

New Legislation - Prioritizing Resources and Organization for Intellectual Property Act of 2008

By Julie E. Kretschmer

On October 13, 2008, President Bush signed into law the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (the PRO-IP Act) (P.L. 110-403). The PRO-IP Act revises various enforcement related revisions to U.S. copyright and trademark laws. The PRO-IP Act is intended to provide increased enforcement measures for intellectual property owners. The most important aspect of the PRO-IP Act is the establishment of an Intellectual Property Enforcement Coordinator to be appointed by the President. The "IP Czar" will be an advisory position to the President. The person holding this position will be key to the establishing protocols under the new law. Intellectual property owners can look forward increased controls, security and enforcement as relates to their intellectual property.

The key provisions of the Act are summarized below:

- **Harmless Errors.** The PRO-IP Act revises the Copyright Act protecting the validity of copyright registrations that have a harmless error. Specifically, the revision will excuse any inaccuracy in a copyright certificate of registration so long as the inaccuracy was not knowingly put into the application and correction of the inaccuracy would not result in refusal of registration.
- **Impounding and Protection Orders.** The PRO-IP Act allows impounding of all copies that are claimed to be made in violation of a copyright and also allows for a protective order to be placed upon all impounded copies

so that confidential, private or privileged information is not improperly disclosed or used.

- **Increased Damages.** The PRO-IP Act amends the Trademark Act of 1946 by increasing statutory damages in counterfeiting actions and allowing treble damages in trademark infringement actions involving counterfeit goods for intentional violations.
- **Exportation of Infringing materials.** The PRO-IP Act expands the Copyright Act which currently prohibits the importation of infringing copies, to also cover exportation.
- **Increased authority to seize property.** The PRO-IP Act increases the government's authority to seize property used in connection with copyright infringement.
- **Joint Strategic Plan.** The PRO-IP Act calls for the implementation of a Joint Strategic Plan (the "Plan") against counterfeiting and infringement which will provide for the following:
 - The Plan will be established to reduce counterfeit and infringing goods in the supply chain by identifying structural weaknesses, systematic flaws and other impediments to enforcement against trafficking of counterfeit and infringing goods.

AIPLA's Women in IP Cross Country Dinner February 12, 2009

Save the date for the American Intellectual Property Law Association's (AIPLA) second annual Women in IP Cross Country Dinner, sponsored by the AIPLA's Women in IP Law Committee and hosted by the Detroit law firm of Butzel Long. In January 2008, the AIPLA hosted dinners simultaneously in seventeen different cities across the United States, and included an interactive "shout out" from each city. The concept for the dinners came from a desire to provide female IP attorneys with an opportunity to develop informal networking and mentoring relationships in their own hometowns. The 2009 Michigan dinner will take place on February 12, 2009, at the Detroit office of Butzel Long. For additional information, including how to register, go to www.aipla.org, or e-mail Bea Swedlow at swedlow@butzel.com or Beverly Bunting at bunting@butzel.com.

- The Plan will provide recommendations on the enforcement, investigation and prosecution of intellectual property crimes. This will allow of the aid in the arrest and prosecution of individuals knowingly involved in the financing, trafficking or sale of counterfeit or infringing goods.
- The Plan will provide for strengthening the capacity of other countries to enforce and protect intellectual property rights by establishing international enforcement standards and by providing training and technically assistance to foreign countries.
- **Advisory Committee.** The PRO-IP Act calls for the establishment of an interagency advisory committee on the enforcement of intellectual property which shall establish the Joint Strategic Plan.
- **IP Enforcement Coordinator.** The PRO-IP Act calls for the appointment of an Intellectual Property Enforcement Coordinator (IPEC) to serve an advisor to the President with the following responsibilities:
 - Chair the newly formed intellectual enforcement advisory committee
 - Coordinate the development and assist in the implementation of the Joint Strategic Plan against counterfeiting and infringement
 - Issue policy guidance with respect to intellectual property enforcement
- Make recommendations to Congress regarding enhancements to intellectual property laws and enforcement
- **Enhanced State Efforts.** The PRO-IP Act allows for the establishment of the Department of Justice program which will provide grants to establish and develop programs to enhance state and local enforcement of anti-counterfeiting and anti-infringement efforts.
- **Increased Resources.** The PRO-IP Act increases the resources for enforcement of intellectual property crimes and computer related crimes.
- **Annual Reports.** The PRO-IP Act requires annual reports on all aspects of the enforcement and continued studies to determine if the effectiveness and efficiency of the policies.

The PRO-IP Act allows for many enhancements to the enforcement of Intellectual Property. How these enhancements will be implemented will in part be decided by the advisory committee and the new IPEC and what they choose to include in the Joint Strategic Plan. The IPEC is a presidential appointment and will be appointed by president-elect Obama in January 2009. The IPEC will have the ability to strengthen intellectual property enforcement in the U.S. and to assist foreign jurisdictions with increased intellectual property protection. How far the protection will go and to what extent will partly depend on the agenda of the appointee and the advisory committee. ♡

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Spring Seminar

INTELLECTUAL PROPERTY SPRING SEMINAR, MONDAY, MARCH 16, 2009 AT THE KELLOGG CENTER IN EAST LANSING. Register now to learn about the most recent intellectual property issues from nationally renowned experts. U.S. Customs and Border Protection officials will share tips and advice on how to work with their office to obtain enforcement assistance and get information about infringing products. Get the latest on how KSR has impacted cases, including those on appeal, and how the resulting PTO examination guidelines are being implemented. Learn how to effectively draft and update intellectual property policies, maximize the value of corporate intellectual property and handle risk management issues in your intellectual property practice. Gain insight on recent developments in design patents following Egyptian Goddess, find out about the intersection of FDA and trademark law and understand the ins and outs of International Trade Commission investigations. Presented by the Intellectual Property Law Section of the State Bar of Michigan in cooperation with the Institute of Continuing Legal Education. Register online at www.icle.org. ♡