

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 819

Introduced by Assembly Member Charles Calderon
(Coauthor: Assembly Member Lieu)

February 26, 2009

An act to *amend Sections 13848 and 13848.6 of, and 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 amended, 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 become operative only if AB 711 of the 2009–10 Regular Session is enacted. The bill would make other technical, conforming changes.*

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

Vote: 2/3. Appropriation: ~~yes~~-no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 13848 of the Penal Code is amended to
2 read:

3 13848. (a) It is the intent of the Legislature in enacting this
4 chapter to provide local law enforcement and district attorneys
5 with the tools necessary to successfully interdict the promulgation
6 of high technology crime. According to the federal Law
7 Enforcement Training Center, it is expected that states will see a
8 tremendous growth in high technology crimes over the next few
9 years as computers become more available and computer users
10 more skilled in utilizing technology to commit these faceless
11 crimes. High technology crimes are those crimes in which
12 technology is used as an instrument in committing, or assisting in
13 the commission of, a crime, or which is the target of a criminal
14 act.

15 (b) Funds provided under this program are intended to ensure
16 that law enforcement is equipped with the necessary personnel
17 and equipment to successfully combat high technology crime which
18 includes, but is not limited to, the following offenses:

19 (1) White-collar crime, such as check, automated teller machine,
20 and credit card fraud, committed by means of electronic or
21 computer-related media.

22 (2) Unlawful access, destruction of or unauthorized entry into
23 and use of private, corporate, or government computers and
24 networks, including wireless and wireline communications
25 networks and law enforcement dispatch systems, and the theft,
26 interception, manipulation, destruction, or unauthorized disclosure
27 of data stored within those computers and networks.

28 (3) Money laundering accomplished with the aid of computer
29 networks or electronic banking transfers.

30 (4) Theft and resale of telephone calling codes, theft of
31 telecommunications service, theft of wireless communication
32 service, and theft of cable television services by manipulation of
33 the equipment used to receive those services.

34 ~~(5) Software piracy and other unlawful duplication of~~
35 ~~information.~~

1 ~~(6)~~
2 (5) Theft and resale of computer components and other high
3 technology products produced by the high technology industry.

4 ~~(7)~~
5 (6) Remarketing and counterfeiting of computer hardware and
6 software.

7 ~~(8)~~
8 (7) Theft of trade secrets.

9 (c) This program is also intended to provide support to law
10 enforcement agencies by providing technical assistance to those
11 agencies with respect to the seizure and analysis of computer
12 systems used to commit high technology crimes or store evidence
13 relating to those crimes.

14 *SEC. 2. Section 13848.6 of the Penal Code is amended to read:*
15 13848.6. (a) The High Technology Crime Advisory Committee
16 is hereby established for the purpose of formulating a
17 comprehensive written strategy for addressing high technology
18 crime throughout the state, with the exception of crimes that occur
19 on state property or are committed against state employees, and
20 to advise the California Emergency Management Agency on the
21 appropriate disbursement of funds to regional task forces.

22 (b) This strategy shall be designed to be implemented through
23 regional task forces. In formulating that strategy, the committee
24 shall identify various priorities for law enforcement attention,
25 including the following goals:

26 (1) To apprehend and prosecute criminal organizations,
27 networks, and groups of individuals engaged in the following
28 activities:

29 (A) Theft of computer components and other high technology
30 products.

31 (B) Violations of Penal Code Sections 211, 350, 351a, 459, 496,
32 537e, 593d, 593e, 653h, 653s, and 635w.

33 (C) Theft of telecommunications services and other violations
34 of Penal Code Sections 502.7 and 502.8.

35 (D) Counterfeiting of negotiable instruments and other valuable
36 items through the use of computer technology.

37 ~~(E) Creation and distribution of counterfeit software and other~~
38 ~~digital information, including the use of counterfeit trademarks to~~
39 ~~misrepresent the origin of that software or digital information.~~

1 ~~(F) Creation and distribution of pirated sound recordings or~~
2 ~~audiovisual works or the failure to disclose the origin of a recording~~
3 ~~or audiovisual work.~~

4 (2) To apprehend and prosecute individuals and groups engaged
5 in the unlawful access, destruction, or unauthorized entry into and
6 use of private, corporate, or government computers and networks,
7 including wireless and wire line communications networks and
8 law enforcement dispatch systems, and the theft, interception,
9 manipulation, destruction, and unauthorized disclosure of data
10 stored within those computers.

11 (3) To apprehend and prosecute individuals and groups engaged
12 in the theft of trade secrets.

13 (4) To investigate and prosecute high technology crime cases
14 requiring coordination and cooperation between regional task
15 forces and local, state, federal, and international law enforcement
16 agencies.

17 (c) The Secretary of California Emergency Management shall
18 appoint the following members to the committee:

19 (1) A designee of the California District Attorneys Association.

20 (2) A designee of the California State Sheriffs Association.

21 (3) A designee of the California Police Chiefs Association.

22 (4) A designee of the Attorney General.

23 (5) A designee of the California Highway Patrol.

24 (6) A designee of the High Technology Crime Investigation
25 Association.

26 (7) A designee of the California Emergency Management
27 Agency.

28 (8) A designee of the American Electronic Association to
29 represent California computer system manufacturers.

30 (9) A designee of the American Electronic Association to
31 represent California computer software producers.

32 (10) A designee of CTIA - The Wireless Association.

33 (11) A representative of the California Internet industry.

34 (12) A designee of the Semiconductor Equipment and Materials
35 International.

36 (13) A designee of the California Cable & Telecommunications
37 Association.

38 (14) A designee of the Motion Picture Association of America.

39 (15) A designee of the California Communications Associations
40 (CalCom).

1 (16) A representative of the California banking industry.

2 (17) A representative of the Office of Information Security and
3 Privacy Protection.

4 (18) A representative of the Department of Finance.

5 (19) A representative of the State Chief Information Officer.

6 (20) A representative of the Recording Industry of America.

7 (21) A representative of the Consumers Union.

8 (d) The Secretary of California Emergency Management shall
9 designate the Chair of the High Technology Crime Advisory
10 Committee from the appointed members.

11 (e) The advisory committee shall not be required to meet more
12 than 12 times per year. The advisory committee may create
13 subcommittees of its own membership, and each subcommittee
14 shall meet as often as the subcommittee members find necessary.
15 It is the intent of the Legislature that all advisory committee
16 members shall actively participate in all advisory committee
17 deliberations required by this chapter.

18 Any member who, without advance notice to the Secretary of
19 California Emergency Management and without designating an
20 alternative representative, misses three scheduled meetings in any
21 calendar year for any reason other than severe temporary illness
22 or injury (as determined by the secretary) shall automatically be
23 removed from the advisory committee. If a member wishes to send
24 an alternative representative in his or her place, advance written
25 notification of this substitution shall be presented to the executive
26 director. This notification shall be required for each meeting the
27 appointed member elects not to attend.

28 Members of the advisory committee shall receive no
29 compensation for their services, but shall be reimbursed for travel
30 and per diem expenses incurred as a result of attending meetings
31 sponsored by the California Emergency Management Agency.

32 (f) The Secretary of California Emergency Management, in
33 consultation with the High Technology Crime Advisory
34 Committee, shall develop specific guidelines and administrative
35 procedures for the selection of projects to be funded by the High
36 Technology Theft Apprehension and Prosecution Program, which
37 guidelines shall include the following selection criteria:

38 (1) Each regional task force that seeks funds shall submit a
39 written application to the committee setting forth in detail the
40 proposed use of the funds.

1 (2) In order to qualify for the receipt of funds, each proposed
2 regional task force submitting an application shall provide written
3 evidence that the agency meets either of the following conditions:

4 (A) The regional task force devoted to the investigation and
5 prosecution of high technology-related crimes is comprised of
6 local law enforcement and prosecutors, and has been in existence
7 for at least one year prior to the application date.

8 (B) At least one member of the task force has at least three years
9 of experience in investigating or prosecuting cases of suspected
10 high technology crime.

11 (3) Each regional task force shall be identified by a name that
12 is appropriate to the area that it serves. In order to qualify for funds,
13 a regional task force shall be comprised of local law enforcement
14 and prosecutors from at least two counties. At the time of funding,
15 the proposed task force shall also have at least one investigator
16 assigned to it from a state law enforcement agency. Each task force
17 shall be directed by a local steering committee composed of
18 representatives of participating agencies and members of the local
19 high technology industry.

20 (4) The California High Technology Crimes Task Force shall
21 be comprised of each regional task force developed pursuant to
22 this subdivision.

23 (5) Additional criteria that shall be considered by the advisory
24 committee in awarding grant funds shall include, but not be limited
25 to, the following:

26 (A) The number of high technology crime cases filed in the
27 prior year.

28 (B) The number of high technology crime cases investigated in
29 the prior year.

30 (C) The number of victims involved in the cases filed.

31 (D) The total aggregate monetary loss suffered by the victims,
32 including individuals, associations, institutions, or corporations,
33 as a result of the high technology crime cases filed, and those under
34 active investigation by that task force.

35 (6) Each regional task force that has been awarded funds
36 authorized under the High Technology Theft Apprehension and
37 Prosecution Program during the previous grant-funding cycle,
38 upon reapplication for funds to the committee in each successive
39 year, shall be required to submit a detailed accounting of funds
40 received and expended in the prior year in addition to any

1 information required by this section. The accounting shall include
2 all of the following information:

3 (A) The amount of funds received and expended.

4 (B) The use to which those funds were put, including payment
5 of salaries and expenses, purchase of equipment and supplies, and
6 other expenditures by type.

7 (C) The number of filed complaints, investigations, arrests, and
8 convictions that resulted from the expenditure of the funds.

9 (g) The committee shall annually review the effectiveness of
10 the California High Technology Crimes Task Force in deterring,
11 investigating, and prosecuting high technology crimes and provide
12 its findings in a report to the Legislature and the Governor. This
13 report shall be based on information provided by the regional task
14 forces in an annual report to the committee which shall detail the
15 following:

16 (1) Facts based upon, but not limited to, the following:

17 (A) The number of high technology crime cases filed in the
18 prior year.

19 (B) The number of high technology crime cases investigated in
20 the prior year.

21 (C) The number of victims involved in the cases filed.

22 (D) The number of convictions obtained in the prior year.

23 (E) The total aggregate monetary loss suffered by the victims,
24 including individuals, associations, institutions, corporations, and
25 other relevant public entities, according to the number of cases
26 filed, investigations, prosecutions, and convictions obtained.

27 (2) An accounting of funds received and expended in the prior
28 year, which shall include all of the following:

29 (A) The amount of funds received and expended.

30 (B) The uses to which those funds were put, including payment
31 of salaries and expenses, purchase of supplies, and other
32 expenditures of funds.

33 (C) Any other relevant information requested.

34 ~~SECTION 4.~~

35 *SEC. 3.* Chapter 5.8 (commencing with Section 13849) is added
36 to Title 6 of Part 4 of the Penal Code, to read:

1 CHAPTER 5.8. INTELLECTUAL PROPERTY PIRACY PREVENTION
2 AND PROSECUTION ACT OF 2009

3
4 13849. (a) This act shall be known and may be cited as the
5 Intellectual Property Piracy Prevention and Prosecution Act of
6 2009.

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

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

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

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

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

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

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

1 (7) Finally, by safeguarding the legitimate sale of intellectual
2 property, California will increase its tax base, and stimulate the
3 economy.

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

9 13849.1. (a) There is hereby established in the Department of
10 Justice, a program of financial assistance for law enforcement and
11 district attorneys' offices, designated the Intellectual Property
12 Piracy Prevention and Prosecution Program.—~~All~~ *Upon*
13 *appropriation by the Legislature, all* funds appropriated to the
14 Department of Justice for the purposes of this chapter shall be
15 administered and disbursed by the Attorney General in consultation
16 with the Intellectual Property Piracy Prevention and Prosecution
17 Advisory Committee as established in Section 13849.3 and shall,
18 to the extent feasible, be coordinated with funds derived pursuant
19 to Section 13849.3 and private grants or private donations that are
20 made available for these purposes.

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

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

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

34 (e) Grant money shall be used exclusively to combat intellectual
35 property piracy within the state. Grants shall be made on an annual
36 basis, and may not be used to pay existing staff, absent
37 extraordinary circumstances and approval by the Attorney General.
38 Grant recipients may receive funding for no more than three years
39 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. 4. This act shall become operative only if upon enactment*
39 *of Assembly Bill 711 of the 2009-10 Regular Session is enacted.*

1 ~~SEC. 2.~~

2 *SEC. 5.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety within
4 the meaning of Article IV of the Constitution and shall go into
5 immediate effect. The facts constituting the necessity are:

6 In order to ensure public peace against the accelerating problem
7 of intellectual property piracy, it is necessary for this act to take
8 effect immediately.

O