

**PRO IP Act Hearing
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1. Hill Urged to Flex Piracy Muscles
Labor, management support for Pro IP act of 'war'
Hollywood Reporter
By Brooks Boliek
December 14, 2007

Proponents of tougher intellectual property protection laws urged Congress on Thursday to issue a "declaration of war" against the freebooters.

During a hearing examining legislation known as the Pro IP Act, industry and labor called on lawmakers to ratchet up the fight against infringement, contending that it is necessary to save U.S. jobs and economic strength.

"The Pro IP Act is a needed declaration of war, escalating the priority of this vital public policy by deploying dedicated enforcement resources to the battle," NBC executive vp and general counsel Rick Cotton said.

Cotton holds a day job as one of NBC's top executives, but he has been spending a great deal of time as chairman of the Coalition Against Counterfeiting and Piracy, a U.S. Chamber of Commerce-led organization that includes most of the nation's leading intellectual property companies, ranging from automobile parts makers and pharmaceutical firms to film studios.

While big business wants the legislation to pass, it also has the support of big labor as Teamsters president Jim Hoffa also told lawmakers the bill is a necessary step.

"Some people might think it's no big deal to buy a knockoff handbag or fake DVD, but it is," Hoffa said. "These crimes kill jobs -- good jobs that my union has fought to protect for more than a hundred years."

Hoffa told the members of the House Judiciary Committee's intellectual property subcommittee that about 370,000 jobs in the American entertainment industry are lost every year as a result of the lost revenue from pirated and counterfeited media.

While the Pro IP bill has the backing of both labor and business, it is not without its critics, who are concerned that some provisions may go too far. A "compilation" provision that would allow judges to count each song bootlegged from a single album as a separate offense brought out the ire of fair-use advocates.

"Increasing damages this way will have a severe chilling effect on legitimate uses of copyrighted works and on innovation," said Gigi Sohn, president and co-founder of Public Knowledge, a non-profit advocacy group.

The compilation provision is being pushed by the record industry, which has been hardest hit by piracy.

Generally the legislation creates a copyright "czar" within the White House and sets tougher statutory penalties for copyright infringement; it expands the forfeiture provisions, allowing the feds to seize property used in counterfeiting operations; appoints intellectual property officers to work with foreign countries in their efforts to combat counterfeiting and piracy; and authorizes the creation of a permanent Intellectual Property Division within the Department of Justice.

While American industrial and labor might back the bill, the administration and the Justice Department appear to be less than thrilled about bringing in a copyright czar or reorganizing the department.

Sigal Mandelker, (CQ) the department's criminal division chief, told lawmakers that the system they have in place was working just fine.

"We are always going to be concerned about someone in the White House directing cases we should or shouldn't pursue," she said. "That's contrary to the long-standing custom at the Department of Justice."

Rep. Howard Berman, D-Calif., chairman of the intellectual property subcommittee, told The Reporter that he was confident he could work out the differences.

"My feeling is that we will move it through Congress, not this year, but during the next session," he said. "Our goal is to get it through this Congress."

While the bill has strong bipartisan support and the support of the full committee chairman Rep. John Conyers, D-Mich., there are some members who questioned it.

"I think it would go more towards Americans than those in other countries who are responsible for the tsunami of counterfeit goods entering this country," said Rep. Hank Johnson, D-Ga.

But Conyers said that is not the case.

"This bill is important in the fight to maintain our edge in the global marketplace," he said. "Contrary to what is being said on the Internet, this bill is for the American people, not some interest group."

2. Judiciary Leaders Offer To Work With IP Bill's Critics

National Journal's Tech Daily

by Andrew Noyes

December 13, 2007

House Judiciary Committee leaders who last week introduced a bill to bolster U.S. intellectual property enforcement said Thursday that they are eager to work with stakeholders in the debate who have problems with the legislation.

The loudest opposition pertains to a section of the bill, H.R. 4279, that would boost statutory damages in copyright cases. Existing law provides for penalties of up to \$30,000 for each non-willful violation and up to \$150,000 for willful violation.

At a hearing of the House Judiciary Courts, the Internet and Intellectual Property Subcommittee, full committee Chairman John Conyers said he recognizes concerns that the language could lead to "opportunistic lawsuits to drive some smaller companies out of business." The Michigan Democrat said he is "committed to working further on this issue."

Subcommittee ranking Republican Howard Coble of North Carolina, who has not yet signed on as a co-sponsor, said he supports "an overwhelming majority" of the measure but said more talks are needed to grapple with the potential impact of the damages language.

California Democrat Zoe Lofgren said she is "deeply troubled" by the text and submitted a letter co-signed by fellow committee members Rick Boucher, D-Va., and James Sensenbrenner, R-Wis. She also offered a letter from 25 law professors who are equally miffed.

The provision would "do little or nothing to deter willful infringers," Boucher said. He suggested that a bill he introduced, which would repeal certain anti-circumvention measures of the 1998 Digital Millennium Copyright Act, should be "examined as part of the overall discussion."

Public Knowledge President Gigi Sohn, a well-known defender of "fair use" of copyrighted content, said current damages "are already stretching the bounds of reason." She added that the bill's expansion of forfeiture authority could lead to the seizure of a family's general-purpose computer in a case over allegedly illegal downloads.

"We carefully crafted language in this section to allow seizure only if the property is held or controlled predominantly by the infringer," Conyers said. He said he sought input from civil-liberties groups and Internet firms to strike the right chord, and he feels "comfortable" about the section.

Deputy Assistant Attorney General Sigal Mandelker lauded lawmakers' efforts to fight counterfeiting and piracy but said the bill's proposed creation of a permanent IP division within the Justice Department "could have a detrimental effect" on enforcement efforts.

The bill also would create an executive-level office to oversee domestic and global copyright and trademark laws. Mandelker said she could not speak for the White House but noted that the department is always concerned when proposals let non-law enforcement entities develop policies that directly impact criminal investigations and prosecutions.

NBC Universal General Counsel Rick Cotton and Teamsters President James Hoffa said they fully back the bill. Cotton called counterfeiting and piracy "the new face of organized crime" and said the trend represents "a global pandemic that is getting worse."

Conyers said his legislation is "for the American people, not a specific industry" and pointed out that IP infringement annually costs U.S. businesses 750,000 jobs and accounts for as much as \$250 billion in lost sales.

3. Report Shows Costs, Benefits Of Boosting IP Protection

National Journal's Daily Dose

By Andrew Noyes

December 13, 2007

A U.S. Chamber of Commerce-led coalition aimed at combating counterfeiting and piracy released a new study to a handful of reporters on Wednesday that the group says demonstrates the value of strengthening U.S. intellectual property enforcement efforts.

The report by Laura Tyson, the former head of the President's Council of Economic Advisers, was embargoed until Thursday -- the day of a crucial hearing chaired by California Democrat Howard Berman of the House Judiciary Courts, the Internet and Intellectual Property Subcommittee.

According to Tyson, the coalition's proposal to embolden American IP protection, components of which were included in H.R. 4279, would cost the government money but would save the country much more in the long run.

"Measured in present value terms, the CACP initiative would cost between \$0.289 and \$0.489 during the first three years," according to the report. Most of the costs incurred would pertain to the hiring and training of additional federal employees to fight IP crime.

U.S. companies lose at least \$225 billion annually to piracy and counterfeiting, the report pointed out. Tyson said the coalition's proposal would reduce those losses by between \$18.4 billion and \$36.8 billion in three years' time. Savings could be as high as 10 percent by the third year, she said.

If enacted, the IP enhancements would increase U.S. output by about \$27 billion a year and would boost employment by about 174,000 a year after three years, the report said. Those figures rise to \$54 billion and 348,000 jobs after that initial period.

Tyson added that for every dollar spent on such an effort, federal tax revenues would increase by at least \$2.9 and by as much as \$9.7 with an intermediate range of \$4.9 to \$5.7. For every dollar spent, U.S. output would increase by at least \$38 and could increase by as much as \$127, she wrote.

On H.R. 4279, NBC Universal General Counsel Rick Cotton, who chairs the chamber's IP alliance, said lawmakers would be "hard-pressed to find another bill that has the breadth of support that this one does."

Even though Congress has a mountain of other priorities, he believes the legislation can move forward swiftly. "Congress is looking for things to get done," he said. Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., has his own bill (S.2317) and so do Sens. George Voinovich, R-Ohio, and Evan Bayh, D-Ind. (S. 522).

4. IP Bill Gets Mostly Friendly Hearing

Content Agenda

By Paul Sweeting

December 13, 2007

WASHINGTON—The Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act encountered only light opposition in its first subcommittee hearing on Capitol Hill Thursday, signaling relatively smooth sailing ahead.

The biggest threat to the bill at this point appears to be the legislative calendar, which will be truncated in 2008 to allow lawmakers to campaign for reelection, leaving relatively few days to move legislation.

Backed by a bipartisan roster of co-sponsors, the bill would dramatically reorganize U.S. law enforcement efforts aimed at combating counterfeiting and piracy, while creating senior positions with the Department of Justice and the White House to coordinate those efforts both domestically and abroad.

The full text of the bill is available [here](#).

Thursday's hearing, before the House Subcommittee on Courts, the Internet and Intellectual Property, also featured an unusual level of bipartisanship, between corporate representatives and labor unions.

Sharing the witness table in support of the bill were Richard Cotton, general counsel of NBC Universal and chairman of the Coalition Against Counterfeiting and Piracy, which was responsible for proposing most of the bill's provisions, and James P. Hoffa, general president of the International Brotherhood of Teamsters.

"I am particularly pleased to be able to support legislation that not only has bipartisan support but also brings labor and management together, something I'm sure you'd agree doesn't often happen," Hoffa said in his opening statement. "I appreciate the good work that Rick Cotton and the CACP have done to highlight the damage of these [intellectual property] crimes, not just to the corporate bottom line, but also to the lives of workers."

Hoffa noted that the entertainment industry is heavily unionized, giving the Teamsters a direct stake in the bill's outcome, and gave a shout out to striking Hollywood writers, whose dispute with the studios has shut down movie and TV production for the last six weeks.

Reflecting proponents' careful orchestration of support from the start, the bill's most controversial provision was not part of the original package of proposals put forth by the CACP.

The provision, contained in Section 104 of the bill, would significantly increase the statutory damages for copyright infringement involving compilations by allowing courts to assess the maximum penalty for each individual work contained in the compilation. Currently, compilations are treated as single works, subject only a single award of damages.

The provision was added to the bill at the urging of the record companies, according to Cotton, who want to see each track on an illegally copied CD treated as a separate copyrighted work for assessing damages, and by photographers, who want to see individual photographs treated separately when a collection or album of photos is infringed.

Several committee members expressed skepticism about the provision, including Rep. Howard Coble (R-NC), the ranking Republican on the panel.

“I think it’s in the interests of copyright owners and users to have further discussion on Section 104,” said Coble, who has not yet signed on as a co-sponsor.

He also endorsed a proposal to have the U.S. Copyright Office convene roundtable discussions among interested parties to consider how to handle compilations in infringement cases.

Opponents of the provision say it would potential damages so onerous that many would-be innovators might balk at pursuing their ideas out of fear they would be subject to ruinous penalties.

“Increasing damages this way will have a severe chilling effect on legitimate uses of copyrighted works and on innovation,” said Gigi Sohn, president of the Washington-based consumer advocacy group Public Knowledge.

She noted that the penalty for infringing three songs on an album could rise from the current maximum of \$150,000, to \$450,000.

In written testimony sent to the committee before the hearing, Consumer Electronics Association president Gary Shapiro, echoed Sohn’s concerns.

“Suppose you are the CEO of a small, entrepreneurial company considering the production of a new digital product that allows consumers to enjoy their lawfully acquired movies and music in innovative ways,” Shapiro wrote. “Legal counsel cautions about the risks of being charged with copyright infringement on a ‘secondary’ basis.

“You learn the Copyright Act requires, at the election of the plaintiff, the assessment of “statutory damages,” per work copied and irrespective of actual harm or societal benefits of a product, of up to \$150,000,” he continued. “Given this enormous legal exposure, are you willing to risk your entire company and all its equity on this one new product? Unsurprisingly, for many innovators and venture capitalists, the answer is ‘no.’”

Other members committee expressed concern that the increased damages could also be used by copyright owners as leverage to go after individual infringers rather than organized piracy groups.

“I think we need to be very careful about distinguishing between disputes over particular uses that may turn out not to be infringing, and willful infringers,” said Rep. Darrell Issa (R-CA).

Cotton declined to comment on whether removing Section 104 from the bill would be a “deal killer” for CACP. But he dismissed the fears of technology providers that the provision could increase their liability in cases involving secondary, or contributory, copyright infringement.

“I think they’re seeing hobgoblins, I really do,” Cotton said. “This bill has zero effect on secondary liability.”

5. New House Bill Attacks Piracy
Measures could reduce bootlegging by 10%
Variety
By William Triplett
December 13, 2007

New antipiracy measures in a bill a House subcommittee will consider today could reduce overall bootlegging by 10% or more over three years and bring at least a fourfold return on every taxpayer dollar required to fund the bill, according to an economic analysis by economic and financial consulting firm LECG.

With its authors calling the overall package of measures "a sound investment for the federal government," the analysis will be used by a group of businesses and industries -- including showbiz -- as evidence the bill should be passed and enacted.

According to an advance copy of his prepared testimony to the House Subcommittee on Courts, the Internet and Intellectual Property today, NBC U exec veep Rick Cotton, who is also chairman of the Coalition Against Counterfeiting and Piracy, characterizes the report as "powerful" and says it "confirms what we all know -- we must tackle the problem of intellectual property theft to safeguard our economic security, to create jobs, to protect our health and safety, to defend against organized crime and to make the United States a model for our trading partners of how to address this issue."

The subcommittee will review the Prioritizing Resources and Organization for Intellectual Property Act of 2007, or PRO IP Act, which was introduced last week (Daily Variety, Dec. 6). The bill would create a supervisory position inside the White House for intellectual property issues, establish a permanent IP division within the Justice Dept., up penalties for IP theft and increase personnel for combating piracy domestically and abroad.

The coalition -- led by the U.S. Chamber of Commerce and comprising more than 400 business entities, including entertainment and media companies -- engaged consulting firm LECG to perform a cost-benefit analysis of the above measures and others.

At a press briefing Wednesday, former Clinton administration economics adviser Laura Tyson, who oversaw the LECG analysis, said that immediate benefits of implementing the PRO IP Act would be increased productivity and employment for IP-intensive industries.

Tyson emphasized that she and her colleagues adopted "a very conservative" take on evaluating estimated economic gains and costs that the PRO IP Act might entail.

Bottom line: "Every \$1 spent by the government on this will get at least \$4-\$5 back in tax revenues," Tyson said.

The authors of the analysis also concluded that the measures could cut the estimated \$225 billion annual losses to piracy across all sectors by \$18.4 billion in the first year and by \$36.8 billion in

the first three years. Annual output would increase by \$27 billion, and 174,000 new jobs would be created.

While the bill focuses only on deterrence, Cotton, the Peacock's point man on IP protection, said "the big contribution this makes is that the issue will get senior government attention and leadership, and I can't conceive that that would not include a major public education effort" to inform consumers about the dangers as well illegality of buying bootlegs of any kind.

6. CACP Piracy Plan Under House Scrutiny
Hollywood Reporter
By Brooks Boliek
Decemberr 13, 2007

WASHINGTON -- Proponents of a stronger, more centralized federal attack on piracy are hoping a new report that the House Judiciary Committee plans to examine Thursday provides a big commercial bang for the federal buck.

According to the cost-benefit analysis by Laura Tyson -- former chairwoman of the National Economic Council and a business professor at the University of California at Berkeley -- of a legislative initiative developed by the Coalition against Counterfeiting and Piracy, the cost to the federal government for tougher laws with a centralized leadership would run from \$289 million-\$489 million for the first three years of the program.

The FBI and other government sources say U.S. companies lose \$225 billion each year to bootlegging. Tyson contends that the CACP initiative would reduce those losses by \$18.4 billion-\$36.8 billion in the first three years.

The legislation being considered Thursday closely tracks proposals of the CACP, a U.S. Chamber of Commerce-led organization that includes most of the nation's leading intellectual property companies, ranging from the automobile-parts makers and pharmaceutical firms to the motion picture studios. CACP funded the study.

This month, a bipartisan group of lawmakers introduced the Prioritizing Resources and Organization for Intellectual Property "PRO IP" Act of 2007.

Among other things, the bill seeks to strengthen the substantive civil and criminal laws relating to copyright and trademark infringement and establish the Office of the United States Intellectual Property Enforcement Representative in the White House.

Although the legislation doesn't include all of CACP's suggestions, NBC executive vp and general counsel Rick Cotton said it has the coalition's support. Cotton is CACP chairman and had a big hand in developing the coalition's recommendations.

"While language consistent with the original CACP proposals would have been preferable, we understand the sponsors' reasons for altering these proposals and believe they have struck a good balance between the need for stronger IP protection and the concerns of Internet service providers, grey marketers, the criminal defense bar, Internet commerce companies and others," Cotton said in testimony prepared for the committee.

7. Ahead of the Bell: Copyright Hearing

AP

By Christopher S. Rugaber

December 13

Movie moguls, studio heads and manufacturing executives on Thursday will urge Congress to allow larger penalties for pirating movies, music and other copyright goods and to dedicate more resources to enforcing copyright laws.

Consumer advocates, however, have expressed concern that additional penalties, included in legislation introduced in the House last week, could discourage innovation and subject consumers to excessive fines.

Business groups, including the U.S. Chamber of Commerce and National Association of Manufacturers, set up a coalition of industrial, entertainment and other companies earlier this year to lobby for a copyright enforcement bill. Members of the group include Viacom Inc., Microsoft Corp., the Walt Disney Co., and Ford Motor Co.

The bill, introduced Dec. 6 by Reps. John Conyers, D-Mich., and Howard Berman, D-Calif., would boost the potential fines for copyright infringement by allowing penalties to be assessed for parts of a pirated work, such as each song on a pirate CD, rather than just for the CD as a whole.

The legislation would also create a White House office to coordinate enforcement of copyright and counterfeiting laws and set up an intellectual property division in the Justice Department. The "Prioritizing Resources and Organization for Intellectual Property," or PRO-IP Act, would also provide more resources to fight piracy overseas.

Rick Cotton, general counsel for NBC Universal and chair of the coalition, said Wednesday the bill is "a declaration of war against the global counterfeiters and global pirates."

NBC Universal is 80 percent owned by General Electric Co. and 20 percent by Vivendi, the Paris-based entertainment company.

Cotton will argue in testimony Thursday before a House Judiciary subcommittee, chaired by Berman, that copyright-enforcement resources and penalties need to increase to counter technological advances that have made large-scale production of pirated and counterfeit goods easier.

James P. Hoffa, general president of the Teamsters union, is also scheduled to testify in favor of the bill.

Gigi Sohn, president of the nonprofit consumer advocacy group Public Knowledge, will criticize the bill's penalty provisions during the hearing, according to a written version of her testimony.

The bill would "subject millions of people to the threat of unrealistically harsh penalties" and is "a step away from a rational, realistic copyright regime," her testimony says, "one that can allow a law last overhauled before the invention of the VCR to adapt itself to a world of Tivo and YouTube."

Sohn noted that the recording industry won a \$222,000 judgment against a Minnesota woman in October for sharing 24 songs online, or \$9,250 per song. Such an award demonstrates that penalties for infringement are already excessive, she said in her testimony.

8. Rick Cotton Addressed the PRO-IP Act Copyright Alliance

<http://blog.copyrightalliance.org/blog/Rick-Cotton-Addresses-the-PROIP-Act>

December 13, 2007

Guest blog by Richard Cotton, Executive Vice President and General Counsel for NBC Universal and Chairman of the Coalition Against Counterfeiting and Piracy (CACCP).

I am visiting Capitol Hill today to testify in support of the most comprehensive legislation ever introduced on the subject of equipping our government to protect intellectual property. The Prioritizing Resources and Organization for Intellectual Property Act of 2007 -- the PRO IP Act for short -- is a crucial piece of legislation and deserves strong bipartisan support and quick passage.

As regular visitors to this site know, the increase in global counterfeiting and piracy constitutes an enormous threat to our future economic vitality. The U.S. bears the brunt of this activity, but IP theft knows no boundaries and exacts a heavy toll on both developed and developing nations.

Here are three reasons everyone should be alarmed about this epidemic:

First, IP theft is a jobs and economic security issue, with hundreds of billions of dollars a year and millions of high-paying jobs at stake.

Second, IP theft is a health and safety issue that presents a clear and increasing danger to the public, from counterfeit toothpaste laced with antifreeze to exploding batteries and other dangerous consumer goods.

Third, IP theft is the new face of organized crime. Organized crime goes where the money is, and today that is high-value IP-dependent commerce such as bootleg DVDs and counterfeit medicine.

Turning the tide will not be easy, and will require stepped-up efforts on many fronts: in the private sector, in technology development, and in government action.

In this third area, I'm pleased to say that the PRO IP Act is a big step in the right direction. It has the three elements of any government plan that can realistically make a difference:

* The Act creates key leadership positions to address the challenge of counterfeiting and piracy government-wide with the new United States Intellectual Property Enforcement Representative and within the Department of Justice, by creating a new Intellectual Property Enforcement Division, headed by an Intellectual Property Enforcement Officer.

* The Act authorizes more IP-devoted resources, including expanded numbers of U.S. prosecutors specializing in IP enforcement, FBI agents dedicated to IP investigations to support these prosecutors, money for state IP enforcement programs, and international IP specialists based in U.S. embassies around the world.

* The Act updates several laws that have failed to keep pace with the burgeoning threat of counterfeiting and piracy, such as raising statutory damages in counterfeiting cases, which have remained the same for more than thirty years; outlawing the export of counterfeit or pirate product from the United States; and raising the penalty for counterfeiting that results in death or serious bodily harm.

If Congress enacts this bill, and other related proposals that are within the jurisdictions of other Committees of Congress, it will make a long-term difference. We must tackle the problem of IP theft to safeguard our economic security, to create jobs, to protect our health and safety, to defend against organized crime, and to make the United States a model for our trading partners of how to address this issue.

9. Intellectual Property Theft Needs Action, Bill's Backers Say
December 14, 2007
By Corey Boles Of DOW JONES NEWSWIRES

WASHINGTON (Dow Jones)--Efforts to substantially beef up law-enforcement resources tackling intellectual property theft could reduce the loss to the U.S. economy by \$37 billion in three years' time, a study by a former top economic advisor to President Clinton concluded.

The report, conducted by economic consultants LECG LLC, pinpoints the cost to the U.S. economy from intellectual property theft at \$225 billion annually. It said that could be reduced by between \$18.4 billion and \$36.8 billion within three years if legislation introduced in the House last week is enacted to further protect copyrights, patents, trademarks and the like in the U.S. and abroad.

That bipartisan legislation would drastically increase resources for U.S. law enforcement to fight intellectual property theft at the federal, state and local levels.

Dr. Laura Tyson, who headed the Council of Economic Advisers under President Clinton from March 1995 to December 1996, was one of the principal authors of the study.

She estimated the cost to the U.S. Treasury for the measures included in the bill would be between \$300 million and \$500 million over the first three years.

But she said the plan would increase U.S. economic output by about \$27 billion a year and would create around 174,000 jobs a year after that initial three year period.

The bill was introduced by Rep. John Conyers, D-Mich., the chairman of the House Judiciary Committee, and co-sponsored by several other lawmakers of both parties.

It calls for more training for law enforcement and a stronger law enforcement presence at U.S. ports where much of the counterfeit goods enters the country.

The legislation would increase penalties against those found to be engaging in intellectual property theft. It would also create a dedicated position within the White House to coordinate efforts within the federal government to tackle the problem, and create posts in major U.S. embassies around the world to draw attention to the issue.

The bill has widespread support from lawmakers on both sides of the aisle, as well as business groups and unions.

A similar version of the legislation has been introduced in the Senate by lawmakers on the Judiciary Committee.

The LECG study was commissioned by the Coalition Against Counterfeiting and Piracy, an umbrella group of trade bodies, companies and labor organizations that have been lobbying for action to fight counterfeiting.

The House Subcommittee on Courts, the Internet and Intellectual Property held a hearing on the bill Thursday.

Richard Cotton, executive vice president and general counsel at NBC Universal, and chairman of the coalition, testified at the hearing.

Calling the issue of intellectual property theft a global pandemic, he urged Congress to take action to address it. Speaking to reporters on Wednesday, Cotton said the bill "really represents a declaration of war against global counterfeiting and global pirates."

Cotton said he hoped that, due to the bipartisan support of the bill, it might have a chance of becoming law at a time when Congress seems unable to get much else passed onto the books.

But he acknowledged that, since 2008 will be an election year, it will be a tough fight.

Sigal P. Mandelker, a deputy assistant attorney general at the Department of Justice, said in his testimony at the hearing that the administration supported aspects of the bill but took issue with other parts of it.

He said he hoped to be able to work with lawmakers over the coming weeks to address those issues.

In his opening remarks, Rep. Howard Berman, D-Calif., the chairman of the subcommittee, said his door was open to such talks.

"We've met with DOJ about some of their apprehensions and our door remains open to try and constructively resolve our mutual concerns," said Berman.

Spokespersons for Sens. Patrick Leahy, D-Vt., and Arlen Specter, R-Pa., said the issue of fighting intellectual property theft would be a key priority in 2008. Leahy is the chair of the Senate judiciary panel, and Specter is the ranking minority member.

-By Corey Boles, Dow Jones Newswires; 202-862-6637; corey.boles@dowjones.com

10. Consumer, Industry Groups Spar Over Piracy Bill

December 13, 2007

By [Sean Gallagher](#)

WASHINGTON, D.C. -- Rivals debating a new intellectual property enforcement bill had their say before a U.S. House of Representatives subcommittee today, with labor and media figures supporting its counterfeit crackdown while consumer groups warned of a possible "chilling effect" on digital media and fair use.

The [Prioritizing Resources and Intellectual Property Act of 2007](#), or "PRO IP", enjoys bipartisan backing as well as broad support from media and labor leaders, a number of whom spoke today before the House Subcommittee on Courts, the Internet and Intellectual Property.

The act would create a new structure within the Department of Justice to enforce intellectual property laws. It also expands the penalties for infringement on IP to include forfeiture of property involved or "intended for use" with infringed material.

The bill also would change how statutory damages are assessed, which could significantly increase damages for copying and redistributing copyrighted material in some cases.

"The good thing about this bill is we've got strong support on both sides of the aisle," said Rep. John Conyers (D-Mich.), the sponsor of the bill and chairman of the House Judiciary Committee, during his opening remarks.

Conyers, who described the bill as being "for the people," pointed out the public safety concerns of counterfeit products. He also discussed the economic impact of IP piracy, which he placed at 750,000 lost jobs and between \$200 billion and \$250 billion.

"We can either wring our hands, or make a difference," he said.

Media industry and labor leaders joined Conyers in supporting the bill.

"I'm particularly pleased to be able to support legislation that not only has bipartisan support but also brings labor and management together," said Teamsters President James Hoffa. "Some people might think it's not a big deal to buy a knockoff bag or DVD, but these things cost us hundreds of thousands of jobs."

Rick Cotton, executive vice president and general counsel for NBC Universal, spoke before the committee as chairman of the [Coalition Against Counterfeiting and Piracy](#), calling the PRO IP act "a much-needed declaration of war" on IP violations.

"Counterfeiting and piracy represent a global pandemic which is getting worse, not better," Cotton said. "The unprecedented and explosive growth [of each] represents a dagger aimed at the heart of future U.S. economic growth."

Yet consumer advocates charged that some of the measures in the PRO IP Act could hurt the development of new ways to consume media. They also claimed the bill further encroaches on consumers' "fair use" rights to use copyrighted material.

The most controversial measure in the bill, Section 104, would change current copyright law to treat each infringement of work in a compilation as a separate act. As a result, it could potentially multiply statutory damages for even accidental or non-willful infringement.

"Section 104 of the bill would disaggregate the parts of a compilation or derivative work for the purpose of calculating damages, multiplying the already-massive statutory damages associated with copyright infringement," said Gigi Sohn, president of Public Knowledge, during her oral testimony. "Increasing damages this way will have a severe chilling effect on legitimate uses of copyrighted works and on innovation."

Rep. Zoe Lofgren (D-Calif.) also expressed concern about Section 104 of the bill, and doubts about the efficacy of greater statutory damages in any case. "When we inspect less than one percent of the containers that come into the US, this bill isn't going to stop piracy."

Sigal Mandelker, a U.S. Deputy Asst. Attorney General, testified that the White House is generally pleased with the bill because it incorporates changes in IP law that the administration had recommended.

However, Mandelker said the Department of Justice was concerned with Title V of the bill, which creates a new division within the department to enforce intellectual property laws. That portion of the bill also creates a new White House office, similar to that of the U.S. Trade Representative, dedicated to coordinating international intellectual property enforcement.

"We do have significant concerns with Title V of the act, which we feel will have a detrimental effect on how the DOJ performs enforcement," Mandelker said.

11. DOJ Blasts New 'Copyright Czar' Bill

PC Magazine 12.13.07

By [Chloe Albanesius](#)

The Department of Justice on Thursday slammed intellectual property legislation that would reorganize its IP enforcement structure, calling it unnecessary and counterproductive to the work it has already accomplished.

"We have a current structure ... that works quite effectively," Sigal Mandelker, deputy assistant attorney general, told the House Judiciary subcommittee on Courts, the Internet, and Intellectual Property.

Judiciary Chairman John Conyers last week introduced H.R. 4279, which would further crack down on intellectual property violations, and [create several new government positions with the power to enforce the new law](#). It is intended to preserve American economic prosperity, according to sponsors.

The new government positions include an intellectual property enforcement representative who would report to the White House, and a permanent intellectual property division within the Department of Justice.

Those plans would be "ill-advised," Mandelker told the committee. Removing the department's IP division from the criminal division, as the bill proposes, "will disrupt important relationships within the criminal division and will make intradepartmental IP coordination more difficult," she said.

The IP division works closely with the DOJ's cyber crime laboratory, so separating a copyright unit could fracture investigation, Mandelker said. "This close collaboration ... could be jeopardized if the IP enforcement component were split off from computer crime and placed into a separate division," she said. "Moreover, it may lead to duplicative administration and training programs."

The DOJ itself has an IP task force and recently implemented 31 recommendations, but "there was never any recommendation to create an entirely new division for IP," Mandelker said.

Copyright controls in the hands of the White House? Bad idea

DOJ was also not pleased with an IP office inside the White House. "We are always going to be concerned when you have somebody at the White House who may be in the position of directing our enforcement or what cases we do or don't do," she said. "That would be contrary to the long-standing tradition of the department making independent decisions regarding law enforcement."

Rick Cotton, executive vice president and general counsel for NBC Universal and chairman of the Coalition Against Counterfeiting and Piracy, suggested that IP issues tend to "fall down the 'to-do' list". Until there are senior policy executives specifically tasked with IP enforcement, he said, "we will not make progress in addressing the issues that are on the table."

Panel members also expressed concern over Section 104 of the bill, which would allow a copyright owner to collect statutory damages for each copyrighted work that is stolen. Detractors fear that this provision could result in protracted lawsuits, expensive settlements, and unintended consequences, especially when it comes to music.

Under current law, for example, someone who pirates a single album will be charged with one crime. Section 104, however, would penalize criminals on a per-song basis, so if someone pirated a motion picture soundtrack that had songs from 12 different artists, the pirate would be charged with 12 separate offenses and be subject to exorbitant fees.

Panelists said that while slapping music pirates with hefty fines may not seem overly problematic, these fines often wind up affecting the parents of kids sharing copyrighted material on their home computers or third-party hardware and software providers more than the operators of sophisticated piracy rings.

Increasing fines "would do little or nothing to deter willful infringers," said Rep. Rick Boucher, D-Va. "There are already ample statutory damages directed at them."

If anything, an increase in fines could deter innovation, Boucher suggested. Researchers might waver on "whether or not to introduce [a] product and involve themselves in that level of innovation" if the risk of being sued is too high, he said.

Rep. Zoe Lofgren, D-Calif., was "deeply troubled" by Section 104. "These statutory damages would provide for \$1.5 million damages for a single CD. I think that's unreasonable."

Chairman Conyers was not convinced.

"Damages need to reflect the fact that we live in a world where music is being consumed in bite-sized pieces, not just in albums or whole books," he said.

Conyers was not concerned about opportunistic lawsuits. "We're always watching lawyers that are hustling, so that goes with the turf," he said.

Subcommittee Chairman Howard Berman pointed out that that Section 104 is discretionary and not a mandate, and called on the Copyright Office to hold a series of meetings with various stakeholders about Section 104 to address any concerns.

Conyers, meanwhile, shot down the notion that a provision allowing for the seizure of equipment used to pirate copyrighted goods would result in the collection of a family's general-purpose computer in a download case.

Bill authors "carefully crafted the language to allow seizure only if the property was owned or predominantly controlled by the infringer," Conyers said. "A warehouse used to store counterfeit goods could be seized, or property used to transfer" pirated good would be the likely target of that provision, he said.

12. Lawmakers raise questions about copyright enforcement bill

The PRO-IP Act, which would significantly raise penalties for copyright infringement, is being hotly debated in Congress

InfoWorld

By Grant Gross, IDG News Service

December 13, 2007

A handful of lawmakers, law professors, and consumer groups have raised objections to a new U.S. copyright bill that could significantly increase the fines for copyright infringement.

The Prioritizing Resources and Organization for Intellectual Property Act (or [PRO IP Act](#)), debated before a congressional subcommittee Thursday, would allow courts to assess copyright infringement damages for each piece of a compilation or derivative work found to infringe copyright, instead of treating the compilation as one infringement.

The maximum fine for infringing three songs in one compilation would increase from \$150,000 to \$450,000 under the bill, introduced Dec. 5, said Gigi Sohn, president of Public Knowledge, a consumer rights advocacy group. The fines for infringing five poems in one compilation would rise from \$150,000 to \$750,000, said Sohn, referring to a [letter](#) signed by 25 IP professors.

The bill would also make it easy for courts to forfeit computers and other property alleged to be used for infringement in civil copyright lawsuits, and it would allow the U.S. government to pursue criminal copyright enforcement before the creator registers a work or product with the U.S. Copyright Office.

"While we agree that enforcement of intellectual property laws is essential to encouraging creativity, certain provisions in the proposed act risk undermining this essential goal by threatening consumers with an overbroad and inapposite enforcement regime," Sohn told the House of Representatives Subcommittee on Courts, the Internet and Intellectual Property. "These provisions of the bill ... represent a step away from a rational, realistic copyright regime."

The bill will hurt the consumer electronics industry with companies that make recording and copying devices scared to introduce new products because of a fear of lawsuits, added Representative Rick Boucher, a Virginia Democrat.

"The effect on innovation will be real, and it will be adverse," Boucher said.

But supporters of the bill said it's needed. Counterfeiting and piracy cost U.S. companies between \$200 billion and \$250 billion a year, said Representative John Conyers, a Michigan Democrat and chairman of the House Judiciary Committee.

Conyers, the primary sponsor of the bill, tried to dispel criticism that the legislation was targeted only at music and movie piracy. Counterfeit drugs, automobile parts, and airplane parts are "placing human lives at risk," he said.

Copyright theft also costs hundreds of thousands of jobs, added James Hoffa, general president of the International Brotherhood of Teamsters, a large trade union. Members of the union deliver DVDs, CDs, and video games from legitimate companies, he said. "When pirated DVDs and CDs are sold on a street corner in an underground economy, we lose jobs," he said.

Government agencies also lose tax revenue through pirated or counterfeit goods, Hoffa said. "Lost tax revenue has a significant and potentially debilitating impact on American working families," he added. "By most anyone's calculations, the bridges and roads that our members both build and travel over are in a critical state of disrepair throughout the country."

While Representative Lamar Smith, a Texas Republican, called copyright infringement "massive," others raised concerns that the bill goes too far. Representative Zoe Lofgren, a Democrat from Silicon Valley in California, noted that the bill could increase the penalties for infringing a 10-song CD from \$150,000 to \$1.5 million. "I think that's unreasonable," she said.

Public Knowledge's Sohn noted that a Minnesota woman was fined \$222,000 for 24 songs in a court case that ended in October. She called on the subcommittee to kill the portion of the bill that would increase copyright damages for compiled works.

"I don't think anybody's arguing that statutory damages are inadequate," she said. "I'm not sure that increasing penalties 10 fold or 20 fold does anything other than stop legitimate innovators."

13. Committee Leaders Offer To Work With IP Measure's Critics

CongressDailyAM – December 14, 2007

Andrew Noyes

House Judiciary Committee leaders who last week introduced a bill to bolster U.S. intellectual property enforcement said Thursday that they are eager to work with stakeholders who have problems with the legislation.

The loudest opposition pertains to a section of the bill that would boost statutory damages in copyright cases. Existing law provides for penalties of up to \$30,000 for each non-willful violation and up to \$150,000 per willful violation.

At a hearing of the House Judiciary Courts, the Internet and Intellectual Property Subcommittee, **Judiciary Chairman Conyers** said he recognizes concerns that the language could lead to "opportunistic lawsuits to drive some smaller companies out of business." Conyers said he is "committed to working further on this issue."

Courts, the Internet and Intellectual Property Subcommittee ranking member **Howard Coble**, R-N.C., said he supports "an overwhelming majority" of the measure but said more talks are needed to grapple with the potential impact of the damages language.

Rep. **Zoe Lofgren**, D-Calif., said she is deeply troubled by the text and submitted a letter co-signed by fellow committee members Reps. **Rick Boucher**, D-Va., and **James Sensenbrenner**, R-Wis.

She also offered a letter from 25 law professors who are equally miffed.

The provision would "do little or nothing to deter willful infringers," Boucher said.

He suggested that a bill he introduced, which would repeal certain anti-circumvention measures of the 1998 Digital Millennium Copyright Act, should be "examined as part of the overall discussion."

Public Knowledge President Gigi Sohn, a well-known defender of "fair use" of copyrighted content, said current damages "are already stretching the bounds of reason."

She added that the bill's expansion of forfeiture authority could lead to the seizure of a family's general-purpose computer in a case over allegedly illegal downloads.

"We carefully crafted language in this section to allow seizure only if the property is held or controlled predominantly by the infringer," Conyers said.

He said he sought input from civil-liberties groups and Internet firms and he feels comfortable with the section.

Deputy Assistant Attorney General Sigal Mandelker lauded lawmakers' efforts to fight counterfeiting and piracy but said the bill's proposed creation of a permanent IP division within the Justice Department "could have a detrimental effect" on enforcement efforts.

The bill also would create an executive-level office to oversee domestic and global copyright and trademark laws.

Mandelker said she could not speak for the White House but noted that the department is always concerned when proposals let non-law enforcement entities develop policies that directly impact criminal investigations.

NBC Universal General Counsel Rick Cotton and Teamsters President James Hoffa said they fully back the bill.

Cotton called counterfeiting and piracy "the new face of organized crime" and said the trend represents "a global pandemic that is getting worse."

Conyers said his legislation is "for the American people, not a specific industry" and pointed

out that IP infringement annually costs U.S. businesses 750,000 jobs and accounts for as much as \$250 billion in lost sales. *By Andrew Noyes. From National Journal's Technology Daily*

14. Ars Technica Blog

[House committee hears the cons of the PRO-IP Act](#)

By [Nate Anderson](#) | Published: December 13, 2007 - 02:00PM CT

The House today held a hearing on the new [PRO-IP Act](#) that beefs up intellectual property enforcement. [Rick Cotton](#), a top NBC lawyer and representative for the [Coalition Against Counterfeiting and Piracy](#) (CACP), called counterfeiting and piracy "a global pandemic" and "a dagger into the heart of America's future economic security." What the US needs, he said, is a "declaration of war." But not even the Department of Justice is convinced that PRO-IP, in its current form, is that sort of declaration.

Counterfeit goods are certainly a problem, and no one at the hearing stands opposed to crafting good intellectual property law to protect creative work and new products (even Public Knowledge's Gigi Sohn proclaimed her support for IP law and enforcement).

Rep. Darrell Issa (R-CA), who made money in the car alarm business and was the voice of the "Viper" system, used his opening statement to tell his fellow representatives about how other companies ripped off his products, including his voice, and sold them in the US market.

Defective products would arrive at Issa's company that he had not even manufactured, though in the minds of customers, his company was to blame. Will PRO-IP help to fix such problems?

Concerns from Justice

The PRO-IP Act seeks to stem the "tsunami" (as one representative put it) of counterfeiting and piracy by making a pair of changes to the structure of the federal government. First, a new executive branch office devoted to intellectual property enforcement would be created in the White House, and it would be modeled on the office of the US Trade Representative. The Department of Justice would also get a new IP enforcement division that would consolidate work currently done in several other divisions.

Sigal Mandelker, a Deputy Assistant Attorney General at the DOJ, told the subcommittee that this plan raised some concerns at Justice. For one thing, having a White House office that can direct the priorities and investigations at Justice could undermine the independence of the department, she said. In addition, the current arrangement at Justice is "actually quite effective."

Public Knowledge weighs in



Gigi Sohn

Other concerns came from Gigi Sohn, president of Public Knowledge, who attacked the PRO-IP Act's increase to the statutory damages that can be leveled for copyright infringement. Referencing the [Jammie Thomas case](#) in Minnesota, Sohn noted that statutory damages are already "disproportionate penalties for infringement," and called on Congress to move them in the other direction.

Despite several significant criticisms of the bill, Sohn said that she was pleased with how subcommittee chair Howard Berman (D-CA) listened to many different stakeholders and had already removed the most egregious provisions from the bill.

"Unslakable lust for more"

Google's senior copyright counsel, William Patry, wasn't at the hearing, but he had a far less charitable take on the legislation. [Calling it](#) the most "outrageously gluttonous IP bill ever introduced in the US," Patry made clear that he was appalled by the "unslakable lust for more and more rights, longer terms of protection, draconian criminal provisions, and civil damages that bear no resemblance to the damages suffered."

One might expect that coming from a Google lawyer (the blog is written in his private capacity), since the company is a voracious consumer of copyrighted work, but Patry has himself served in the Copyright Office and has written perhaps the definitive seven-volume tome on the subject of US copyright law. Instead, he [says](#), he is "pro-IP in this most important of senses. But an excessive amount of something that is beneficial in measured doses can become fatal in overdoses, and copyright is already at fatal strength."

The PRO-IP Act, with its attempt to increase statutory damages and increase forfeiture penalties for equipment used for copyright infringement, clearly moves in a way that Patry dislikes. Fortunately, when it comes to criminal matters, Justice remains steadfastly unconcerned with prosecuting minor infringement cases, as Mandelker again made clear in response to a question.

Still, with even harsher laws on the books, there's always a chance that the penalties won't hit only those who import ripped-off car alarms, but a huge array of ordinary Americans. Where penalties are needed, they should fit the crime. Ruining someone's financial life over the equivalent of a box of CDs or DVDs hardly seems to meet that standard.