

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 4279  
OFFERED BY MR. CONYERS OF MICHIGAN, MR.  
SMITH OF TEXAS, MR. BERMAN OF CALI-  
FORNIA, AND MR. COBLE OF NORTH CARO-  
LINA**

Page 9, lines 10 and 11, strike “if the copies or phonorecords had been made in the United States” and insert “if this title had been applicable”.

Page 10, strike “and” on line 10.

Page 10, strike lines 11 through 14 and insert the following:

- 1                   (ii) by striking “United States Customs
- 2                   Service” and inserting “U.S. Customs and Bor-
- 3                   der Protection”; and
- 4                   (iii) by striking “Customs Service” the sec-
- 5                   ond place it appears and inserting “U.S. Cus-
- 6                   toms and Border Protection”.

Page 10, insert the following after line 14 and redesignate the succeeding paragraph accordingly:

1           (2) Section 601(b)(2) of title 17, United States Code,  
2 is amended by striking “United States Customs Service”  
3 and inserting “U.S. Customs and Border Protection”

Page 12, line 14, insert before the period the following: “, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a)”.

Page 12, strike lines 15 through 18.

Page 16, line 11, insert before the period the following: “, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of section 506(a) of title 17”.

Page 16, strike lines 12 through 15.

Page 20, line 15, insert before the period the following: “, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a)”.

Page 20, strike lines 16 through 19.

Page 24, line 17, insert before the period the following: “, except that property is subject to forfeiture

under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a)”.

Page 24, strike lines 18 through 21.

Page 30, line 13, strike “The IP” and all that follows through line 17.

Page 30, strike line 22 and all that follows through page 31, line 3 and insert the following:

1           (A) have primary responsibility for devel-  
2           oping the Joint Strategic Plan against counter-  
3           feiting and piracy under section 321 and facili-  
4           tating the implementation of the Joint Strategic  
5           Plan by the departments and agencies listed in  
6           subsection (d)(2).

Page 31, line 4, strike “the principal” and insert “a principal”.

Page 31, strike lines 7 through 23 and insert the following:

7           (C) assist the United States Trade Rep-  
8           resentative—  
9                   (i) concerning negotiations on behalf  
10           of the United States relating to inter-  
11           national intellectual property enforcement,

1 including negotiations on any intellectual  
2 property enforcement matter considered  
3 under the auspices of the World Trade Or-  
4 ganization or in the course of commodity  
5 and direct investment negotiations in  
6 which the United States participates; and  
7 (ii) in the programs of the United  
8 States Trade Representative to monitor  
9 and enforce intellectual property enforce-  
10 ment obligations of other countries under  
11 trade agreements with the United States;  
12 (D) coordinate the issuance of policy guid-  
13 ance to departments and agencies on basic  
14 issues of policy and interpretation that arise in  
15 the exercise of domestic and international intel-  
16 lectual property enforcement functions to the  
17 extent necessary to assure the coordination of  
18 intellectual property enforcement policy and  
19 consistency with any other law;

Page 32, line 1, strike “the principal” and insert “a principal”.

Page 32, strike lines 4 through 8 and insert the following:

1 (F) report directly to the President and  
2 the Congress regarding domestic and inter-  
3 national intellectual property enforcement pro-  
4 grams

Page 33, line 4, strike “the senior” and insert “a senior”.

Page 33, line 9, strike “all”.

Page 33, line 12, strike “major” and insert “significant”.

Page 33, line 22, strike “as IP” and insert “as the IP”.

Page 34, strike lines 1 through 8 and insert the following:

5 (1) IN GENERAL.—In carrying out the func-  
6 tions of the IP Enforcement Representative, the IP  
7 Enforcement Representative shall develop rec-  
8 ommendations on the allocation of Federal resources  
9 for intellectual property enforcement.

Page 34, line 9, strike “For purposes” and all that follows through “there is established” on line 12 and insert the following:

1                   (A) ESTABLISHMENT.—There is estab-  
2                   lished

Page 34, beginning on line 20, through page 35, line 16, redesignate subparagraphs (A) through (I) as clauses (i) through (ix), respectively.

Page 35, insert the following after line 19:

3                   (B) FUNCTIONS.—The advisory committee  
4                   established under subparagraph (A) shall,  
5                   under the guidance of the IP Enforcement Rep-  
6                   resentative, develop the Joint Strategic Plan  
7                   against counterfeiting and piracy under section  
8                   321.

9                   (3) EXEMPTION FROM FEDERAL ADVISORY  
10                  COMMITTEE ACT.—The Federal Advisory Committee  
11                  Act shall not apply to the interagency intellectual  
12                  property enforcement advisory committee established  
13                  under paragraph (2) or to any of the activities con-  
14                  ducted by the IP Enforcement Representative in de-  
15                  veloping the Joint Strategic Plan under section 321.

Page 36, lines 14 and 15, strike “use for adminis-  
trative purposes, on a reimbursable basis,” and insert  
“use, with the consent of the Federal, State, and local  
government agencies concerned,”.

Page 36, line 16, strike “of Federal” and insert “of such Federal”.

Page 38, line 13, insert “in particular” after “including”.

Page 38, strike lines 21 and 22 and insert the following:

- 1 (1) Reducing counterfeit and pirated goods in
- 2 the domestic and international supply chain.

Page 39, lines 3 through 5, strike “Identifying and sharing information among the relevant departments and agencies for the purpose of” and insert “Assuring that information is identified and shared among the relevant departments and agencies, to the extent permitted by law and consistent with law enforcement protocols for handling information to aid in the objective of”.

Page 39, line 6, strike “involved” and insert “involved in”.

Page 39, line 9, strike “counterfeit” and insert “domestic and international counterfeiting”.

Page 40, line 12, add “and” after the semicolon.

Page 40, line 15, strike “; and” and insert a period.

Page 40, strike lines 16 through 19.

Page 41, line 19, strike “In developing” and insert “During the development of”.

Page 42, line 18, insert “, and plans for addressing the joint strategic plan” before the period.

Page 42, line 22, insert after “for” the following: “carrying out the objectives in the joint strategic plan, including”.

Page 43, line 23, insert “by the executive branch” after “oversight”.

Page 43, line 24, add “responsible for” after “agencies”.

Page 44, strike lines 1 through 10 and insert the following:

1           (8) Such other information as is necessary to  
2           convey the costs imposed on the United States econ-  
3           omy by, and the threats to public health and safety  
4           created by, counterfeiting and piracy, and those  
5           steps that the Federal Government intends to take  
6           over the period covered by the succeeding joint stra-  
7           tegic plan to reduce those costs and counter those  
8           threats.



Page 44, lines 17 and 18, strike “the IP Representative, in developing the joint strategic plan, shall” and insert “the joint strategic plan shall”.

Page 45, line 9, strike “the countries” and insert “the list of countries”.

Page 46, line 1, strike “an” and insert “a”.

Page 46, line 11, insert before the period the following: “, including an analysis of the performance measures used to monitor results described in section 321(e)(4)”.

Page 46, line 12, strike “toward” and insert “in”.

Page 47, line 6, insert before the period the following: “and in implementing the recommendations developed under section 301(d)(1)”.

Page 47, line 13, insert before the period the following: “, including through the elimination or consolidation of duplicative programs or initiatives”.

Page 48, strike lines 1 through 16 and redesignate the succeeding sections accordingly.

Page 48, strike lines 21 through 25 and insert the following:

1 (b) CURRENT AUTHORITIES NOT AFFECTED.—Ex-  
2 cept as provided in subsection (a), nothing in this title  
3 shall alter the authority of any department or agency of  
4 the United States (including any independent agency) re-  
5 lating to—

6 (1) investigating and prosecuting violations of  
7 laws protecting intellectual property rights;

8 (2) administratively enforcing, at the borders of  
9 the United States, laws protecting intellectual prop-  
10 erty rights; or

11 (3) international trade or the United States  
12 trade agreements program.

Page 48, line 24, insert “(including any independent agency)” after “United States”.

Page 48, line 25, strike “rights” and insert “property rights, to enforce such laws administratively at the borders of the United States, to conduct trade relations with other countries, or to carry out the United States trade agreements program”.

Page 49, lines 22 and 23, strike “shall appoint 10” and insert “shall, within 2 years after the date of the enactment of this Act, appoint at least 10”.

Page 49, line 24 and 25, strike “10 appointments shall be in addition to personnel” and insert “appoint-

ments under this section shall be in addition to those individuals”.

Page 50, line 1, strike “attaché” and insert “attachés”.

Page 50, line 3, add after the period the following: “The Director shall provide such managerial, administrative, research, and other services as the Secretary of Commerce considers necessary to assist the intellectual property attachés in carrying out their responsibilities.”.

Page 51, insert the following after line 16 and redesignate the succeeding paragraph accordingly:

1           (7) To assist in the coordination of the efforts  
2           of the United States Intellectual Property Enforcement  
3           Representative, Federal agencies, and private  
4           organizations engaged in the promotion of United  
5           States intellectual property interests abroad so as to  
6           maximize their effectiveness and minimize duplica-  
7           tive efforts.

Page 52, line 8, strike “and to protecting” and insert “or to protecting”.

Page 52, strike lines 16 through 21 and insert the following:

1 (b) REPORT ON ATTACHÉS.—The Inspector General  
2 of the Department of Commerce shall perform yearly au-  
3 dits of the intellectual property attachés of the Depart-  
4 ment, and shall report to the Committees on the Judiciary  
5 of the House of Representatives and the Senate the results  
6 of each such audit. In addition to an overview of the activi-  
7 ties and effectiveness of the intellectual property attaché  
8 operations, the audit shall include—

9 (1) an evaluation of the current placement of  
10 foreign-based personnel and recommendations for  
11 transferring such personnel in response to newly  
12 emerging intellectual property issues abroad; and

13 (2) an evaluation of the personnel system and  
14 its management, including the recruitment, assign-  
15 ment, promotion, and performance appraisal of per-  
16 sonnel, and the use of limited appointees.

Page 57, lines 2 and 3, strike “theft of goods pro-  
tected by any copyright” and insert “unlawful acts with  
respect to goods by reason of their protection by a”.

Page 67, line 18, strike “and of protecting” and in-  
sert “or of protecting”.

