

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To improve the bill.

**IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.**

**S. 3325**

To enhance remedies for violations of intellectual property laws, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. LEAHY

Viz:

1       On page 7, line 13, strike “inaccurate” and insert  
2 “inaccuracy of the”.

3       On page 8, strike line 5 and all that follows through  
4 page 9, line 2, and insert the following:

5       (a) IN GENERAL.—Section 503(a) of title 17, United  
6 States Code, is amended to read as follows:

7       “(a)(1) At any time while an action under this title  
8 is pending, the court may order the impounding, on such  
9 terms as it may deem reasonable—

1           “(A) of all copies or phonorecords claimed to  
2           have been made or used in violation of the exclusive  
3           right of the copyright owner;

4           “(B) of all plates, molds, matrices, masters,  
5           tapes, film negatives, or other articles by means of  
6           which such copies of phonorecords may be repro-  
7           duced; and

8           “(C) of records documenting the manufacture,  
9           sale, or receipt of things involved in any such viola-  
10          tion, provided that any records seized under this  
11          subparagraph shall be taken into the custody of the  
12          court.

13          “(2) For impoundments of records ordered under  
14          paragraph (1)(C), the court shall enter an appropriate  
15          protective order with respect to discovery and use of any  
16          records or information that has been impounded. The pro-  
17          tective order shall provide for appropriate procedures to  
18          ensure that confidential, private, proprietary, or privileged  
19          information contained in such records is not improperly  
20          disclosed or used.

21          “(3) The relevant provisions of paragraphs (2)  
22          through (11) of section 34(d) of the Trademark Act (15  
23          U.S.C. 1116(d)(2) through (11)) shall extend to any im-  
24          poundment of records ordered under paragraph (1)(C)  
25          that is based upon an ex parte application, notwith-

1 standing the provisions of rule 65 of the Federal Rules  
2 of Civil Procedure. Any references in paragraphs (2)  
3 through (11) of section 34(d) of the Trademark Act to  
4 section 32 of such Act shall be read as references to sec-  
5 tion 501 of this title, and references to use of a counterfeit  
6 mark in connection with the sale, offering for sale, or dis-  
7 tribution of goods or services shall be read as references  
8 to infringement of a copyright.”.

9 (b) PROTECTIVE ORDER FOR SEIZED RECORDS.—  
10 Section 34(d)(7) of the Trademark Act (15 U.S.C.  
11 1116(d)(7)) is amended to read as follows:

12 “(7) Any materials seized under this subsection  
13 shall be taken into the custody of the court. For sei-  
14 zures made under this section, the court shall enter  
15 an appropriate protective order with respect to dis-  
16 covery and use of any records or information that  
17 has been seized. The protective order shall provide  
18 for appropriate procedures to ensure that confiden-  
19 tial, private, proprietary, or privileged information  
20 contained in such records is not improperly disclosed  
21 or used.”.

22 On page 11, line 7, strike “, **TRANSSHIPMENT,** ”.

1        On page 11, lines 12 and 13, strike “**TRANS-**  
2 **SHIPMENT,**”.

3        On page 11, line 20, strike “TRANSSHIPMENT,”.

4        On page 12, line 1, strike “TRANSSHIPMENT”.

5        On page 12, lines 3 and 4, strike “, transshipment  
6 through the United States”.

7        On page 12, line 8, strike “copyright or” and insert  
8 “copyright, or which”.

9        On page 18, lines 14 and 15, strike “or 1204”.

10       On page 19, line 7, after “section.” insert the fol-  
11 lowing: “For seizures made under this section, the court  
12 shall enter an appropriate protective order with respect  
13 to discovery and use of any records or information that  
14 has been seized. The protective order shall provide for ap-  
15 propriate procedures to ensure that confidential, private,  
16 proprietary, or privileged information contained in such  
17 records is not improperly disclosed or used.”.

1 On page 20, line 21, strike “or 1204”.

2 On page 24, line 4, strike “**PIRACY**” and insert  
3 “**INFRINGEMENT**”.

4 On page 24, line 24, strike “piracy” and insert “in-  
5 fringement”.

6 On page 25, between lines 3 and 4, insert the fol-  
7 lowing:

8 (D) facilitate the issuance of policy guid-  
9 ance to departments and agencies on basic  
10 issues of policy and interpretation, to the extent  
11 necessary to assure the coordination of intellec-  
12 tual property enforcement policy and consist-  
13 ency with other law;

14 On page 25, line 4, strike “(D)” and insert “(E)”.

15 On page 25, line 7, strike “(E)” and insert “(F)”.

16 On page 25, line 12, strike “(F)” and insert “(G)”.

1       On page 25, strike line 19 and all that follows  
2 through page 27, line 3, and insert the following:

3               (A) ESTABLISHMENT.—There is estab-  
4 lished an interagency intellectual property en-  
5 forcement advisory committee composed of the  
6 IPEC, who shall chair the committee, and—

7               (i) Senate-confirmed representatives  
8 of the following departments and agencies  
9 who are involved in intellectual property  
10 enforcement, and who are, or are ap-  
11 pointed by, the respective heads of those  
12 departments and agencies:

13               (I) The Office of Management  
14 and Budget.

15               (II) The Department of Justice.

16               (III) The United States Patent  
17 and Trademark Office and other rel-  
18 evant units of the Department of  
19 Commerce.

20               (IV) The Office of the United  
21 States Trade Representative.

22               (V) The Department of State,  
23 the United States Agency for Inter-  
24 national Development, and the Bu-

1           reau of International Narcotics Law  
2           Enforcement.

3                   (VI) The Department of Home-  
4           land Security, United States Customs  
5           and Border Protection, and United  
6           States Immigration and Customs En-  
7           forcement.

8                   (VII) The Food and Drug Ad-  
9           ministration of the Department of  
10          Health and Human Services.

11                   (VIII) Any such other agencies  
12          as the President determines to be sub-  
13          stantially involved in the efforts of the  
14          Federal Government to combat coun-  
15          terfeiting and piracy; and

16                   (ii) the Register of Copyrights, or a  
17          senior representative of the United States  
18          Copyright Office appointed by the Register  
19          of Copyrights.

20           On page 27, line 7, strike “piracy” and insert “in-  
21   fringement”.

22           On page 27, line 22, strike “piracy” and insert “in-  
23   fringement”.

1        On page 28, line 1, strike “pirated” and insert “in-  
2 fringed”.

3        On page 28, line 7, strike “pirated” and insert “in-  
4 fringed”.

5        On page 28, line 15, strike “pirated” and insert “in-  
6 fringed”.

7        On page 28, line 17, strike “piracy” and insert “in-  
8 fringement”.

9        On page 28, line 22, strike “pirated” and insert “in-  
10 fringed”.

11       On page 29, lines 9 and 10, strike “pirated” and in-  
12 sert “infringed”.

13       On page 31, line 2, strike “piracy” and insert “in-  
14 fringement”.

15       On page 31, line 16, strike “piracy” and insert “in-  
16 fringement”.



1        On page 32, line 2, strike “piracy” and insert “in-  
2 fringement”.

3        On page 32, line 15, strike “piracy” and insert “in-  
4 fringement”.

5        On page 33, line 1, strike “piracy” and insert “in-  
6 fringement”.

7        On page 33, line 10, strike “pirated” and insert “in-  
8 fringed”.

9        On page 33, line 25, strike “piracy” and insert “in-  
10 fringement”.

11       On page 35, lines 1 and 2, strike “pirated” and insert  
12 “infringed”

13       On page 35, line 16, strike “piracy” and insert “in-  
14 fringement”.

15       On page 36, strike lines 21 through 23, and insert  
16 the following:

1 (c) RULE OF CONSTRUCTION.—Nothing in this title  
2 shall derogate from the powers, duties, and functions of  
3 any of the agencies, departments, or other entities listed  
4 or included under section 401(b)(3)(A).

5 On page 40, line 19, strike “90” and insert “75”.

6 On page 40, line 21, strike “, unless” and all that  
7 follows through “requirement” on line 22.

8 On page 41, line 22, strike “that are complex” and  
9 all that follows through “international” on line 24.

10 On page 42, line 7, strike “assigned” and insert  
11 “supported by”.

12 On page 42, line 9, strike “assigned to” and insert  
13 “supporting”.

14 On page 42, line 12, strike “and”.

15 On page 42, between lines 12 and 13, insert the fol-  
16 lowing:

1           (3) ensure that all Computer Hacking and In-  
2           tellectual Property Crime Units located at an office  
3           of a United States Attorney are assigned at least 2  
4           Assistant United States Attorneys responsible for in-  
5           vestigating and prosecuting computer hacking or in-  
6           tellectual property crimes; and

7           On page 42, line 13, strike “(3)” and insert “(4)”.

8           On page 43, line 10, strike “a Task Force to de-  
9           velop”.

10          On page 45, line 12, strike “pirated” and insert “in-  
11          fringed”.

12          On page 46, line 1, strike “Coordinating” and insert  
13          “Assisting in the coordination of”.

14          On page 46, strike lines 16 through 19.

15          On page 46, after line 19, insert the following:

1           **TITLE VI—MISCELLANEOUS**

2   **SEC. 601. GAO STUDY ON PROTECTION OF INTELLECTUAL**  
3                   **PROPERTY OF MANUFACTURERS.**

4           (a) STUDY.—The Comptroller General of the United  
5 States shall conduct a study to help determine how the  
6 Federal Government could better protect the intellectual  
7 property of manufacturers by quantification of the im-  
8 pacts of imported and domestic counterfeit goods on—

9                   (1) the manufacturing industry in the United  
10 States; and

11                   (2) the overall economy of the United States.

12           (b) CONTENTS.—In conducting the study required  
13 under subsection (a), the Comptroller General shall exam-  
14 ine—

15                   (1) the extent that counterfeit manufactured  
16 goods are actively being trafficked in and imported  
17 into the United States;

18                   (2) the impacts on domestic manufacturers in  
19 the United States of current law regarding defend-  
20 ing intellectual property, including patent, trade-  
21 mark, and copyright protections;

22                   (3) the nature and scope of current statutory  
23 law and case law regarding protecting trade dress  
24 from being illegally copied;

1           (4) the extent which such laws are being used  
2           to investigate and prosecute acts of trafficking in  
3           counterfeit manufactured goods;

4           (5) any effective practices or procedures that  
5           are protecting all types of intellectual property; and

6           (6) any changes to current statutes or rules  
7           that would need to be implemented to more effec-  
8           tively protect the intellectual property rights of man-  
9           ufacturers.

10          (c) REPORT.—Not later than 1 year after the date  
11          of the enactment of this Act, the Comptroller General shall  
12          submit to Congress a report on the results of the study  
13          required under subsection (a).

14          **SEC. 602. SENSE OF CONGRESS.**

15          It is the sense of Congress that—

16               (1) the United States intellectual property in-  
17               dustries have created millions of high-skill, high-pay-  
18               ing United States jobs and pay billions of dollars in  
19               annual United States tax revenues;

20               (2) the United States intellectual property in-  
21               dustries continue to represent a major source of cre-  
22               ativity and innovation, business start-ups, skilled job  
23               creation, exports, economic growth, and competitive-  
24               ness;

1           (3) counterfeiting and infringement results in  
2 billions of dollars in lost revenue for United States  
3 companies each year and even greater losses to the  
4 United States economy in terms of reduced job  
5 growth, exports, and competitiveness;

6           (4) the growing number of willful violations of  
7 existing Federal criminal laws involving counter-  
8 feiting and infringement by actors in the United  
9 States and, increasingly, by foreign-based individuals  
10 and entities is a serious threat to the long-term vi-  
11 tality of the United States economy and the future  
12 competitiveness of United States industry;

13           (5) effective criminal enforcement of the intel-  
14 lectual property laws against such violations in all  
15 categories of works should be among the highest pri-  
16 orities of the Attorney General; and

17           (6) with respect to criminal counterfeiting and  
18 infringement of computer software, the Attorney  
19 General should give priority to cases—

20                   (A) involving the willful theft of intellectual  
21 property for purposes of commercial advantage  
22 or private financial gain;

23                   (B) where the theft of intellectual property  
24 is central to the sustainability and viability of

1           the commercial activity of the enterprise (or  
2           subsidiary) involved in the violation;

3           (C) where the counterfeited or infringing  
4           goods or services enables the enterprise to un-  
5           fairly compete against the legitimate rights  
6           holder;

7           (D) where there is actual knowledge of the  
8           theft of intellectual property by the directors or  
9           officers of the enterprise; and

10          (E) where the enterprise involved in the  
11          theft of intellectual property is owned or con-  
12          trolled by a foreign enterprise or other foreign  
13          entity.