

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 819**

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**Introduced by Assembly Member Charles Calderon  
(Coauthors: Assembly Members Lieu, Portantino, and Smyth)**

February 26, 2009

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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 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~~ *an appropriation is made for its operation*. 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.

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

3 (6) Remarketing and counterfeiting of computer hardware and  
4 software.

5 (7) Theft of trade secrets.

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

11 SEC. 2. Section 13848.6 of the Penal Code is amended to read:

12 13848.6. (a) The High Technology Crime Advisory Committee  
13 is hereby established for the purpose of formulating a  
14 comprehensive written strategy for addressing high technology  
15 crime throughout the state, with the exception of crimes that occur  
16 on state property or are committed against state employees, and  
17 to advise the California Emergency Management Agency on the  
18 appropriate disbursement of funds to regional task forces.

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

23 (1) To apprehend and prosecute criminal organizations,  
24 networks, and groups of individuals engaged in the following  
25 activities:

26 (A) Theft of computer components and other high technology  
27 products.

28 (B) Violations of Penal Code Sections 211, 350, 351a, 459, 496,  
29 537e, 593d, 593e, 653h, 653s, and 635w.

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

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

34 (2) To apprehend and prosecute individuals and groups engaged  
35 in the unlawful access, destruction, or unauthorized entry into and  
36 use of private, corporate, or government computers and networks,  
37 including wireless and wire line communications networks and  
38 law enforcement dispatch systems, and the theft, interception,  
39 manipulation, destruction, and unauthorized disclosure of data  
40 stored within those computers.

- 1 (3) To apprehend and prosecute individuals and groups engaged  
2 in the theft of trade secrets.
- 3 (4) To investigate and prosecute high technology crime cases  
4 requiring coordination and cooperation between regional task  
5 forces and local, state, federal, and international law enforcement  
6 agencies.
- 7 (c) The Secretary of California Emergency Management shall  
8 appoint the following members to the committee:
- 9 (1) A designee of the California District Attorneys Association.  
10 (2) A designee of the California State Sheriffs Association.  
11 (3) A designee of the California Police Chiefs Association.  
12 (4) A designee of the Attorney General.  
13 (5) A designee of the California Highway Patrol.  
14 (6) A designee of the High Technology Crime Investigation  
15 Association.  
16 (7) A designee of the California Emergency Management  
17 Agency.  
18 (8) A designee of the American Electronic Association to  
19 represent California computer system manufacturers.  
20 (9) A designee of the American Electronic Association to  
21 represent California computer software producers.  
22 (10) A designee of CTIA - The Wireless Association.  
23 (11) A representative of the California Internet industry.  
24 (12) A designee of the Semiconductor Equipment and Materials  
25 International.  
26 (13) A designee of the California Cable & Telecommunications  
27 Association.  
28 (14) A designee of the Motion Picture Association of America.  
29 (15) A designee of the California Communications Associations  
30 (CalCom).  
31 (16) A representative of the California banking industry.  
32 (17) A representative of the Office of Information Security and  
33 Privacy Protection.  
34 (18) A representative of the Department of Finance.  
35 (19) A representative of the State Chief Information Officer.  
36 (20) A representative of the Recording Industry of America.  
37 (21) A representative of the Consumers Union.
- 38 (d) The Secretary of California Emergency Management shall  
39 designate the Chair of the High Technology Crime Advisory  
40 Committee from the appointed members.

1 (e) The advisory committee shall not be required to meet more  
2 than 12 times per year. The advisory committee may create  
3 subcommittees of its own membership, and each subcommittee  
4 shall meet as often as the subcommittee members find necessary.  
5 It is the intent of the Legislature that all advisory committee  
6 members shall actively participate in all advisory committee  
7 deliberations required by this chapter.

8 Any member who, without advance notice to the Secretary of  
9 California Emergency Management and without designating an  
10 alternative representative, misses three scheduled meetings in any  
11 calendar year for any reason other than severe temporary illness  
12 or injury (as determined by the secretary) shall automatically be  
13 removed from the advisory committee. If a member wishes to send  
14 an alternative representative in his or her place, advance written  
15 notification of this substitution shall be presented to the executive  
16 director. This notification shall be required for each meeting the  
17 appointed member elects not to attend.

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

22 (f) The Secretary of California Emergency Management, in  
23 consultation with the High Technology Crime Advisory  
24 Committee, shall develop specific guidelines and administrative  
25 procedures for the selection of projects to be funded by the High  
26 Technology Theft Apprehension and Prosecution Program, which  
27 guidelines shall include the following selection criteria:

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

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

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

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

1 (3) Each regional task force shall be identified by a name that  
2 is appropriate to the area that it serves. In order to qualify for funds,  
3 a regional task force shall be comprised of local law enforcement  
4 and prosecutors from at least two counties. At the time of funding,  
5 the proposed task force shall also have at least one investigator  
6 assigned to it from a state law enforcement agency. Each task force  
7 shall be directed by a local steering committee composed of  
8 representatives of participating agencies and members of the local  
9 high technology industry.

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

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

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

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

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

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

25 (6) Each regional task force that has been awarded funds  
26 authorized under the High Technology Theft Apprehension and  
27 Prosecution Program during the previous grant-funding cycle,  
28 upon reapplication for funds to the committee in each successive  
29 year, shall be required to submit a detailed accounting of funds  
30 received and expended in the prior year in addition to any  
31 information required by this section. The accounting shall include  
32 all of the following information:

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

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

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

39 (g) The committee shall annually review the effectiveness of  
40 the California High Technology Crimes Task Force in deterring,

1 investigating, and prosecuting high technology crimes and provide  
2 its findings in a report to the Legislature and the Governor. This  
3 report shall be based on information provided by the regional task  
4 forces in an annual report to the committee which shall detail the  
5 following:

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

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

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

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

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

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

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

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

20 (B) The uses to which those funds were put, including payment  
21 of salaries and expenses, purchase of supplies, and other  
22 expenditures of funds.

23 (C) Any other relevant information requested.

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

26

27 CHAPTER 5.8. INTELLECTUAL PROPERTY PIRACY PREVENTION  
28 AND PROSECUTION ACT OF 2009

29

30 13849. (a) This act shall be known and may be cited as the  
31 Intellectual Property Piracy Prevention and Prosecution Act of  
32 2009.

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

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

38 (2) The problem of intellectual property piracy continues to  
39 grow worse. A 2005 Gallup study found that 5 percent of  
40 Americans had purchased, copied, or downloaded counterfeit music

1 in the preceding year. By 2007, this number had jumped to 9  
2 percent. The percentage of respondents that admitted buying a  
3 pirated movie rose from 3 percent in 2005, to 6 percent in 2007.  
4 At the same time, once robust DVD sales have flattened over the  
5 past few years, while CD shipments to retailers have plummeted.

6 (3) The effect of intellectual property piracy on California and  
7 its citizens is particularly dire. Intellectual property piracy  
8 adversely affects the California economy, eliminates jobs, and  
9 damages industry. According to the Business Software Alliance,  
10 in 2003, software piracy alone cost the California economy more  
11 than 13,000 jobs, over eight hundred two million dollars  
12 (\$802,000,000) in wages and salaries, over one billion dollars  
13 (\$1,000,000,000) in retail sales of business software applications,  
14 and roughly two hundred thirty-nine million dollars (\$239,000,000)  
15 in total tax losses.

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

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

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

25 (7) Finally, by safeguarding the legitimate sale of intellectual  
26 property, California will increase its tax base, and stimulate the  
27 economy.

28 (c) Funds provided under this program are intended to ensure  
29 that law enforcement and prosecutors are equipped with the  
30 necessary personnel and equipment to combat successfully  
31 intellectual property piracy, which includes piracy of movies,  
32 music, software, and video games.

33 13849.1. (a) There is hereby established in the Department of  
34 Justice, a program of financial assistance for law enforcement and  
35 district attorneys' offices, designated the Intellectual Property  
36 Piracy Prevention and Prosecution Program. Upon appropriation  
37 by the Legislature, all funds appropriated to the Department of  
38 Justice for the purposes of this chapter shall be administered and  
39 disbursed by the Attorney General in consultation with the  
40 Intellectual Property Piracy Prevention and Prosecution Advisory



1 Committee as established in Section ~~13849.3~~ and shall, to the  
2 extent feasible, be coordinated with funds derived pursuant to  
3 Section ~~13849.3~~ and private grants or private donations that are  
4 made available for these purposes. *13849.2*.

5 (b) All funds designated for use for purposes of this chapter  
6 shall be deposited in the Intellectual Property Piracy Prevention  
7 and Prosecution Fund, which is hereby established. The fund shall  
8 be under the direction and control of the office of the Attorney  
9 General. ~~Notwithstanding Section 13340 of the Government Code,~~  
10 ~~moneys in the fund are hereby continuously appropriated for the~~  
11 ~~purposes specified in this chapter. The fund may also accept private~~  
12 ~~donations.~~

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

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

18 (e) Grant money shall be used exclusively to combat intellectual  
19 property piracy within the state. Grants shall be made on an annual  
20 basis, and may not be used to pay existing staff, absent  
21 extraordinary circumstances and approval by the Attorney General.  
22 Grant recipients may receive funding for no more than three years  
23 without submitting another grant application. Grants shall only be  
24 made to applicants with an existing budget dedicated to fighting  
25 intellectual property piracy.

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

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

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

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

36 (4) If the grant funds are used for the purpose of investigation,  
37 litigation, or prosecution, any remedy, settlement, judgment, or  
38 restitution award shall provide for full reimbursement to the  
39 Intellectual Property Piracy Protection and Prosecution Fund of  
40 all grant funds used for that investigation, litigation, or prosecution.

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

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

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

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

18 (9) If grant funds are used for the production of any materials,  
 19 the recipient shall permit the Attorney General’s office and the  
 20 advisory committee to use and distribute those materials without  
 21 restriction, for their intended purposes.

22 (10) The advisory committee is authorized to audit, review, and  
 23 inspect the recipient’s activities, books, documents, papers, and  
 24 records during the project and thereafter for three years following  
 25 the final allocation of funds.

26 13849.2. (a) The Intellectual Property Piracy Prevention and  
 27 Prosecution Advisory Committee is hereby established for the  
 28 purpose of formulating a comprehensive written strategy for  
 29 addressing intellectual property piracy prevention and prosecution  
 30 throughout the state, and to advise the Attorney General on the  
 31 appropriate disbursement of funds to local law enforcement  
 32 agencies and district attorneys’ offices.

33 (b) In formulating that strategy, the committee shall identify  
 34 various priorities for law enforcement attention regarding the  
 35 following:

36 (1) The apprehension and prosecution of criminal organizations,  
 37 networks, and groups of individuals engaged in the theft of,  
 38 counterfeiting of, or unauthorized distribution, sale, or reproduction  
 39 of, the following types of intellectual property:

40 (A) Movies.

1 (B) Music.

2 (C) Computer software.

3 (D) Video games.

4 (2) The investigation and prosecution of violations of criminal  
5 and civil provisions of law, including, but not limited to, Sections  
6 653h, 653s, and 653w.

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

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

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

18 (2) At least one representative with demonstrable knowledge  
19 of the movie industry.

20 (3) At least one representative with demonstrable knowledge  
21 of the music industry.

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

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

26 (6) At least one representative with experience in law  
27 enforcement, specifically relating to intellectual property piracy  
28 offenses.

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

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

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

35 (2) The proposal's specificity, including whether the proposal  
36 identifies anticipated costs, along with materials and personnel to  
37 be used.

38 (3) The anticipated public benefit.

39 (4) The ability of the advisory committee to audit the use of the  
40 funds.

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

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

5 ~~13849.3. On July 1, 2010, and every July 1 thereafter, the~~  
6 ~~Legislature hereby appropriates from the General Fund to the~~  
7 ~~Intellectual Property Piracy Prevention and Prosecution Fund a~~  
8 ~~sum sufficient to bring the balance in the Intellectual Property~~  
9 ~~Piracy Prevention and Prosecution Fund to fifty million dollars~~  
10 ~~(\$50,000,000). In no event shall an annual appropriation from the~~  
11 ~~General Fund be made if the fund has a balance of fifty million~~  
12 ~~dollars (\$50,000,000) or more.~~

13 SEC. 4. This act shall become operative only if upon enactment  
14 of Assembly Bill 711 of the 2009–10 Regular Session is enacted.  
15 *an appropriation is provided for its operation.*

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

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