

# Counterfeiting and Piracy

## Protections Against Intellectual Property Theft Offer Enforcement Tool

### Summary

#### Background

The problem of counterfeiting and piracy is a crucial issue for the state of California. Governor Arnold Schwarzenegger has indicated that intellectual property piracy is a leading issue “critical to the future growth of California’s global economy.” Given California’s position in the world economy, the state has a lot to lose when it comes to intellectual property theft — in fact, the California economy loses \$34 billion per year to counterfeiting and piracy. Unfortunately, California is a major entry and assembly point for many counterfeit goods. In recent years, numerous private enforcement actions have had to be brought against California companies engaged in illegal duplication and distribution of DVDs, CDs, software and the like.

#### Federal/State Policy

On the federal front, California depends upon the government to enact both strong federal standards and to enter into international trade agreements and treaties that will protect California companies from intellectual property theft overseas. Without these protections, California industries lose not only significant market opportunities, but also the ability to benefit other parts of the globe with the state’s products. Without adequate protections against intellectual property theft, California innovators will be reluctant to share products with developing countries.

Although much has been done at the federal level, it is important that California supplement federal efforts and resources with state protections for companies that choose to locate or do business in the state. The reasons are two-fold: First, federal resources are finite, as they must be allocated among the 50 states and overseas. Second, providing local protections gives California companies and consumers another tool for enforcement.

#### Recent Legislation

In 2008, California Chamber of Commerce-sponsored AB 1394 (Krekorian; D-Burbank) was signed into law. AB 1394 clarifies the anti-counterfeiting statute by enacting clarifications recently adopted at the federal level. California’s anti-counterfeiting statute, Penal Code Section 350, currently prohibits trafficking of counterfeit products. Unlike federal law, however, state law is unclear on whether separate fake components, for example, fake computers and the fake brand name labels that are to be affixed to them, are illegal counterfeit goods unless already assembled. AB 1394 expressly states that unassembled components are illegal goods. In addition, AB 1394 clarifies that illegal counterfeit goods must be forfeited, as is the case under federal law.

#### Anticipated Action

The CalChamber will continue to promote adoption of legislation that strengthens enforcement efforts against counterfeiting at the state level. Combining federal, state and local efforts means more effective intellectual property protections for California companies and consumers, a stronger California economy and mutually beneficial relationships with the state’s global trading partners.

### CalChamber Position

The CalChamber supports upholding existing laws and international agreements that protect intellectual property rights and strengthening them to the extent necessary to achieve or maintain effective, appropriate and current intellectual property rights protections, using clear standards and applying free market and free trade principles and sound economic policies; and promoting a culture of respect for intellectual property rights in private and public sectors.

### Reasons for Position

- Counterfeiting and piracy of intellectual property is a significant domestic and global problem that has a negative impact on jobs, consumer safety, innovation, tax revenues and the economy.
- Strong intellectual property rights are a key component to stability, competitiveness and growth of the California and U.S. economies in the global marketplace.

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