 2006 Trading Partner	Domestic Value	% of Total Value
China	\$ 122,555,844	81%
Hong Kong	\$ 2,389,464	6%
Taiwan	\$ 1,843,794	1%
Pakistan	\$ 1,838,915	1%
Korea	\$ 1,810,140	1%
Singapore	\$ 1,198,735	Less than 1%
Malaysia	\$ 1,174,071	Less than 1%
Indonesia	\$ 983,425	Less than 1%
India	\$ 882,841	Less than 1%
Mexico	\$ 832,820	Less than 1%
All Others	\$ 10,166,611	7%
Total FY 06 Domestic Value	\$ 155,368,236	
Number of Seizures	14,675	

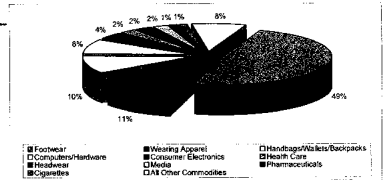


Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

FY 2005	Domestic Value	% of Total Value
Handbags/Wallets/Backpacks	\$ 9,797,309	15%
Cigarettes	\$ 9,540,433	15%
Footwear	\$ 7,836,101	12%
Wearing Apparel	\$ 7,787,241	12%
Consumer Electronics	\$ 6,775,947	11%
Toys/Electronic Games	\$ 6,628,217	10%
Computers/Hardware	\$ 3,533,735	6%
Watches/Parts	\$ 2,650,566	3%
Headwear	\$ 1,498,756	2%
Automotive/Motorized Vehicles	\$ 1,488,920	2%
All Other Commodities	\$ 6,949,181	11%
Total FY 05 Domestic Value	\$ 63,958,416	
Number of Seizures	3,769	



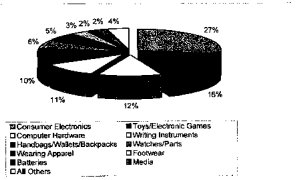
FY 2006	Domestic Value	% of Total Value
Footwear	\$ 11,909,037	42%
Wearing Apparel	\$ 14,215,434	11%
Handbags/Wallets/Backpacks	\$ 12,225,539	10%
Computers/Hardware	\$ 19,479,715	6%
Consumer Electronics	\$ 5,149,151	4%
Health Care	\$ 3,616,323	2%
Headwear	\$ 3,023,467	2%
Media	\$ 2,755,572	2%
Pharmaceuticals	\$ 1,722,769	1%
Cigarettes	\$ 1,679,640	1%
All Other Commodities	\$ 9,959,226	8%
Total FY 06 Domestic Value	\$ 123,595,844	
Number of Seizures	10,722	



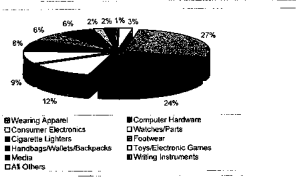
Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Hong Kong

FY 2005	Domestic Value	% of Total Value
Consumer Electronics	\$ 1,552,384	21%
Toys/Electronic Games	\$ 956,291	16%
Computer Hardware	\$ 716,456	12%
Writing Instruments	\$ 633,009	11%
Handbags/Wallets/Backpacks	\$ 594,134	10%
Watches/Parts	\$ 365,096	6%
Wearing Apparel	\$ 317,678	5%
Footwear	\$ 199,833	3%
Batteries	\$ 98,893	2%
Media	\$ 69,294	2%
All Others	\$ 237,194	4%
Total FY 05 Domestic Value	\$ 5,799,112	
Number of Seizures	892	



FY 2006	Domestic Value	% of Total Value
Wearing Apparel	\$ 2,269,249	27%
Computer Hardware	\$ 2,289,829	24%
Consumer Electronics	\$ 1,189,032	14%
Watches/Parts	\$ 862,480	9%
Cigarette Lighters	\$ 719,000	8%
Footwear	\$ 567,598	6%
Handbags/Wallets/Backpacks	\$ 567,598	6%
Toys/Electronic Games	\$ 199,267	2%
Media	\$ 151,643	2%
Writing Instruments	\$ 69,555	1%
All Others	\$ 239,025	3%
Total FY 06 Domestic Value	\$ 9,389,464	
Number of Seizures	753	

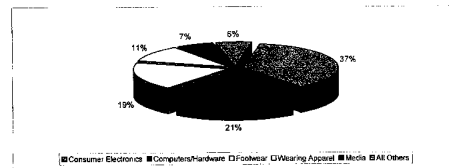


Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Taiwan

FY 2006*	Domestic Value	% of Total Value
Consumer Electronics	\$ 679,251	37%
Computers/Hardware	\$ 393,346	21%
Footwear	\$ 341,992	19%
Wearing Apparel	\$ 199,234	11%
Media	\$ 122,760	7%
All Others	\$ 110,161	6%
Total FY 06 Domestic Value	\$ 1,843,764	
Number of Seizures	67	

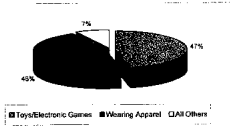
* Taiwan was not among the top five trading partners for IPR seizures in FY 05



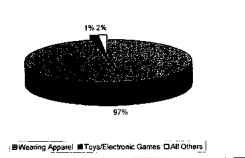
Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Pakistan

FY 2005	Domestic Value	% of Total Value
Toys/Electronic Games	\$ 820,805	47%
Wearing Apparel	\$ 820,873	46%
All Others	\$ 130,276	7%
Total FY 05 Domestic Value	\$ 1,783,154	
Number of Seizures	76	



FY 2006	Domestic Value	% of Total Value
Wearing Apparel	\$ 1,784,679	97%
Toys/Electronic Games	\$ 25,977	1%
All Others	\$ 28,559	2%
Total FY 06 Domestic Value	\$ 1,839,815	
Number of Seizures	85	

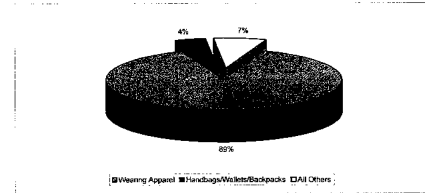


Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Korea

FY 2006*	Domestic Value	% of Total Value
Wearing Apparel	\$ 1,622,438	89%
Handbags/Wallets/Backpacks	\$ 78,440	4%
All Others	\$ 129,262	7%
Total FY 06 Domestic Value	\$ 1,810,140	
Number of Seizures	144	

*Korea was not among the top five trading partners for IPR seizures in FY 05

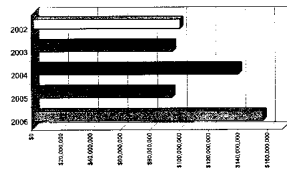


Source: U.S. Customs and Border Protection, L.A. Strategic Trade Center, 11-07-06

Comparison of Yearly Domestic Values of IPR Seizures

The value of IPR seizures in FY 2006 increased by 67% from the value in FY 2005. The FY 2006 domestic value is the highest in the history of Customs' Disarmament of Homeland Security.

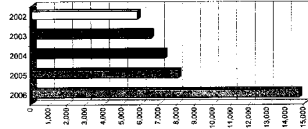
Fiscal Year	Overall Total Values (IPR)
2002	\$ 33,850,341
2003	\$ 94,019,277
2004	\$ 138,707,885
2005	\$ 93,234,510
2006	\$ 155,389,235
Total	\$ 580,341,199



Comparison of Yearly Seizure Totals

The number of seizures in FY 2006, reflects an increase of almost 63% over the number of seizures in FY 2005, and is the highest number of seizures in the history of Customs' Disarmament of Homeland Security. The port of JFK accounted for more than 48% of the total seizures.

Fiscal Year	Number of Seizures
2002	5,793
2003	6,500
2004	7,355
2005	8,322
2006	14,975
Total	42,945



Source: U.S. Customs and Border Protection, I.A. Strategic Trade Center, 11-07-06