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Intellectual Property Rights Violations: Federal Civil Remedies and Criminal Penalties Related to Copyrights, Trademarks, Patents, and Trade Secrets

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Summary

This report provides information describing the federal civil remedies and criminal penalties that may be available as a consequence of violations of the federal intellectual property laws: the Copyright Act of 1976, the Patent Act of 1952, the Trademark Act of 1946 (conventionally known as the Lanham Act), and the Economic Espionage Act of 1996. The report explains the remedies and penalties for the following intellectual property offenses:

- 17 U.S.C. §501 (copyright infringement);
- 17 U.S.C. §506(a)(1)(A) and 18 U.S.C. §2319(b) (criminal copyright infringement for profit);
- 17 U.S.C. §506(1)(B) and 18 U.S.C. §2319(c) (criminal copyright infringement without a profit motive);
- 17 U.S.C. §506(a)(1)(c) and 18 U.S.C. §2319(d) (pre-release distribution of a copyrighted work over a computer network);
- 17 U.S.C. §1309 (infringement of a vessel hull or deck design);
- 17 U.S.C. §1326 (falsely marking an unprotected vessel hull or deck design with a protected design notice);
- 17 U.S.C. §§1203, 1204 (circumvention of copyright protection systems);
- 18 U.S.C. §2319A (bootleg recordings of live musical performances);
- 18 U.S.C. §2319B (unauthorized recording of films in movie theaters);
- 15 U.S.C. §1114(1) (unauthorized use in commerce of a reproduction, counterfeit, or colorable imitation of a federally registered trademark);
- 15 U.S.C. §1125(a) (trademark infringement due to false designation, origin, or sponsorship);
- 15 U.S.C. §1125(c) (dilution of famous trademarks);
- 15 U.S.C. §§1125(d) and 1129 (cybersquatting and cyberpiracy in connection with Internet domain names);
- 18 U.S.C. §2318 (counterfeit/illicit labels and counterfeit documentation and packaging for copyrighted works);
- 35 U.S.C. §271 (patent infringement);
- 35 U.S.C. §289 (infringement of a design patent);
- 35 U.S.C. §292 (false marking of patent-related information in connection with articles sold to the public);
- 28 U.S.C. §1498 (unauthorized use of a patented invention by or for the United States, or copyright infringement by the United States);
- 19 U.S.C. §1337 (unfair practices in import trade);
- 18 U.S.C. §2320 (trafficking in counterfeit trademarks);
- 19 U.S.C. §1526(e), 15 U.S.C. §1124 (importing merchandise bearing counterfeit marks),18 U.S.C. §2320(h) (transshipment and exportation of counterfeit goods);
- 18 U.S.C. §1831 (trade secret theft to benefit a foreign entity); and
- 18 U.S.C. §1832 (theft of trade secrets for commercial advantage).

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This report summarizes the federal civil remedies and criminal penalties that may be available for violations of the rights granted by the federal intellectual property laws: the Copyright Act of 1976, the Patent Act of 1952, the Trademark Act of 1946 (conventionally known as the Lanham Act), and the Economic Espionage Act of 1996.[1]

Introduction

Intellectual property (IP) law has four major branches, applicable to different types of subject matter: *copyright* (original artistic and literary works of authorship), *patent* (inventions of processes, machines, manufactures, and compositions of matter that are useful, new, and nonobvious), *trademark* (commercial symbols), and *trade secret* (confidential, commercially valuable business information). The source of federal copyright and patent law originates with the Copyright and Patent Clause of the U.S. Constitution, which authorizes Congress "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[2] By contrast, the Commerce Clause provides the constitutional basis for federal trademark law[3] and trade secret law.

The Copyright Act, Patent Act, and Lanham Act provide legal protection for intellectual property against unauthorized use, theft, and other violations of the rights granted by those statutes to the IP owner. The Copyright Act provides copyright owners with the exclusive right to control reproduction, distribution, public performance, and display of their copyrighted works.[4] The Patent Act grants patent holders the right to exclude others from making, using, offering for sale, or selling their patented invention throughout the United States, or importing the invention into the United States.[5] The Lanham Act allows sellers and producers of goods and services to prevent a competitor from

> (1) using any counterfeit, copy, or imitation of their trademarks (that have been registered with the U.S. Patent and Trademark Office), in connection with the sale of any goods or services in a way that is likely to cause confusion, mistake, or deception,[6] or
>
> (2) using in commercial advertising any word, term, name, symbol, or device, or any false or misleading designation of origin or false or misleading description or representation of fact, which: (a) is likely to cause confusion, mistake, or deception as to affiliation, connection, or association, or as to origin, sponsorship, or approval, of his or her goods,

[1] Unlike copyrights and patents, which are exclusively protected by federal law, remedies for trademark infringement and trade secret misappropriation may be available under both federal and state law. This report focuses solely on federal intellectual property law.

[2] U.S. CONST. art. I, §8, cl. 8.

[3] U.S. CONST. art. I, §8, cl. 3. In the *Trade-Mark Cases*, 100 U.S. 82, 93-94 (1879), the U.S. Supreme Court held the first federal trademark act to be unconstitutional because it was enacted pursuant to the Copyright and Patent clause: "Any attempt ... to identify the essential characteristics of a trade-mark with inventions and discoveries in the arts and sciences, or with the writings of authors, will show that the effort is surrounded with insurmountable difficulties." Subsequent federal trademark laws avoided this problem because they were adopted pursuant to Congress's power to regulate interstate commerce, foreign commerce, and commerce with the Indian Tribes.

[4] 17 U.S.C. §106.

[5] 35 U.S.C. §§154(a)(1), 271(a). However, there is no statutory requirement that a patentee must practice the invention; the patentee is free to license to others the right to make, use, or sell the invention. Rite-Hite Corp. v. Kelley Co., Inc., 56 F.3d 1538, 1547 (Fed. Cir. 1995). Nor does the grant of a patent give a patent holder an affirmative right to use the invention, as compliance with other laws may be required before such activity. For example, if a company obtains a patent on a drug compound, it must still seek the approval of the U.S. Food and Drug Administration in order to market the drug to consumers.

[6] 15 U.S.C. §1114(1).

> services, or commercial activities by another person, or (b) misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities.[7]

In addition, the Lanham Act grants to owners of "famous" trademarks the right to seek injunctive relief against another person's use in commerce of a mark or trade name if such use causes dilution by blurring or tarnishment of the distinctive quality of the famous trademark.[8]

An alternative to patent law protection may be found in trade secret[9] law, which grants inventors proprietary rights to particular technologies, processes, designs, or formula that may not be able to satisfy the rigorous statutory standards for patentability. Until 1996, trade secret protection was primarily governed by state law.[10] Congress enacted the federal Economic Espionage Act of 1996[11] to provide criminal penalties (and authorize the Attorney General to seek injunctive relief) for the theft of trade secrets by domestic and foreign entities, in certain circumstances. The Defend Trade Secrets Act of 2016[12] amended the Economic Espionage Act to provide private parties with a federal civil remedy for trade secret misappropriation.[13]

Enforcement of IP rights may be accomplished by the IP owner bringing a lawsuit against an alleged infringer. The U.S. Department of Justice may also criminally prosecute particularly egregious violators of the IP laws in order to impose greater punishment and possibly deter other would-be violators.[14] In certain circumstances, a variety of federal agencies may become involved in IP rights enforcement:[15] for example, the U.S. Customs and Border Protection agency has the

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[7] 15 U.S.C. §1125(a)(1).

[8] 15 U.S.C. §1125(c)(1). For more information about trademark dilution, *see* CRS Report RL33393, Protecting Famous, Distinctive Marks: The Trademark Dilution Revision Act of 2006, by Brian T. Yeh.

[9] A "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing 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. 18 U.S.C. §1839(3).

[10] The Uniform Trade Secrets Act (UTSA) was published in 1979 by the National Conference of Commissioners on Uniform State Laws and codifies the common law concerning trade secrets. The UTSA has been adopted by 47 states and the District of Columbia. Only New York, Massachusetts and North Carolina have not enacted the UTSA, though they offer protection through a distinct statute or the common law.

[11] P.L. 104-294, §§1831-1839, 110 Stat. 3488 (codified at 18 U.S.C. §§1831-1839).

[12] P.L. 114-153.

[13] "Misappropriation" of a trade secret means an acquisition, disclosure, or use of a trade secret by "improper means." 18 U.S.C. §1839(5). "Improper means" is a term that "includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means," but does not include reverse engineering or independent derivation. *Id.* §1839(6). These statutory definitions were added by the Defend Trade Secrets Act of 2016 and are nearly identical to the definitions of these terms in the Uniform Trade Secrets Act. For more information about trade secret law, see CRS Report R43714, Protection of Trade Secrets: Overview of Current Law and Legislation, by Brian T. Yeh.

[14] The 93 U.S. Attorneys' Offices located across the country have primary responsibility for prosecution of IP offenses. Every office has at least one Computer Hacking and Intellectual Property ("CHIP") Coordinator, who are Assistant U.S. Attorneys with expertise in prosecuting IP and computer crimes. U.S. DEP'T OF JUSTICE, COMPUTER CRIME & INTELLECTUAL PROPERTY SECTION, PROSECUTING INTELLECTUAL PROPERTY CRIMES (4th ed., March 2015), *available at* https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/03/26/prosecuting_ip_crimes_manual_2013.pdf.

[15] The scope of this report is limited to summarizing the penalties available under federal law for IP rights violations; the report will not discuss in detail the various foreign, federal and state entities that may become involved in IP enforcement and prosecution activities.

power to seize counterfeit goods upon their attempted importation in the United States; the International Trade Commission may investigate and adjudicate allegations of unfair trade practices due to the importing of goods that were produced as a result of trade secret theft or that infringe U.S. patents, trademarks, or copyrights; and the U.S. Trade Representative, the U.S. Department of Commerce's International Trade Administration, and the U.S. State Department are all involved in promoting and seeking IP rights enforcement by trading partners and other foreign countries.[16]

In copyright cases, the statute of limitations for initiating a civil action is within three years after the claim accrued,[17] while a criminal proceeding must be commenced within five years after the cause of action arose.[18] Although there is no express federal statute of limitations for civil trademark infringement claims, federal courts generally follow the limitations period for the most analogous state-law cause of action from the state in which the claim is heard; courts have also applied the equitable doctrine of laches (unreasonable, prejudicial delay in commencing a lawsuit) to determine whether a trademark infringement claim is untimely.[19] One federal appellate court has determined that criminal trademark infringement prosecutions are governed by the general five-year statute of limitations for non-capital offenses under Title 18 of the U.S. Code.[20] Although there is no statute of limitations in patent infringement actions, the Patent Act specifies a time limit on monetary relief for patent infringement claims: damages are available only for infringement that occurs within the six years prior to the filing of the complaint or counterclaim for patent infringement.[21] Finally, federal law provides a three-year statute of limitations period for a civil action involving the misappropriation of a trade secret.[22]

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[16] The "Prioritizing Resources and Organization for Intellectual Property Act of 2008," P.L. 110-403, created the position of "Intellectual Property Enforcement Coordinator" (IPEC) to serve within the Executive Office of the President, and established an interagency IP enforcement advisory committee, chaired by the IPEC and composed of Senate-confirmed representatives of departments and agencies involved in IP enforcement, including the Office of Management and Budget, U.S. Patent and Trademark Office, Food and Drug Administration, Copyright Office, and the Departments of State, Homeland Security, Agriculture, and Justice. This advisory committee is charged with developing and implementing a "joint strategic plan" to combat counterfeiting and infringement of IP rights.

[17] In Petrella v. Metro-Goldwyn-Mayer, Inc., 134 S.Ct. 1962 (2014), the U.S. Supreme Court ruled that the equitable doctrine of laches (unreasonable, prejudicial delay in commencing a lawsuit) cannot be invoked as a defense to preclude adjudication of a copyright infringement claim for damages brought within the three-year statute of limitations period. However, the Court explained that a plaintiff's unreasonable delay could be considered at the remedial stage, in assessing an award of profits and in determining appropriate injunctive relief. *Id.* at *9-10.

[18] 17 U.S.C. §507.

[19] Ronald J. Nessim, *Criminal (and Civil) Trademark Infringement: What Statute of Limitations Applies?*, 76 J. PAT. & TRADEMARK OFF. SOC'Y 933, 937 (Dec. 1994).

[20] 18 U.S.C. §3282; *see also* United States v. Foote, 413 F.3d 1240, 1247 (10th Cir. 2005)("In the case of the Counterfeit Trademark Act, a criminal statute, Congress has provided a specific statutory period in § 3282.").

[21] 35 U.S.C. §286. In 1992, the U.S. Court of Appeals for the Federal Circuit held that laches may be raised as an affirmative defense to a claim for patent infringement if the patent holder's delay in bringing suit is unreasonable and inexcusable, and the alleged infringer suffers material prejudice attributable to the delay. A.C. Aukerman Co. v. R.L. Chaides Constr. Co., 960 F.2d 1020, 1028 (Fed. Cir. 1992). In SCA Hygiene Products v. First Quality Baby Products, LLC, 807 F.3d 1311 (Fed. Cir. 2015), an en banc Federal Circuit reconsidered *Aukerman* in light of the Supreme Court's *Petrella* decision, discussed *supra* note 20. By a 6-5 vote, the appellate court distinguished *Aukerman* from *Petrella* and reaffirmed the availability of laches as a defense in patent infringement claims brought within the Patent Act's six-year statutory limitations period. On May 2, 2016, the Supreme Court granted a petition for writ of certiorari to review *SCA Hygiene Products.*

[22] 18 U.S.C. §1836(d) ("A civil action [for trade secret misappropriation] may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation.").

The Lanham Act, Copyright Act, and Economic Espionage Act have criminal and civil provisions for violations of their respective provisions,[23] while the Patent Act only provides civil remedies in the event of patent infringement.[24] Federal courts determine the civil remedies in an action for infringement brought by the IP owner.[25] If the federal government chooses to prosecute individuals or organizations for IP violations, the imprisonment terms are set forth in the substantive statutes describing the particular IP crime, while the criminal fine amount for violations of the trademark and copyright laws is determined in conjunction with 18 U.S.C. Section 3571 (which specifies the amount of the fine under Title 18 of the U.S. Code). In comparison, the criminal fine amount for economic espionage or trade secret theft is specified in the Economic Espionage Act itself.[26]

Information regarding the civil remedies and criminal penalties for violations of the copyright, trademark, patent, and trade secret laws is presented on the following pages in table-format. These penalties may be imposed upon conviction of the defendant in the case of a criminal prosecution, and the civil remedies follow a judgment of infringement reached by a federal judge or jury in a civil action. (Certain injunctive relief may be available prior to final judgment, such as temporary injunctions or impounding of infringing articles.) For any offense that provides forfeiture penalties, criminal forfeiture is available upon the conviction of the owner of the offending property; civil forfeiture is available if the government establishes that the infringing goods are subject to confiscation by a preponderance of the evidence.[27] Restitution is available when the defendant is convicted of a criminal property offense.[28]

[23] For copyright, 17 U.S.C. §501 (civil) and §506, 18 U.S.C. §2319 (criminal); for trademark, 15 U.S.C. §1114 (civil) and 18 U.S.C. §2320 (criminal); for trade secret, 18 U.S.C. §1836 (civil) and §§1831, 1832 (criminal).

[24] 35 U.S.C. §281.

[25] For copyright infringement civil actions, *see* 17 U.S.C. §§501-505; trademark infringement claims, *see* 15 U.S.C. §§1114-1121; patent infringement actions, *see* 35 U.S.C. §§281-297; trade secret misappropriation actions, *see* 18 U.S.C. §1836(b)(3).

[26] 18 U.S.C. §§1831, 1832.

[27] For more information about forfeiture generally, *see* CRS Report 97-139, Crime and Forfeiture, by Charles Doyle.

[28] 18 U.S.C. §2323(c) ("When a person is convicted of an offense under section 506 of title 17 or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, the court, pursuant to sections 3556, 3663A, and 3664 of this title, shall order the person to pay restitution to any victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii) of this title"). This new section of the U.S. Code was added by the "Prioritizing Resources and Organization for Intellectual Property Act of 2008," P.L. 110-403.

Civil Remedies

Copyright

Cause of Action	Description of Violation	Remedies Available[a]
Copyright Infringement, 17 U.S.C. §501	Violation of any of the exclusive rights of the copyright owner as provided by 17 U.S.C. §§106-122, 602, including the right to control reproduction, distribution, public performance, and display of copyrighted works.	(1) Injunctions, 17 U.S.C. §502. (2) Impounding, destruction, or other reasonable disposition of: all copies made in violation of the copyright owner's rights; all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced; and any records documenting the manufacture, sale, or receipt of things involved in the violation—the court shall take such records into custody and shall enter an appropriate protective order (with respect to discovery and use of the records) that assures that confidential information contained in such records is not improperly disclosed or used, 17 U.S.C. §503. (3) Actual damages suffered by the copyright owner due to the infringement, and any profits of the infringer attributable to the infringement, 17 U.S.C. §504(b). (4) Statutory damages (at the copyright owner's election to recover in lieu of actual damages and profits), in the amount of not less than $750 or more than $30,000 as the court deems just, 17 U.S.C. §504(c)(1). For willful infringement, a court may, in its discretion, increase the statutory damages award to a sum of not more than $150,000, 17 U.S.C. §504(c)(2).[b] (5) Costs and attorney's fees, 17 U.S.C. §505.
Infringement of a Vessel Hull or Deck Design, 17 U.S.C. §1309	Violation of any of the rights of the owner of a vessel hull or deck design registered with the U.S. Copyright Office, including the right to: (1) make, have made, or import, for sale or for use in trade, any useful article embodying the design; and (2) sell or distribute any useful article with the design. A seller/distributor who did not make or import an infringing article is liable if he induces or acts in collusion to make/import the article. A seller/distributor can also be liable if a design owner asks where the article came from and the	(1) Injunctions, 17 U.S.C. §1322.[c] (2) Destruction or other disposition of all infringing articles, and any plates, molds, patterns, models, or other means specially adapted for making the articles, 17 U.S.C. §1323(e). (3) Actual damages suffered by the copyright owner due to the infringement, 17 U.S.C. §1323(a). The court may increase the damages to such amount, not exceeding $50,000 or $1 per copy, whichever is greater, as the court determines to be just. (4) Infringer's profits (may only be awarded as an

Cause of Action	Description of Violation	Remedies Available[a]
	seller/distributor refuses to disclose its source and orders or reorders the article with the infringing design after being notified that the design is protected.	alternative to compensatory damages) resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the owner's design, 17 U.S.C. §1323(b). (5) Attorney's fees, 17 U.S.C. §1323(d).
Falsely Marking an Unprotected Vessel Hull or Deck Design with a Protected Design Notice, 17 U.S.C. §1326	For the purpose of deceiving the public, marking or using in advertising in connection with an unprotected vessel hull or deck design (not registered with the U.S. Copyright Office) a design notice or other words or symbols suggesting that the design is protected, knowing that the design is not so protected.	(1) A fine of not more than $500 for each such offense, 17 U.S.C. §1326(a). (2) Any person may sue for the penalty, in which event one-half shall go to the person suing and the remainder awarded to the United States, 17 U.S.C. §1326(b).

Cause of Action	Description of Violation	Remedies Available[a]
Circumvention of Copyright Protection Systems in Violation of §§1201 and 1202 of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. §1203	(1) 17 U.S.C. §1201: Descrambling, decrypting, or otherwise avoiding, bypassing, removing, deactivating, or impairing a technological measure, without the authority of the copyright owner, that effectively controls access to a copyrighted work. (2) 17 U.S.C. §1202: Manufacturing, importing, offering to the public, providing, or otherwise trafficking in any technology, product, service, device, or component, that is primarily designed or produced for the purpose of circumventing copyright protection measures.	(1) Temporary and permanent injunctions to prevent or restrain a violation of this offense, but in no event shall the court impose a prior restraint on free speech or the press protected under the First Amendment to the Constitution. (2) At any time while an action is pending, the court may order the impounding of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation. (3) Recovery of costs by or against any party other than the United States or an officer thereof. (4) Reasonable attorney's fees to the prevailing party. (5) The court may order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or that has been impounded. (6) Actual damages and any additional profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. (7) Statutory damages (at the election of the complaining party in lieu of actual damages), as follows: For each violation of 17 U.S.C. §1201, in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just. For each violation of 17 U.S.C. §1202, in the sum of not less than $2,500 or more than $25,000. (8) For repeated violations: If the injured party proves, and the court finds, that a person has violated 17 U.S.C. §§1201 or 1202 within 3 years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just. (9) For innocent violations: The court in its discretion may reduce or remit the total award of damages in any case in which the violator proves, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

Cause of Action	Description of Violation	Remedies Available[a]
Counterfeit or Illicit Labels and Counterfeit Documentation and Packaging for Copyrighted Works, 18 U.S.C. §2318(e)(1)[c]	Knowingly trafficking in a counterfeit label or illicit label affixed to, enclosing, or accompanying a copyrighted work, or trafficking in counterfeit documentation or packaging.	(1) Injunctions, 18 U.S.C. §2318(e)(2)(A). (2) Impounding of any article in the custody/control of the alleged violator that the court has reasonable cause to believe was involved in a violation of this offense, 18 U.S.C. §2318(e)(2)(B). (3) Reasonable attorney fees and costs, 18 U.S.C. §2318(e)(2)(C). (4) Actual damages and any additional profits of the violator, 18 U.S.C. §2318(e)(2)(C)(ii)(I). (5) Statutory damages (at the election of the plaintiff to recover instead of actual damages and profits), in the amount of not less than $2,500 or more than $25,000, as the court considers appropriate, 18 U.S.C. §§2318(e)(2)(C)(ii)(II), (f)(4). (6) Treble damages for subsequent violations by an individual within 3 years after a final judgment was entered against that person for a violation of this offense, 18 U.S.C. §2318(e)(5).
Infringement of a Copyrighted Work by the United States,[d] 28 U.S.C. §1498(b)	Infringement of a copyrighted work by the United States government, by a corporation owned or controlled by the United States government, or by a contractor, subcontractor, or any person, firm, or corporation acting for the United States and with the authorization or consent of the United States government.	The exclusive remedy is for the copyright owner to commence an action against the United States in the United States Court of Federal Claims for the recovery of his or her reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in 17 U.S.C. §504(c). However, before the copyright owner may bring such an action, the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner for the damages caused by such infringement and to settle the claim administratively out of available appropriations.

a. Throughout this report, the list of "remedies available" or "authorized penalties" describes the range of remedies and penalties that are associated with the particular violation; whether some or all the remedies/penalties apply in any given case depends on several factors, including the court's discretion, the plaintiff's election of remedy, the defendant's conduct, and other factual circumstances of the case.

b. Where an infringer proves that he was not aware and had no reason to believe his acts constituted copyright infringement, the court may, in its discretion, reduce the award of statutory damages to a sum of not less than $200, 17 U.S.C. §504(c)(2).

c. While this offense also carries criminal penalties, discussed *infra*, the statute also provides civil remedies, permitting any copyright owner who is injured, or is threatened with injury due to this offense, to file suit in an appropriate U.S. district court.

d. Under the Eleventh Amendment to the U.S. Constitution, a state (or instrumentality thereof) enjoys governmental immunity from lawsuits brought by private parties. Therefore, a state that violates intellectual property rights may not be sued by the intellectual property owner unless the state consents. Congress has attempted to abrogate the states' sovereign immunity from patent, trademark, or copyright infringement lawsuits, by passing laws in the early 1990s that explicitly required states to submit to suit in federal court for their intellectual property violations. However, federal courts have held these laws unconstitutional. *See* Florida Prepaid v. College Savings, 527 U.S. 627 (1999) (invalidating the Patent and Plant Remedy Clarification Act of 1992); Chavez v. Arte Publico Press, 204 F.3d 601 (5th Cir. 2000) (invalidating the Copyright Remedy Clarification Act of 1990); Board of Regents of the Univ. of Wisconsin System v. Phoenix Software Int'l, Inc., 565 F.Supp.2d 1007 (W.D. Wis. 2008)(invalidating the Trademark Remedy Clarification Act of 1992).

Trademark

Cause of Action	Description of Violation	Remedies Available
Trademark Infringement Due to Unauthorized Use of Any Reproduction, Copy, or Colorable Imitation of a Federally Registered Mark, 15 U.S.C. §1114(1)	Unauthorized use in commerce of any reproduction, copy, or colorable imitation[a] of a federally registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services, where such use is likely to cause consumer confusion, mistake, or deception.	(1) Injunctions, 15 U.S.C. §1116(a). (2) Any damages sustained by the plaintiff, defendant's profits, and the costs of the action, 15 U.S.C. §1117(a). (3) In exceptional cases,[b] reasonable attorney fees, 15 U.S.C. §1117(a). (4) The court may order that any infringing articles bearing the reproduction, copy, or colorable imitation of a registered mark be destroyed, 15 U.S.C. §1118.
Trademark Infringement Due to Use of a Counterfeit of a Federally Registered Mark, 15 U.S.C. §1114(1)	Intentional use in commerce of a counterfeit mark or designation[c], in either of two circumstances: (1) in connection with the sale, offering for sale, or distribution of goods or services, knowing that such mark or designation is a counterfeit mark, or (2) providing goods or services necessary to the commission of the violation described in the first circumstance above, with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.	(1) Injunctions, 15 U.S.C. §1116(a). (2) The court may order that any infringing articles bearing the counterfeit of the registered mark be destroyed, 15 U.S.C. §1118. (3) Seizure of goods and counterfeit marks as ordered by a court upon an ex parte application, as well as the means of making such marks, and records documenting the manufacturer, sale, or receipt of things involved in such violation, 15 U.S.C. §1116(d)(1)(A). (4) Unless the court finds extenuating circumstances, treble any damages sustained by the plaintiff or defendant's profits, whichever is greater, plus reasonable attorneys' fees, 15 U.S.C. §1117(b). (5) Statutory damages (at the election of the plaintiff to recover instead of actual damages and profits), in the amount of not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just, 15 U.S.C. §1117(c)(1). If the court finds that the use of the counterfeit mark was willful, the statutory damages award is not more than $2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just, 15 U.S.C. §1117(c)(2).
Trademark Infringement Due to False Designation, Origin, or Sponsorship, 15 U.S.C. §1125(a)	Use in connection with any goods or services of any word, term, name, symbol, or device, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which: (A) is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or	(1) Injunctions, 15 U.S.C. §1116(a). (2) Any damages sustained by the plaintiff, defendant's profits, and the costs of the action, 15 U.S.C. §1117(a). (3) In exceptional cases, reasonable attorney fees, 15 U.S.C. §1117(a). (4) The court may order that any infringing articles bearing the word, term, name, symbol, or device be destroyed, 15 U.S.C. §1118.

Cause of Action	Description of Violation	Remedies Available
	geographic origin of his or her or another person's goods, services, or commercial activities.	
Dilution of Famous Trademarks, 15 U.S.C. §1125(c)	Use in commerce of a mark or trade name if such use causes dilution[d] by blurring[e] or tarnishment[f] of the distinctive quality of a famous trademark.	(1) Injunctions, 15 U.S.C. §§1116(a), 1125(c)(1). Under 15 U.S.C. §1125(c)(5), owners of famous marks may also be entitled to the following additional remedies listed below if: the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the alleged infringer after Oct. 6, 2006; and (A) in a dilution by blurring action, the person willfully intended to trade on the recognition of the famous mark; or (B) in a dilution by tarnishment action, the person willfully intended to harm the reputation of the famous mark. (2) For a willful violation, any damages sustained by the plaintiff, defendant's profits, and the costs of the action, 15 U.S.C. §1117(a). (3) In exceptional cases, reasonable attorney fees, 15 U.S.C. §1117(a). (4) For a willful violation, the court may order that any infringing articles bearing the word, term, name, symbol, or device be destroyed, 15 U.S.C. §1118.
Cyberpiracy and Cybersquatting in Connection With Internet Domain Names, 15 U.S.C. §1125(d)	Registering of, trafficking in, offering to sell, or use of an Internet domain name that is (A) identical or confusingly similar to a trademark that is distinctive at the time the domain name is registered; or (B) identical, confusingly similar to, or dilutive of a trademark that is famous at the time the domain name is registered, with a bad faith intent to profit from the goodwill of another's trademark.	(1) Injunctions, 15 U.S.C. §1116(a). (2) Any damages sustained by the plaintiff, defendant's profits, and the costs of the action, 15 U.S.C. §1117(a). (3) Statutory damages (at the election of the plaintiff to recover instead of actual damages and profits), in the amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just, 15 U.S.C. §1117(d). (4) In exceptional cases, reasonable attorney fees, 15 U.S.C. §1117(a). (5) Forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark, 15 U.S.C. §1125(d)(1)(C) If the trademark owner is not able to obtain in personam jurisdiction over a person who would have been a defendant in this action (for example, the domain name registrant lives in a foreign country), or is otherwise unable through due diligence to identify the person to bring such an action, the trademark owner may file an in rem civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located. In such an in rem action, the remedies are limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark, 15 U.S.C. §1125(d)(2).

Cause of Action	Description of Violation	Remedies Available
Cyberpiracy Protection for Individuals, 15 U.S.C. §1129	Registering an Internet domain name, on or after November 29, 1999, that consists of the name of another living person, or a name substantially and confusingly similar thereto, without that person's consent, with the specific intent to profit from such name by selling the domain name for financial gain to that person or any third party.	(1) Injunctive relief, including the forfeiture or cancellation of the domain name or the transfer of the domain name to the plaintiff, 15 U.S.C. §1129(2). (2) Costs and attorneys' fees to the prevailing party, at the court's discretion, 15 U.S.C. §1129(2).
Importation of Merchandise Bearing Counterfeit Mark,19 U.S.C. §1526(e); 15 U.S.C. §1124 **Transshipment and Exportation of Counterfeit Goods and Services,** 18 U.S.C. §2320(h)	Importing goods bearing infringing marks or names that are identical with, or substantially indistinguishable from, registered marks, in violation of Section 526 of the Tariff Act of 1930, and Section 42 of the Lanham Act.[g] Transshipping through or exporting from the United States counterfeit goods or services	(1) Seizure by the U.S. Customs Service[h] and, in the absence of the written consent of the trademark owner, forfeiture for violations of the customs laws. (2) Upon seizure of such merchandise, the Secretary of the Department of Homeland Security shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. If, however, the merchandise is *not* unsafe or a hazard to health, and the trademark owner provides his consent to the Secretary, the Secretary may remove the trademark (if feasible) and dispose of the seized goods by giving it to federal, state, and local government agencies or to charitable organizations that the Secretary believes have a need for such merchandise. If none of these parties have established such a need, and it has been at least 90 days after the date of forfeiture, the Customs Service may sell the merchandise at public auction. (3) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized in violation of this offense is subject to a civil fine. For the first seizure of such merchandise, the fine shall be not more than the domestic value of the merchandise as if it had been genuine, according to the manufacturer's suggested retail price. For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine. The imposition of this fine is within the discretion of the Customs Service, and is in addition to any other civil or criminal penalty or other remedy authorized by law, 19 U.S.C. §1526(f).

a. The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive. 15 U.S.C. §1127.

b. Although the Lanham Act does not define what constitutes an "exceptional" case, federal courts have determined that malicious, fraudulent, deliberate, or willful trademark infringement could qualify for this characterization. *See, e.g.,* United Phosphorus, Ltd. v. Midland Fumigant, Inc., 205 F.3d 1219, 1232 (10th Cir. 2000).

c. A "counterfeit mark or designation" means: (1) a counterfeit of a mark that is registered on the principal register of the U.S. Patent and Trademark Office, or (2) a spurious designation that is identical with, or substantially indistinguishable from, a designation relating to the United States Olympic Committee and other sports-related symbols and names protected under 36 U.S.C. §220506. 15 U.S.C. §1116(d).

d. "Dilution" is statutorily defined in 15 U.S.C. §1127 to mean "the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of ... (1) competition between the owner of the famous mark and other parties, or (2) likelihood of confusion, mistake, or deception."

e. "Blurring" occurs when the famous mark's ability to identify its product has been impaired due to an association in the minds of consumers arising from similarity between another mark and the famous mark. 15 U.S.C. §1125(c)(2)(B).

f. Tarnishment occurs when the reputation of a famous mark has been harmed by negative associations arising from the similarity between another mark and the famous mark. 15 U.S.C. §1125(c)(2)(C). Situations in which tarnishment could result are when a famous trademark is "linked to products of shoddy quality, or is portrayed in an unwholesome or unsavory context, with the result that the public will associate the lack of quality or lack of prestige in the defendant's goods with the plaintiff's unrelated goods." Hormel Foods Corp. v. Jim Henson Prods., 73 F.3d 497, 507 (2d Cir. 1996) (citations and internal quotations omitted).

g. Under the "personal use exemption," 19 U.S.C. §1526(d)(1), this restriction does not apply to the importation of one article bearing a protected trademark that accompanies any traveler arriving in the United States, when such article is for his personal use and not for sale.

h. Pursuant to agency policy, the U.S. Customs Service prioritizes enforcement efforts on trademarks and trade names that are recorded with U.S. Customs Service. U.S. Customs Directive No. 2310-008A (April 2000), *available at* http://www.cbp.gov/linkhandler/cgov/trade/legal/directives/2310-008a.ctt/2310-008a.pdf. Trademarks registered by the U.S. Patent and Trademark Office may be recorded with U.S. Customs if the registration is current. 19 C.F.R. §133.1.

Patent

Cause of Action	Description of Violation	Remedies Available
Patent Infringement, 35 U.S.C. §§271; 281-297	(a) Unauthorized making, using, or selling any patented invention within the United States or importing into the United States any patented invention during the patent term; (b) Actively inducing patent infringement; (c) Selling within the United States or importing into the United States a component of a patented invention, for use in practicing a patented process, constituting a material part of the invention, knowing it to be especially made for use in an infringement of such patent; (d) Manufacturing within the United States the components of a patented invention and then exporting those disassembled parts for combination abroad into an end product.	(1) Injunctions, 35 U.S.C. §283. (2) Damages adequate to compensate for the infringement (including lost profits if the patent holder can demonstrate a causal connection between the infringement and the unearned profits), but in no event less than a reasonable royalty for the use of the invention by the infringer, together with interest and costs as determined by the court, 35 U.S.C. §284. The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances. (3) The court in its discretion (for example, in cases of egregious, willful infringement) may increase the damages up to three times the amount found or assessed by either the jury or the court, 35 U.S.C. §284. (4) In exceptional cases, the court may award reasonable attorney fees to the prevailing party, 35 U.S.C. §285. NOTE: Monetary damages shall not be awarded for any infringement committed more than 6 years prior to the filing of the complaint or counterclaim for infringement, 35 U.S.C. §286.
Infringement of a Design Patent, 35 U.S.C. §289	Unauthorized application of a patented design (or any colorable imitation thereof) to any article of manufacture for the purpose of sale, or the sale of such article.	(1) The offender is liable to the patent design owner to the extent of his total profit, but in no event less than $250, recoverable in any U.S. district court having jurisdiction of the parties. (2) The remedies for patent infringement described in the box immediately above may also be available to the owner of a design patent infringed in this manner, but he is not allowed to twice recover the profit made from the infringement, 35 U.S.C. §289.
False Marking of Patent-related Information in Connection with Articles	(1) Unauthorized use in connection with anything made, used, or sold within the United States, or imported into the United States, of the name of a patent owner, patent	(1) A fine of not more than $500 for every such offense, 35 U.S.C. §292(a). Only the United States government may sue for this penalty. (2) Any person who has suffered a competitive injury as a result of this

Cause of Action	Description of Violation	Remedies Available
Sold to the Public, 35 U.S.C. §292	number, or the words "patent" or "patentee," with the intent of counterfeiting the mark of the patentee, or of deceiving the public; (2) Marking any unpatented article with the word "patent" or any word or number, for the purpose of deceiving the public; or (3) Using the words "patent applied for," "patent pending," or any word falsely suggesting that a patent application has been made or is pending, for the purpose of deceiving the public.	offense may file a civil action to recover damages adequate to compensate for the injury. 35 U.S.C. §292(b).[m]
Unauthorized Use or Manufacture of a Patented Invention by or for the United States,[n] 28 U.S.C. §1498(a)	(1) Use or manufacture of a patented invention by or for the United States government without the patent owner's authorization.	(1) An action against the United States in the United States Court of Federal Claims for the recovery of the patent holder's reasonable and entire compensation for such use and manufacture. (2) Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the patent owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. However, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

a. Prior to September 16, 2011, the Patent Act's false marking provision allowed for so-called "qui tam" civil actions (that is, any member of the public could have sued a false marking offender on behalf of the federal government, in which event the fine was shared evenly between the person bringing the suit and the United States). In an effort to curb the proliferation of false patent marking suits in 2010 and 2011, the 112th Congress enacted legislation that eliminated qui tam false marking suits. Section 16(b) of the Leahy-Smith America Invents Act, P.L. 112-29, amended the false marking offense to require that the person bringing a false marking suit must have suffered a competitive injury as a result of the violation; the new law also limited the damages available in such a lawsuit.

b. A state (or instrumentality thereof) that infringes a patent may not be sued by the patent holder because of the Eleventh Amendment to the U.S. Constitution. Legislation that would have abrogated the states' sovereign immunity from patent infringement lawsuits was invalidated by the U.S. Supreme Court in the late 1990s. *See* Florida Prepaid v. College Savings, 527 U.S. 627 (1999).

Unfair Competition

Cause of Action	Description of Violation	Remedies Available
Unfair Practices in Import Trade, 19 U.S.C. §1337[a]	(1) Infringement by importing counterfeit and infringing products into the United States. (2) Importation of articles produced as a result of trade secret misappropriation. (Section 337 of the Tariff Act of 1930 grants intellectual property rights holders the right to seek relief from the United States International Trade Commission (ITC), for the importation of goods made as a result of trade secret theft or that infringe a trademark, patent, or copyright. To initiate a "Section 337 action," intellectual property rights owners must file a complaint with the ITC to allege unfair acts in the importation of such goods into the United States.)	(1) General or limited exclusion orders issued by the ITC barring the importation of infringing products into the United States (enforced by the U.S. Bureau of Customs and Border Protection). (2) Cease and desist orders issued by the ITC to specific U.S. persons to prohibit the use or purchase of such infringing products from abroad (enforced by the ITC), 19 U.S.C. §§1337(d)-(f). (3) Monetary damages are not available in a Section 337 proceeding, although the intellectual property owner can seek such monetary relief by filing a suit in federal district court. (4) Civil forfeiture is authorized if the owner or importer of the infringing article previously attempted to import the article into the United States, 19 U.S.C. §1337(i). (5) Anyone who violates an order of the ITC must pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order. The amount of the civil penalty is to be not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the ITC's order. To recover the civil penalty, the ITC may bring a civil action in the U.S. District Court for the District of Columbia or in the district in which the violation occurs, 19 U.S.C. §1337(f)(2).

a. While the majority of Section 337 cases usually involve a claim of patent infringement, the statute expressly allows trademark and copyright owners to seek relief, 19 U.S.C. §1337(a)(1)(B)(i) (registered copyrighted work), 19 U.S.C. §1337(a)(1)(C) (registered U.S. trademark). In addition, a complainant may initiate a Section 337 investigation for nonstatutory unfair practices in importation, such as trade secret misappropriation. *See* TianRui Group Co. v. ITC, 661 F.3d 1322 (Fed. Cir. 2011).

Trade Secrets

Cause of Action	Description of Violation	Remedies Available
Theft of a Trade Secret to Benefit a Foreign Entity, 18 U.S.C. §1831	With intent or knowledge that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly: (1) stealing or without authorization taking or obtaining a trade secret; (2) without authorization copying, destroying, or transmitting a trade secret; (3) receiving, buying, or possessing a trade secret, knowing it to have been stolen or obtained without authorization; (4) attempting to commit any offense described above; (5) conspiring with one or more other persons to commit any offense described above, and one or more of such persons do any act to effect the object of the conspiracy.	(1) The Attorney General of the United States may, in a civil action brought in a U.S. district court, obtain appropriate injunctive relief, 18 U.S.C. §1836. (2) An owner of a trade secret that is misappropriated may bring a civil action if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce, and obtain: • An injunction, 18 U.S.C. §1836(b)(3)(A). • Damages for actual loss and any unjust enrichment caused by the misappropriation, 18 U.S.C. §1836(b)(3)(B)(i)(I), (II). • In lieu of damages measured by any other method, an award of a reasonable royalty, 18 U.S.C. §1836(b)(3)(B)(ii). • If the trade secret is willfully and maliciously misappropriated, an award of exemplary damages, not exceeding two times the amount of the compensatory damages awarded, 18 U.S.C. §1836(b)(3)(C). • Attorney's fees to the prevailing party if the trade secret was willfully and maliciously misappropriated, or if a claim of misappropriation (or a motion to terminate an injunction) is made or opposed in bad faith, 18 U.S.C. §1836(b)(3)(D).
Theft of Trade Secrets for Commercial Advantage, 18 U.S.C. §1832	With intent to convert a trade secret related to a product or service used in or intended for use in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will injure any owner of that trade secret, knowingly: (1) stealing, or without authorization taking or obtaining such information; (2) without authorization copying, destroying, or communicating a trade secret; (3) receiving, buying, or possessing a trade secret, knowing it to have been stolen or obtained without authorization; (4) attempting to commit any offense described above; (5) conspiring to commit any offense described above.	(1) The Attorney General of the United States may, in a civil action brought in a U.S. district court, obtain appropriate injunctive relief, 18 U.S.C. §1836. (2) An owner of a trade secret that is misappropriated may bring a civil action if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce, and obtain: • An injunction, 18 U.S.C. §1836(b)(3)(A). • Damages for actual loss and any unjust enrichment caused by the misappropriation, 18 U.S.C. §1836(b)(3)(B)(i)(I), (II).

Cause of Action	Description of Violation	Remedies Available
		• In lieu of damages measured by any other method, an award of a reasonable royalty, 18 U.S.C. §1836(b)(3)(B)(ii). • If the trade secret is willfully and maliciously misappropriated, an award of exemplary damages, not exceeding two times the amount of the compensatory damages awarded, 18 U.S.C. §1836(b)(3)(C). • Attorney's fees if the trade secret was willfully and maliciously misappropriated, or if a claim of misappropriation (or a motion to terminate an injunction) is made or opposed in bad faith, 18 U.S.C. §1836(b)(3)(D).

Criminal Penalties

Copyright

Criminal Law	Description of Offense	Authorized Penalties
Copyright Infringement for Profit, 17 U.S.C. §506(a)(1)(A), 18 U.S.C. §2319(b)	Willful infringement of copyright for purposes of commercial advantage or private financial gain.	(1) If the offense consists of the reproduction or distribution (including by electronic means) during any 180-day period of at least 10 copies of one or more copyrighted works, which have a total retail value of more than $2,500, an imprisonment sentence of not more than 5 years, or a fine in the amount of up to $250,000, or both (for corporate offenders or an organization, up to a $500,000 fine is permitted), 18 U.S.C. §2319(b)(1). (2) If the offense is a felony and is a second or subsequent offense, the maximum imprisonment term is doubled to 10 years, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(b)(2).

Criminal Law	Description of Offense	Authorized Penalties
		(3) Anyone who commits this offense in any other case is subject to an imprisonment sentence of not more than 1 year, or a fine of up to $100,000 ($200,000 for organizations), or both, 18 U.S.C. §2319(b)(3). (4) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 17 U.S.C. §506(b), 18 U.S.C. §2323. (5) Mandatory restitution, 18 U.S.C. §2323(c).
Copyright Infringement Without Profit Motive, 17 U.S.C. §506(a)(1)(B), 18 U.S.C. §2319(c)	Willful infringement of a copyright by reproducing or distributing, including by electronic means, during any 180-day period, one or more copies of one or more copyrighted works which have a total retail value of more than $1,000.	(1) If the offense consists of the reproduction or distribution of 10 or more copies of 1 or more copyrighted works, which have a total retail value of $2,500 or more, a statutory maximum penalty of 3 years imprisonment, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(c)(1). (2) If the offense is a felony and is a second or subsequent offense, the maximum imprisonment term is 6 years, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(c)(2). (3) If the offense consists of the reproduction or distribution of 1 or more copies of 1 or more copyrighted works, which have a total retail value of more than

Criminal Law	Description of Offense	Authorized Penalties
		$1,000, an imprisonment sentence of not more than 1 year, or a fine of up to $100,000 ($200,000 for organizations), or both, 18 U.S.C. §2319(c)(3). (4) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 17 U.S.C. §506(b), 18 U.S.C. §2323. (5) Mandatory restitution, 18 U.S.C. §2323(c).

Criminal Law	Description of Offense	Authorized Penalties	
Pre-Release Distribution of a Copyrighted Work Over a Publicly-Accessible Computer Network, 17 U.S.C. §506(a)(1)(C), 18 U.S.C. §2319(d)	Distributing a copyrighted work being prepared for commercial distribution, by making it available on a publicly-accessible computer network, if the infringer knew or should have known that the work was intended for commercial distribution.	If infringement committed for commercial purpose: (1) Imprisonment of not more than 5 years, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(d)(2). If the offense is a felony and is a second or subsequent offense, the maximum imprisonment term is 10 years, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(d)(4). (2) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 17 U.S.C. §506(b), 18 U.S.C. §2323. (3) Mandatory restitution, 18 U.S.C. §2323(c).	If infringement has no commercial purpose: (1) For a first offense, imprisonment of not more than 3 years, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(d)(1). (2) If the offense is a felony and is a second or subsequent offense, the maximum imprisonment term is 6 years, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2319(d)(3). (3) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or

Criminal Law	Description of Offense	Authorized Penalties
		derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 17 U.S.C. §506(b), 18 U.S.C. §2323. (4) Mandatory restitution, 18 U.S.C. §2323(c).
Circumvention of Copyright Protection Systems in Violation of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. §1204	Willfully and for purposes of commercial advantage or private financial gain: (1) Descrambling, decrypting, or otherwise avoiding, bypassing, removing, deactivating, or impairing a technological measure, without the authority of the copyright owner, that effectively controls access to a copyrighted work; or (2) Manufacturing, importing, offering to the public, providing, or otherwise trafficking in any technology, product, service, device, or component, that is primarily designed or produced for the purpose of circumventing copyright protection measures.	(1) For a first offense: imprisonment for not more than 5 years, or a fine of not more than $500,000,[a] or both. (2) For the second or subsequent offense: imprisonment for not more than 10 years, or a fine of not more than $1,000,000, or both.
Bootleg Recordings of Live Musical Performances, 18 U.S.C. §2319A	Knowingly and for purposes of commercial advantage or private financial gain: (1) making an unauthorized recording of sounds or sounds/images of a live musical performance, or copies of such recording; (2) transmitting or other communication to the public of such sounds and/or images of a live musical performance; or (3) distribution, sale, or trafficking in any copy of an unauthorized live musical performance recording (whether or not such recording was done in the United States).	(1) For a first offense, imprisonment of up to 5 years, or a fine of up to $250,000 ($500,000 for organizations), or both. (2) For a second or subsequent offense, the maximum imprisonment sentence doubles to 10 years (with the same fine amounts as the first offense). (3) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 18 U.S.C. §§2319A(b), 2323. (4) Mandatory restitution, 18 U.S.C. §2323(c).
Unauthorized Recording of Motion Pictures in a Movie Theater (Camcording), 18 U.S.C. §2319B	Knowingly using an audiovisual recording device to transmit or make a copy of a motion picture from a performance of such work in a movie theater.	(1) For a first offense, imprisonment of not more than 3 years, or a fine of up to $250,000 ($500,000 for organizations). (2) For a second or subsequent offense, the maximum imprisonment sentence doubles to 6 years (with the same fine amounts as the first offense). (3) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 18 U.S.C.

Criminal Law	Description of Offense	Authorized Penalties
		§§2319B(b), 2323 (4) Mandatory restitution, 18 U.S.C. §2323(c).
Counterfeit or Illicit Labels and Counterfeit Documentation and Packaging for Copyrighted Works, 18 U.S.C. §2318	Knowingly trafficking in a counterfeit label or illicit label affixed to, enclosing, or accompanying a copyrighted work, or trafficking in counterfeit documentation or packaging.	(1) Imprisonment of not more than 5 years, a fine of up to $250,000 ($500,000 for organizations), or both. (2) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 18 U.S.C. §§2318(d), 2323. (3) Mandatory restitution, 18 U.S.C. §2323(c).

a. The fines listed in this box are the same for an individual or for organizations.

Trademark

Criminal Law	Description of Offense	Authorized Penalties
Trafficking in Counterfeit Trademarks, Service Marks, and Certification Marks, 18 U.S.C. §2320	(1) Intentionally trafficking or attempting to traffic in goods or services and knowingly using a counterfeit mark[a] on or in connection with such goods or services; (2) Intentionally trafficking or attempting to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive.	(1) For a first offense, imprisonment of not more than 10 years, or a fine of not more than $2,000,000 ($5,000,000 for organizations), or both. (2) For a second or subsequent offense, the maximum imprisonment term doubles to 20 years, and the maximum fines increase to $5,000,000 ($15,000,000 for organizations). (3) If the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of this offense, imprisonment of not more than 20 years, a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2320(a)(2)(A). (4) If the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of this offense, imprisonment for any term of years up to life, or a fine of up to $250,000 ($500,000 for organizations), or both, 18 U.S.C. §2320(a)(2)(B). (5) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 18 U.S.C. §§2320(b), 2323. (6) Mandatory restitution, 18 U.S.C. §§2320(b), 2323(c).

a. 18 U.S.C. §2320(e) defines "counterfeit mark" for the purposes of this offense as a spurious mark that (1) 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;

(2) is identical with, or substantially indistinguishable from, a mark registered 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; (3) 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 (4) the use of which is likely to cause confusion, to cause mistake, or to deceive.

Trade Secrets

Criminal Law	Description of Offense	Authorized Penalties
Trade Secret Theft to Benefit a Foreign Entity, 18 U.S.C. §1831	With intent or knowledge that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly: (1) stealing or without authorization taking or obtaining a trade secret; (2) without authorization copying, destroying, or transmitting a trade secret; (3) receiving, buying, or possessing a trade secret, knowing it to have been stolen or obtained without authorization; (4) attempting to commit any offense described above; (5) conspiring with one or more other persons to commit any offense described above, and one or more of such persons do any act to effect the object of the conspiracy.	(1) Imprisonment of up to 15 years, or a fine of up to $5,000,000, or both. Any organization that commits this offense is subject to a fine of not more than the greater of either (a) $ 10,000,000 or (b) 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided.[r] (2) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 18 U.S.C. §§1834, 2323. (3) Mandatory restitution, 18 U.S.C. §2323(c).
Theft of Trade Secrets for Commercial Advantage, 18 U.S.C. §1832	With intent to convert a trade secret related to a product or service used in or intended for use[s] in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will injure any owner of that trade secret, knowingly: (1) stealing, or without authorization taking or obtaining such information; (2) without authorization copying, destroying, or communicating a trade secret; (3) receiving, buying, or possessing a trade secret, knowing it to have been stolen or obtained without authorization; (4) attempting to commit any offense described above; (5) conspiring with one or more other persons to commit any offense described above, and one or more of such persons do any act to effect the object of the conspiracy.	(1) Imprisonment of up to 10 years, or a fine of up to $250,000, or both. Any organization that commits this offense is subject to a fine of not more than the greater of either (a) $ 5,000,000 or (b) 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided.[t] (2) Civil and criminal forfeiture of any article (the making or trafficking of which is prohibited by this offense), any property used (or intended to be used) in any manner or part to commit or facilitate the commission of this offense, and any property derived constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of the offense, 18 U.S.C. §§1834, 2323. (3) Mandatory restitution, 18 U.S.C. §2323(c).

a. As amended by P.L. 112-269, the Foreign and Economic Espionage Penalty Enhancement Act of 2012, enacted on January 14, 2013.

b. As amended by P.L. 112-236, the Theft of Trade Secrets Clarification Act of 2012, enacted on December 28, 2012.

c. As amended by P.L. 114-153, the Defend Trade Secrets Act of 2016, enacted on May 11, 2016

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