

ASSEMBLY BILL

No. 819

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act to add Chapter 5.8 (commencing with Section 13849) to Title 6 of Part 4 of the Penal Code, relating to intellectual property piracy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 819, as introduced, Charles Calderon. Intellectual property piracy. Existing law establishes various crime prevention and prosecution programs.

This bill would establish the Intellectual Property Piracy Prevention and Prosecution Program to fund grants for local law enforcement and district attorneys for purposes of preventing and prosecuting intellectual property piracy, as specified.

The bill would establish the Intellectual Property Piracy Prevention and Prosecution Fund, which would be continuously appropriated and which would be funded by private and state sources, including, contingent on the enactment of an unspecified Assembly bill, an annual appropriation from the General Fund to bring the balance in the fund to \$50 million.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5.8 (commencing with Section 13849)
2 is added to Title 6 of Part 4 of the Penal Code, to read:

3

4 CHAPTER 5.8. INTELLECTUAL PROPERTY PIRACY PREVENTION
5 AND PROSECUTION ACT OF 2009
6

7 13849. (a) This act shall be known and may be cited as the
8 Intellectual Property Piracy Prevention and Prosecution Act of
9 2009.

10 (b) The Legislature finds and declares the following:

11 (1) According to a 2007 study by the Institute for Policy
12 Innovation, intellectual property piracy, meaning the theft of
13 movies, music, software, and video games, costs the United States
14 economy fifty-eight billion dollars (\$58,000,000,000) each year.

15 (2) The problem of intellectual property piracy continues to
16 grow worse. A 2005 Gallup study found that 5 percent of
17 Americans had purchased, copied, or downloaded counterfeit music
18 in the preceding year. By 2007, this number had jumped to 9
19 percent. The percentage of respondents that admitted buying a
20 pirated movie rose from 3 percent in 2005, to 6 percent in 2007.
21 At the same time, once robust DVD sales have flattened over the
22 past few years, while CD shipments to retailers have plummeted.

23 (3) The effect of intellectual property piracy on California and
24 its citizens is particularly dire. Intellectual property piracy
25 adversely affects the California economy, eliminates jobs, and
26 damages industry. According to the Business Software Alliance,
27 in 2003, software piracy alone cost the California economy more
28 than 13,000 jobs, over eight hundred two million dollars
29 (\$802,000,000) in wages and salaries, over one billion dollars
30 (\$1,000,000,000) in retail sales of business software applications,
31 and roughly two hundred thirty-nine million dollars (\$239,000,000)
32 in total tax losses.

33 (4) This act will send a strong signal that California is committed
34 to protecting the intellectual property created by California's
35 innovation and entertainment industries.

36 (5) By creating a technical advisory committee, California will
37 be able to draw upon the expertise and insight of those on the front
38 lines of the antipiracy effort.

1 (6) Grants awarded pursuant to this act will be used to foster
2 innovation and to provide local law enforcement and prosecutors
3 the tools they need to effectively fight intellectual property piracy.

4 (7) Finally, by safeguarding the legitimate sale of intellectual
5 property, California will increase its tax base, and stimulate the
6 economy.

7 (c) Funds provided under this program are intended to ensure
8 that law enforcement and prosecutors are equipped with the
9 necessary personnel and equipment to combat successfully
10 intellectual property piracy, which includes piracy of movies,
11 music, software, and video games.

12 13849.1. (a) There is hereby established in the Department of
13 Justice, a program of financial assistance for law enforcement and
14 district attorneys' offices, designated the Intellectual Property
15 Piracy Prevention and Prosecution Program. All funds appropriated
16 to the Department of Justice for the purposes of this chapter shall
17 be administered and disbursed by the Attorney General in
18 consultation with the Intellectual Property Piracy Prevention and
19 Prosecution Advisory Committee as established in Section 13849.3
20 and shall, to the extent feasible, be coordinated with funds derived
21 pursuant to Section 13849.3 and private grants or private donations
22 that are made available for these purposes.

23 (b) All funds designated for use for purposes of this chapter
24 shall be deposited in the Intellectual Property Piracy Prevention
25 and Prosecution Fund, which is hereby established. The fund shall
26 be under the direction and control of the office of the Attorney
27 General. Notwithstanding Section 13340 of the Government Code,
28 moneys in the fund are hereby continuously appropriated for the
29 purposes specified in this chapter.

30 (c) The advisory committee shall review grant applications and,
31 on a majority vote of the membership, submit those applications
32 to the Attorney General for formal approval.

33 (d) The advisory committee shall monitor and audit the use of
34 grant funds.

35 (e) Grant money shall be used exclusively to combat intellectual
36 property piracy within the state. Grants shall be made on an annual
37 basis, and may not be used to pay existing staff, absent
38 extraordinary circumstances and approval by the Attorney General.
39 Grant recipients may receive funding for no more than three years
40 without submitting another grant application. Grants shall only be

1 made to applicants with an existing budget dedicated to fighting
2 intellectual property piracy.

3 (f) In order to receive a grant, prospective recipients shall agree
4 in writing to the following terms, as conditions of receiving a grant:

5 (1) The recipient is authorized to accept grant funds under all
6 applicable state and local laws.

7 (2) The recipient will vigilantly safeguard grant funds and ensure
8 that use of the grant funds fully comports with the purposes
9 specified in the application for the grant funds, as approved or
10 modified by the advisory committee.

11 (3) Grant funds shall be used to augment, but shall not be used
12 to supplant, a grant recipient's budget.

13 (4) If the grant funds are used for the purpose of investigation,
14 litigation, or prosecution, any remedy, settlement, judgment, or
15 restitution award shall provide for full reimbursement to the
16 Intellectual Property Piracy Protection and Prosecution Fund of
17 all grant funds used for that investigation, litigation, or prosecution.

18 (5) The recipient shall notify the advisory committee in writing
19 of litigation or prosecution results, including any settlement,
20 judgment, or other resolution, within 30 days.

21 (6) The recipient shall notify the advisory committee in writing
22 of the status of all outstanding investigations, litigation, or
23 prosecutions funded in whole or in part by the grant six months
24 after the funds are disbursed, and every 12 months thereafter until
25 all disbursed funds have been expended and reported on.

26 (7) The recipient shall fully cooperate with the advisory
27 committee and its agents in providing all information and
28 documents concerning the use of grant funds.

29 (8) Except as otherwise expressly agreed by the advisory
30 committee, within 60 days after the conclusion of the investigation,
31 litigation, or prosecution, training, or other activity for which the
32 disbursement was awarded, the recipient shall return all unused
33 funds to the advisory committee by check made payable to the
34 Intellectual Property Piracy Prevention and Prosecution Fund.

35 (9) If grant funds are used for the production of any materials,
36 the recipient shall permit the Attorney General's office and the
37 advisory committee to use and distribute those materials without
38 restriction, for their intended purposes.

39 (10) The advisory committee is authorized to audit, review, and
40 inspect the recipient's activities, books, documents, papers, and

1 records during the project and thereafter for three years following
2 the final allocation of funds.

3 13849.2. (a) The Intellectual Property Piracy Prevention and
4 Prosecution Advisory Committee is hereby established for the
5 purpose of formulating a comprehensive written strategy for
6 addressing intellectual property piracy prevention and prosecution
7 throughout the state, and to advise the Attorney General on the
8 appropriate disbursement of funds to local law enforcement
9 agencies and district attorneys' offices.

10 (b) In formulating that strategy, the committee shall identify
11 various priorities for law enforcement attention regarding the
12 following:

13 (1) The apprehension and prosecution of criminal organizations,
14 networks, and groups of individuals engaged in the theft of,
15 counterfeiting of, or unauthorized distribution, sale, or reproduction
16 of, the following types of intellectual property:

17 (A) Movies.

18 (B) Music.

19 (C) Computer software.

20 (D) Video games.

21 (2) The investigation and prosecution of violations of criminal
22 and civil provisions of law, including, but not limited to, Sections
23 653h, 653s, and 653w.

24 (3) The advising of local law enforcement and district attorneys
25 regarding current aspects of intellectual property piracy, in order
26 to respond quickly to the most serious threats of piracy.

27 (c) The advisory committee, which shall meet at least four times
28 per year, shall consist of 10 members, of whom six shall be
29 appointed by the Governor, two by the Speaker of the Assembly,
30 and two by the Senate Committee on Rules. Members shall be
31 paid a one hundred dollar (\$100) per diem for each meeting, as
32 well as all necessary travel expenses. The advisory committee shall
33 be composed of the following members:

34 (1) At least two representatives of the general public.

35 (2) At least one representative with demonstrable knowledge
36 of the movie industry.

37 (3) At least one representative with demonstrable knowledge
38 of the music industry.

39 (4) At least one representative with demonstrable knowledge
40 of the computer software industry.

1 (5) At least one representative with demonstrable knowledge
2 of the video gaming industry.

3 (6) At least one representative with experience in law
4 enforcement, specifically relating to intellectual property piracy
5 offenses.

6 (7) At least one representative with experience prosecuting
7 intellectual property piracy offenses at the local, state, or federal
8 level.

9 (d) In deciding which grant applications to fund, the advisory
10 committee shall consider the following factors:

11 (1) The purpose for which the funds are sought.

12 (2) The proposal’s specificity, including whether the proposal
13 identifies anticipated costs, along with materials and personnel to
14 be used.

15 (3) The anticipated public benefit.

16 (4) The ability of the advisory committee to audit the use of the
17 funds.

18 (5) The number, amount, and use of previous grants awarded
19 to the prospective recipient, if any.

20 (e) Members of the advisory committee shall be entitled to the
21 same immunity from liability that is provided to public employees.

22 13849.3. (a) All defendants convicted of committing an
23 intellectual property piracy offense shall, in addition to any other
24 punishment and restitution order, be required to pay an additional
25 penalty of ____ dollars (\$____) which shall be payable to the
26 Intellectual Property Piracy Prevention and Prosecution Fund.

27 (b) The fund may also accept private donations.

28 (c) (1) On July 1, 2010, and every July 1, thereafter, the
29 Legislature hereby appropriates from the General Fund to the
30 Intellectual Property Piracy Prevention and Prosecution Fund sum
31 sufficient to bring the balance in the Intellectual Property Piracy
32 Prevention and Prosecution Fund to fifty million dollars
33 (\$50,000,000). In no event shall an annual appropriation from the
34 General Fund be made if the fund has a balance of fifty million
35 dollars (\$50,000,000) or more.

36 (2) This subdivision shall be contingent upon the enactment of
37 AB ____ of the 2009–10 Regular Session.

38 SEC. 2. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to ensure public peace against the accelerating problem
4 of intellectual property piracy, it is necessary for this act to take
5 effect immediately.

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