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# Hughes Hubbard & Reed

## President Signs Pro-IP Act

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On Monday, President Bush signed what some are calling a controversial law entitled The Prioritizing Resources and Organization for Intellectual Property Act of 2008 or "Pro-IP Act". The Pro-IP Act is designed to increase protection of intellectual property by imposing harsher criminal penalties for intellectual property piracy and counterfeiting, including expanding the ability of the government to permanently seize goods and creating an Intellectual Property enforcement officer or "czar", a new cabinet position whose sole job is to increase intellectual property enforcement.

The Act is actually not a new stand-alone law, but amends several existing intellectual property laws in an effort enhance current enforcement and remedy provisions. For example, the Act authorizes the government, in connection with a criminal copyright proceeding, to seize any article that may be used to commit or facilitate copyright infringement. The Act also amends the Lanham (Trademark) Act by doubling statutory damages for counterfeiting to a minimum of \$1,000 and a maximum of \$200,000 per counterfeit mark, with the willful damage figure doubled to \$2,000,000 per mark. In addition, the Act amends the Computer Crime Enforcement Act to allow expand the scope of grants made by the federal government for computer crimes to also be used for training, prevention, enforcement and prosecution of IP theft and infringement crimes.

Perhaps the most groundbreaking element of the Act was the creation of new, cabinet-level position, the Intellectual Property Enforcement Coordinator. This IP Czar is charged with heading an interagency intellectual property enforcement advisory committee (also newly-created by the Act) and coordinating the development and implementation of a "Joint Strategic Plan" against counterfeiting and piracy, which will focus on, among other things, reducing counterfeit and infringing goods in the domestic and international supply chain and disrupting and eliminating domestic and international counterfeiting networks. The first IP Czar will likely not be appointed until the next administration takes office in January 2009, thus it is too early to determine precisely how he/she might implement the newly created enforcement role and what shape the Joint Strategic Plan might take.

The Pro-IP Act is certainly a victory for the many groups that lobbied for its passage, including the entertainment/film industry, the recording industry, and major media companies fighting against the pervasiveness of digital piracy. However, some public advocacy groups opposed the new law, stating that its penalties are far too harsh and that it does not balance consumers' rights and concerns over those of major media and software companies. In addition, critics of the Pro-IP Act have argued that the bill risks punishing people who have not

committed copyright infringement, citing provisions in the Act that authorize the seizure of all computers and compatible devices from a home if a single, pirated MP3 was discovered on just one of the devices.

Ultimately, the passage of this bill sends the U.S. and the world a message that intellectual property infringement and piracy is at the forefront of the U.S. federal government's focus and will be heavily scrutinized going forward. And while the focus of the Act was enhancing IP criminal law enforcement and crime prevention, it is clear that content owners and other stakeholders in the digital media industry will be closely eyeing the government's initiatives in order to ensure that their own efforts to protect and secure their digital assets are done in a manner to best leverage the newly-expanded protections provided in the Act.

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