



Bureau of Justice Statistics Special Report

Federal Justice Statistics Program

October 2004, NCJ 205800

Intellectual Property Theft, 2002

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Intellectual property-related (IP) cases are handled as both civil and criminal matters in Federal court. During 2002, 134 defendants were sentenced for IP infringement offenses under the U.S. Sentencing Guidelines with more than half convicted of stealing IP worth over \$70,000.¹ Also in 2002, 8,254 civil cases related to intellectual property theft were filed in U.S. district courts (up 20% from 1994).

Suspects with copyright violation as the lead charge comprised more than half (52%) of criminal IP referrals to U.S. attorneys in 2002; 25% were referred with trademark offenses; and 22%, with trade secret offenses. Eighty-eight percent of defendants adjudicated with IP theft as the most serious terminating offense in 2002 were convicted.

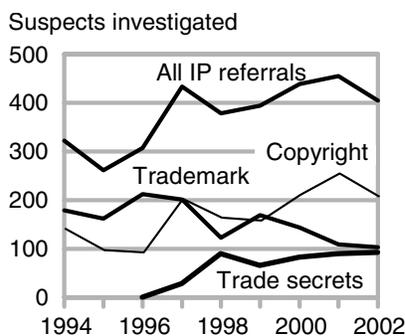
Forty-two percent of the 8,254 civil IP complaints filed in U.S. district court during 2002 were trademark suits; 33% were patent-related; and 25% were for copyright infringement. The U.S. Government was plaintiff or defendant in 32 civil cases filed in U.S. district court during 2002 for patent (20) and trademark (12) complaints.

Criminal IP offenses include the trafficking of goods with counterfeit trademarks or brands (such as clothing and consumer electronics), software piracy, the distribution of bootleg musical recordings and movies, selling

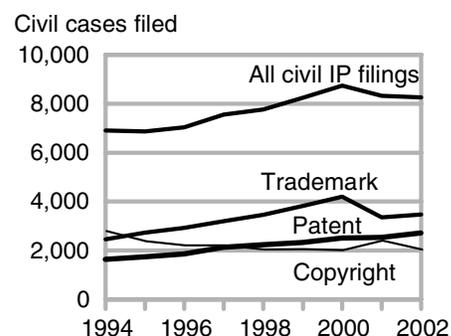
¹Defendants sentenced under copyright/trademark infringement (§2B5.3) as primary guideline.

Highlights

Criminal matters referred to U.S. attorneys with an intellectual property (IP) offense, 1994-2002



Civil intellectual property suits filed in U.S. district courts, 1994-2002



Criminal enforcement

- The number of suspects referred to U.S. attorneys with an IP theft-related lead charge increased 26% from 1994 to 2002. The number of defendants convicted in U.S. district court with an IP offense increased 51% over this same period (89 in 1994 to 134 in 2002).

- During 2002, 88% of defendants with an IP offense as their most serious offense were convicted. Less than half (43%) of those convicted received prison time. The median prison term imposed was 15 months.

- More than half of defendants sentenced for copyright/trademark infringement had stolen IP worth over \$70,000. One in three defendants received a fine as part of their sentence (median \$2,000).

Civil litigation

- From 1994 to 2002 the number of cases in which plaintiffs sought civil remedies related to patent, trademark, and copyright infringement increased 20% to 8,254. The growth was due largely to increases in patent and trademark cases filed between private parties.

- Less than 2% of the 7,445 civil IP disputes disposed in 2002 were resolved by a trial verdict (140).

- 83 of the 140 plaintiffs in IP cases disposed of by a trial verdict won, and of these 83, 53 received a monetary settlement. The median award amount in 2002 was \$965,000. The median awards by nature of suit were: \$84,500 for trademark, \$159,000 for copyright, and \$2.3 million for patent suits.

Protecting intellectual property

Intellectual property (IP) rights are rooted in copyright and patent protections in the U.S. Constitution.¹ As intellectual property grew more important in the U.S. economy, making it an attractive target for individual and organized criminals, Federal lawmakers codified IP protections.

Federal legislation targets the use of the Internet and other communication devices used in reproducing/distributing IP material and the importation of counterfeit merchandise. Congress strengthened civil penalties (the primary remedy for IP offenses/disputes) and established new criminal statutes providing penalties that include imprisonment and fines tied to the estimated value of infringed goods.

Trademark

The Lanham Act of 1946 codified civil law into a national system of trademark protections.² The act provides for the registration and enforcement of trademarks and prohibits counterfeit merchandise from being imported into the U.S.³

The Trademark Counterfeiting Act of 1984 made trafficking in goods and services using a counterfeit trademark a felony (18 U.S.C. § 2320) and strengthened civil remedies to allow for statutory and treble damages and attorney fees. It also permitted the destruction of articles bearing counterfeit marks.⁴

Trade secrets

The Economic Espionage Act (EAA) of 1996 created the first criminal statutes specifically aimed at the theft of trade secrets. Two crimes were codified including: “economic espionage” (18 U.S.C. § 1831) prohibiting theft of valued, proprietary information for the benefit of a foreign government and “theft of trade secrets” (18 U.S.C. § 1832) which more generally includes offenses involving the conversion

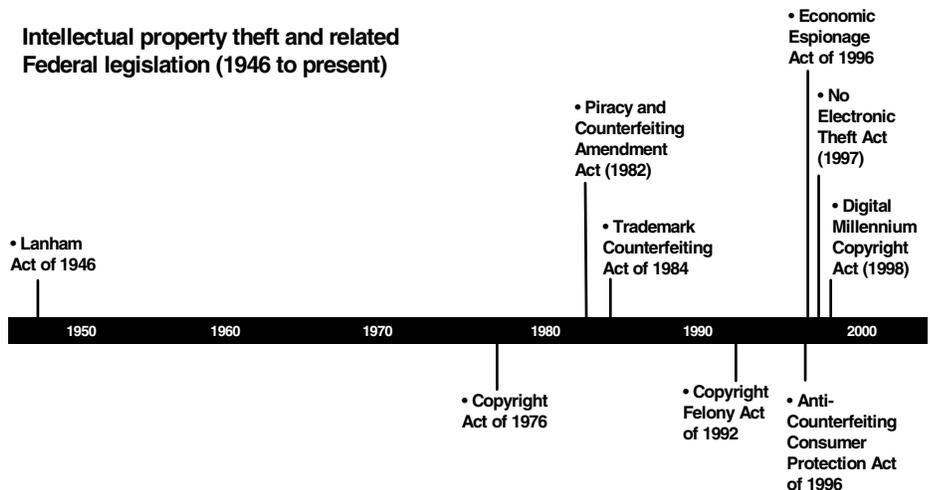
¹Article I, Sec. 8, cl. 8.

²15 U.S.C. § 1051-1127.

³19 C.F.R. Part 133 (1995).

⁴Pub. L. No. 98-473, II § 1502(a), 98 Stat. 2178 (1984).

Intellectual property theft and related Federal legislation (1946 to present)



of a trade secret for economic benefit, whether foreign or domestic, a company or an individual.⁵

The act also authorized the Attorney General to enforce civil actions (18 U.S.C. § 1834) and ensure forfeiture of property used in the offense.

Copyright

The first criminal provision in copyright laws, passed in 1897, made it a misdemeanor to perform dramas or music willfully and for profit without copyright owner's permission.⁶ **The Copyright Act of 1976** provided the basic framework for today's copyright laws. It also made infringement (for purposes of commercial advantage or financial gain) a misdemeanor offense and stiffened penalties for repeat offenders. The act created Federal preemption of copyright criminal remedies (eliminating most recourse to State criminal laws).⁷ In 1982 Congress passed **The Piracy and Counterfeiting Amendments Act**, making mass infringement of movies and records a felony.⁸ **The Copyright Felony Act of 1992** targeted the mass reproduction of computer

⁵Pub. L. No. 104-294, 110 Stat. 3488.

⁶The Act of January 6, 1897 (54th Congress, 2d Session, 29 Stat. 481).

⁷Pub. L. No. 94-553, 101, 90 Stat. 2451, 2586; 17 U.S.C. § 506(a).

⁸Pub. L. No. 97-180, 96 Stat. 91, 92; 18 U.S.C. § 2319(b).

software and made copyright infringement involving 10 or more copies (value over \$2,500) a felony.⁹ The unauthorized recording of live musical recordings or “bootlegging” was made criminal in 1994 (18 U.S.C. § 2319A). **The Anti-Counterfeiting Consumer Protection Act of 1996** made trademark and copyright counterfeiting predicate offenses under the Racketeering Influenced and Corrupt Organization (RICO) statutes (18 U.S.C. §§ 1961-1968).¹⁰

More recently, the **No Electronic Theft (NET) Act** made distributing copyrighted materials (that is, over the Internet) a Federal crime (total retail value of \$1,000).¹¹ Further, the NET Act spurred changes to the U.S. Sentencing Guidelines, stiffening sanctions for IP theft offenders.¹² The **Digital Millennium Copyright Act (DMCA)**, enacted in 1998, established criminal penalties for circumventing copyright protection systems.¹³

⁹Pub. L. No. 102-561, 106 Stat. 4233; 18 U.S.C. § 2319(b).

¹⁰Pub. L. No. 104-153, 110 Stat. 1386.

¹¹Pub. L. No. 105-147, 111 Stat. 2678; 17 U.S.C. § 506(a).

¹²U.S. Sentencing Commission, USSG Appendix C., Amendment 590, May 1, 2000, promulgated in response to Pub. L. 105-147. Sec. 2(g).

¹³Pub. L. No. 105-304, 112 Stat. 2860; 17 U.S.C. § 506(a).

company trade secrets, and derivative copyright violations of intercepting cable/satellite broadcasts (for statutes, *Appendix table*, page 9). Recent Federal legislation prohibits use of the Internet or other communication technology to distribute pirated intellectual property. Recent laws have targeted counterfeit manufacturing

operations, both domestic and international. This report uses data from the Federal Justice Statistics Program (FJSP) and other sources to describe the enforcement of intellectual property rights in the Federal criminal and civil justice systems including private civil remedies.

Criminal enforcement

From 1994 to 2002, 3,395 suspects were referred to U.S. attorneys for an intellectual property offense as the lead charge. This is under 1% of the more than 1 million total Federal suspects referred to U.S. attorneys over the 9-year period. The number of suspects

In 2002 U.S. Customs and Border Protection (CBP) reported nearly 5,800 seizures of IP worth over \$99 million

U.S. Customs and Border Protection (CBP) seizes illegal intellectual property at 317 U.S. ports of entry.* Ports of entry are locales designated for the movement of merchandise and people in and out of the country. Customs has the authority to determine trademark and copyright violations, to search and seize property, and to arrest suspects. (See the Tariff Act.)

The number of Customs' seizures increased 177% from 2,091 in 1995 to

*The Homeland Security Act of 2002 (P.L. 107-296) created the Bureau of Customs and Border Protection (CBP) by merging most of U.S. Customs with immigration inspectors from the former Immigration and Naturalization Service, the Border Patrol, and agricultural border inspectors from the Department of Agriculture's Animal and Plant Health Inspection Service. The CBP took effect on March 1, 2003, under the newly created Department of Homeland Security (DHS).

5,793 in 2002 (not shown in table). In 2002 counterfeit cigarettes were 38% of all CPB seizures, followed by media (movies, software, and music) at 29%, and watches, consumer electronics, apparel, and handbags at 21%. Among exporting countries of origin, China

accounted for a quarter of all seizures and half of the total value seized in 2002. Cigarettes made up 75% of the seizures from China. Taiwanese IP comprised less than 2% of seizures and 27% of the total value (media being 88% of seized material).

Table 1. U.S. Immigration and Customs Enforcement seizures and U.S. trade imports, by country of origin/export, 2002

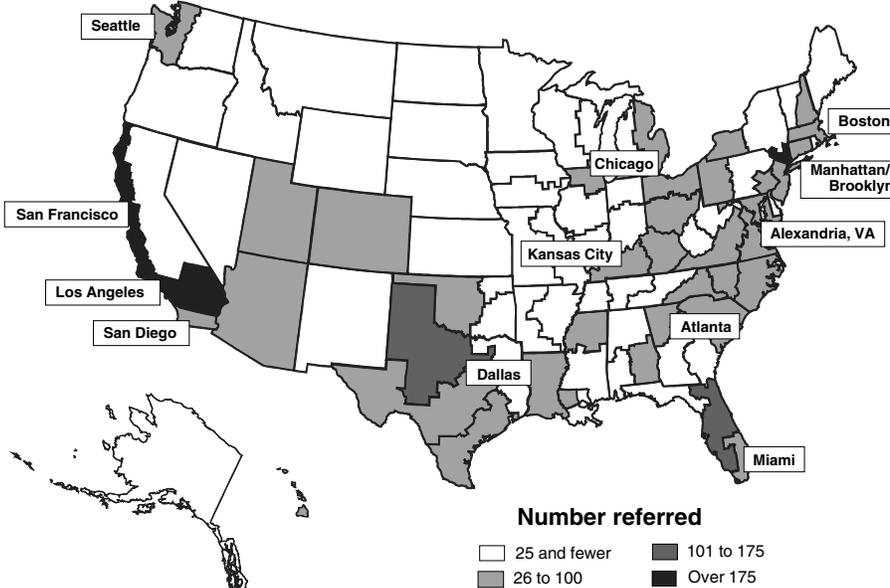
Country of origin/export	Seizures of intellectual property ^a			General U.S. imports (\$ millions) ^b	Value seized per \$1 million in imports ^c	Primary product seized (% of property value)
	Total number of seizures	Domestic value (\$ millions)	Percent of total value seized			
Total	5,793	\$99	100%	\$1,164,000	\$85	Cigarettes (38%)
China	1,488	49	49.1	125,190	388	Cigarettes (75%)
Taiwan	96	27	26.8	32,150	824	Media (88%)
Hong Kong	819	4	4.0	9,330	429	Watches/parts (30%)
Pakistan	35	2	2.4	2,310	1,041	Apparel (62%)
Korea	312	2	1.8	35,570	51	Electronics (34%)
All other	3,043	16	16.0	1,038,810	15	--

^aU.S. Immigration and Customs Enforcement Statistics, Department of Homeland Security <[http://www/customs/ustreas.gov](http://www.customs/ustreas.gov)>.

^bU.S. Census Bureau, Foreign Trade Division, Data Dissemination Branch, Washington D.C.

^cComputed as: (domestic value of seized goods/value of general imports) x 1 million.

Criminal matters referred to U.S. attorneys with intellectual property theft as most serious charge, by Federal judicial district, 1994-2002



Source: Executive Office for the U.S. Attorneys, central system file

Figure 1

Computer Hacking and Intellectual Property (CHIP) prosecution units

By fiscal year-end 2002, the Attorney General had designated Federal CHIP prosecution units in 13 U.S. cities. CHIP units specialize in the enforcement of a wide range of intellectual property theft including copyright and trademark violations, theft of computer components, theft of trade secrets and economic espionage. They also specialize in prosecuting computer hacking, fraud, and other Internet crimes. Cities were selected based on concentrations of high tech industries and other likely targets of IP theft or computer crimes.

The CHIP units work with the FBI and other investigatory agencies to foster relationships with the technology community for enforcement efforts. The units also train members of Federal, State, and local law enforcement agencies in detection of cybercrime and intellectual property theft.

Source: Computer Crime and Intellectual Property Section (CCIPS), U.S. Department of Justice

investigated for an intellectual property offense increased 26% from 322 in 1994 to 405 in 2002 (peaking in 2001 at 455: *Highlights* figure). The number of suspects in matters referred to U.S. attorneys for copyright offenses increased 47% (from 143 in 1994 to

210 in 2002), surpassing trademark offenses, which decreased 42% (179 in 1994 to 103 in 2002). Following passage of the Economic Espionage Act of 1996, the number of suspects referred for trade secret offenses

increased more than threefold from 28 in 1997 to 92 in 2002.

The Computer Crime and Intellectual Property Section (CCIPS) in the Criminal Division of Justice oversees the Federal prosecution of IP theft and

Commercial suspects of IP theft In 2002 businesses were 9% of suspects (37) referred to U.S. attorneys for an IP offense. During 1994 businesses comprised 12% of the suspects referred to U.S. attorneys with IP theft as lead charge. As IP theft referrals increased over 9 years, the number of organizational suspects remained about the same (38 in 1994; 37 in 2002). Three organizations were adjudicated for an IP offense in 2002 (one for a copyright offense and two for trademark offenses), and two were convicted (one organization received a 12-month term of supervision and the other, a suspended sentence).

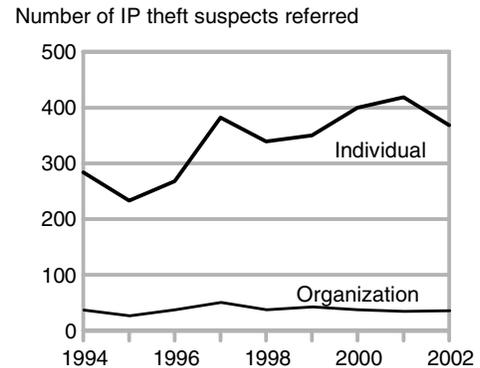
Table 2. Matters referred to U.S. attorneys with IP theft as lead charge, by type of suspect and offense, 2002

Lead charge	Total	Type of suspect	
		Individual	Organization
		Percent	Percent
Total	405	90.9%	9.1%
Copyright	210	92.3	7.7
Copyright infringement ^a	138	92.0	8.0
Counterfeiting labels of copyrighted items ^b	13	76.9	23.1
Bootlegging musical performances ^c	5	100.0	--
Digital Millennium Copyright Act ^d	5	100.0	--
Cable or satellite television piracy ^e	49	95.9	4.1
Trademark			
Trafficking in counterfeit goods ^f	103	88.4	11.6
Theft of trade secrets ^g	92	90.2	9.8

--No cases of this type occurred in the data. ^dTitle 17 U.S.C. §§ 1201-1205.
^aTitle 17 U.S.C. § 506 & 18 USC § 2319. ^eTitle 47 U.S.C. §§ 553 & 605.
^bTitle 18 U.S.C. § 2318. ^fTitle 18 U.S.C. § 2320.
^cTitle 18 U.S.C. § 2319A. ^gTitle 18 U.S.C. §§ 1831-1832.

Data source: Executive Office for the U.S. Attorneys, central system file.

Commercial suspects in matters referred to U.S. attorneys with IP theft as lead charge, 1994-2002



Source: Executive Office for the U.S. Attorneys, central system file.

Figure 2

advises on policies related to infrastructure protection and global IP theft enforcement. CCIPS also supports the CHIP program (described on page 3, with figure 1).²

In 2002 more than 15 Federal, State, and local agencies provided referrals to U.S. attorneys for IP theft. The majority were from agencies of Treasury and Justice. The FBI, with primary authority to investigate IP theft, referred 63% of suspects to U.S. attorneys, followed by the U.S. Customs Service (23%) (USCS). Following the Homeland Security Act of 2002, the USCS is made up of the CBP, which monitors the movement of merchandise and people into and out of the country (text box on page 3), and the U.S. Immigration and Customs Enforcement (ICE), which conducts intelligence and investigations pertaining to IP smuggling. Various agencies made up the remaining 14% of referrals in 2002 (including the Secret Service and the U.S. Postal Service).

²The U.S. Attorney General announced the creation of the *Intellectual Property Task Force* in March 2004 to strengthen IP theft enforcement. The task force focuses attention on countering international piracy and counterfeiting by organized crime.

From 1994 to 2002, 32% of IP matters were referred from seven Federal judicial districts (figure 1). These districts were the Central and Northern Districts of California (7% and 6%, respectively), the Southern and Eastern Districts of New York (5% and 3%, respectively), the Middle District of Florida (5%), and the Northern and Southern Districts of Texas (3% each).

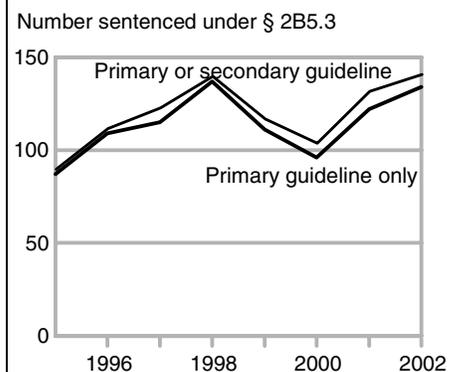
Matters prosecuted

The number of suspects prosecuted for IP theft by U.S. attorneys increased 41% from 129 in 1994 to 182 in 2002. In 2002, 48% of 383 suspects in matters concluded with an IP theft offense as lead charge were prosecuted in U.S. district courts — a slightly greater share than in 1994 (46%). Suspects referred for copyright offenses (56%) were more likely than trademark (50%) or trade secret (22%) suspects to be prosecuted in 2002.

The most common reasons given by U.S. attorneys for declining to prosecute in 2002 were weak/insufficient admissible evidence (20%), agency request (17%), lack of evidence of criminal intent (12%), and civil/administrative action/prosecution by other

authorities (11%). Twenty-three suspects in IP matters concluded in 2002 were organizational defendants (6%); three were prosecuted in U.S. district courts (see text box above).

Defendants sentenced in U.S. district courts for IP theft offense, 1995-2002



Source: U.S. Sentencing Commission, monitoring file

Note: "Primary" guideline includes defendants sentenced under §2B5.3 for which copyright/trademark infringement convictions yielded the greatest sentence. The §2B5.3 guideline does not include economic espionage offenses or theft of trade secrets (18 U.S.C. §1831 & 1832 are included in the theft guideline, §2B1.1).

Figure 3

Table 3. Profile of defendants convicted of IP theft, 1998 and 2002

Characteristic	Percent of IP theft offenders	
	1998	2002
Total	100%	100%
Gender		
Male	83.2%	92.5%
Female	16.8	7.5
Race/ethnic		
White	51.5%	64.9%
Black	11.0	6.1
Hispanic	2.2	12.2
Asian	33.1	15.3
Other	2.2	1.5
Age		
Under 25 yrs	5.8%	8.2%
25-34 yrs	24.1	32.1
35-50 yrs	50.4	44.8
Over 50 yrs	19.7	14.9
Citizenship		
U.S. citizen	65.9%	78.4%
Non-U.S. citizen	34.1	21.6
Education		
Less than high school	18.3%	19.9%
High school graduate	39.7	30.5
Some college or more	42.0	49.6
Prior criminal history*		
No	75.7%	76.1%
Yes	24.3	23.9
Mode of conviction		
Guilty plea	96.4%	97.0%
Jury trial	3.6	3.0
Number of defendants	137	134

Note: Percents are calculated based on nonmissing data.

*Indicates presence of prior convictions used in computation of sentence under the Federal Sentencing Guidelines.

Source: U.S. Sentencing Commission, FY1998 and FY2002 monitoring files.

Criminal case outcomes

Eighty-eight percent of criminal defendants with an IP offense as their most serious offense at case conclusion were convicted in 2002. This is comparable to the overall conviction rate of 89% for the 80,000 criminal defendants adjudicated in 2002. Ninety-three percent of copyright defendants, 85% of adjudicated trademark offenders, and 75% of trade secret offenders were convicted in 2002 (not shown in table).

During 2002, 72% of IP theft offenses were disposed within 1 year (time from case filing to disposition). The mean for all IP offenses was 10.6 months (not shown in table).

Table 4. Sentencing IP theft offenders under the U.S. Sentencing Guidelines, 1998 and 2002

Characteristic	IP theft offenders sentenced under U.S. Sentencing Guidelines			
	1998		2002 ^a	
	Number	Percent	Number	Percent
Total	137	100%	134	100%
Sentencing range				
Sentenced within range	99	74.4%	72	58.5%
Guideline minimum	83	62.4	57	46.3
Lower and upper range	11	8.3	11	8.9
Guideline maximum	1	0.8	2	1.6
Other ^b	4	3.0	2	1.6
Downward departure	6	4.5	13	10.6
Substantial assistance	27	20.3	38	30.9
Upward departure	1	0.8	0	--
Sentence imposed				
Any prison	46	34.1%	58	43.3%
Probation only	57	42.2	39	29.1
Probation with confinement	32	23.7	36	26.9
Fine only	0	--	1	0.7

Note: Defendants sentenced with §2B5.3 as the primary sentencing guideline.

Percents are calculated based on nonmissing data.

-- No cases of this type occurred in the data.

^aData in this table reflect defendants *sentenced* in fiscal year 2002 and therefore aggregate defendants for whom differing guideline amendments may have applied. The 2002 cohort reflects defendants sentenced following a period of significant change in the guidelines (that is, in 2000 the base offense level was increased from 6 to 8; the definition of loss was changed from 'value of infringing items' to 'infringement amount;' and, 3 new offense-specific characteristics were added to the guideline). Appendix table 1 describes the 2002 cohort by amendment year.

^bMissing or indeterminate.

Source: U.S. Sentencing Commission, FY1998 and FY2002 monitoring files.

IP defendants sentenced under the U.S. Sentencing Guidelines

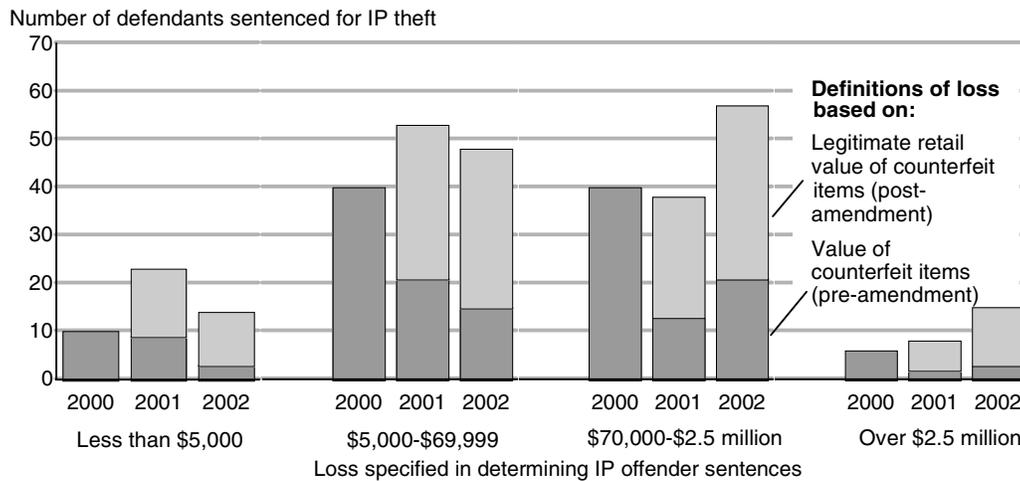
The Sentencing Reform Act of 1984 eliminated parole, restricted *good time* that could be earned, and authorized the U.S. Sentencing Commission to create guidelines that consider a broad variety of factors. The guidelines take into account offense-specific characteristics which are scored and used to determine sentencing ranges.

The number of defendants sentenced for IP theft (as primary guideline) increased 54% from 1995-2002 (87 in 1995 to 134 in 2002) peaking at 137 in 1998. During 2002, 141 defendants were sentenced for IP theft as a primary or secondary guideline. The bulk (134 or 95%) of defendants convicted of IP theft in 2002 were sentenced with IP theft as the primary guideline (figure 3). In 2002 IP theft offenders comprised less than 1% of the 64,366 defendants sentenced under the Sentencing Reform Act of 1984.

During 2002 sentenced defendants were predominantly male (93%), white (65%) or Asian (15%), 35 or older (60%), U.S. citizens (78%), and college educated (50% with some college or a degree). Three-fourths of defendants did not have prior convictions used in determining sentence. Relatively more males, whites, persons under age 35, and persons with some college (or graduate) were convicted of IP offenses in 2002 than in 1998. A similar percentage of IP defendants convicted in 2002 pleaded guilty (97%) as in 1998 (96% pleaded guilty).

In response to the NET Act of 1997, the USSC modified the IP theft guidelines (effective May 1, 2000). The USSC increased the base offense score for IP theft from 6 to 8, added three offense-specific characteristics, and changed the definition of value of infringed IP from being based on the value of counterfeit goods to being based on the legitimate retail value of infringed items. For example, prior to the 2000 amendment, if an offender sold 10 fake name brand watches at

Loss amounts corresponding to IP convictions before and after the 2000 emergency guideline amendment (§2B5.3) changed the definition of loss



Source: U.S. Sentencing Commission, FY2000, FY2001, and FY2002 monitoring files.

Figure 4

\$35 each, when the retail value of a legitimate watch was \$1,000, the loss calculation would be \$350 ('value of infringing items'). Under the post-2000 guidelines, the total loss calculation would be \$10,000 (based on the retail value of legitimate watches or 'infringement amount').

During 2002 more than half of IP theft defendants were convicted with an infringement value of over \$70,000. Given the change in the definition of IP loss effective in 2000, the loss value for most IP defendants sentenced in 2002 was calculated as the legitimate retail value of infringed goods (figure 4).³

³In 2001 USSC also amended the IP theft guidelines (§2B5.3) to include a new loss table that associates increased offense levels with most loss amount categories. The combined effect of this amendment and the new loss definition has increased the severity of sanctions for IP theft.

During 2002, 13 of the 15 defendants in cases with infringement amounts of over \$2.5 million did not have a prior criminal history (that is, prior convictions used for computation of sentence) (not shown in table).

In 2002, 10 defendants sentenced under the IP theft guideline (7.5%) received an adjustment for abuse of position of trust. Ten defendants (7.5%) received an adjustment for an organizing or managing role in the offense, down slightly from 11% in 1998. Six percent of defendants received a mitigating adjustment for their minimal/minor participation in the offense (down slightly from 9.5% in 1998). Almost all IP defendants sentenced in 1998 (93%) and 2002 (96%) accepted responsibility for their crime.

Chapter 3 adjustments	Percent of defendants sentenced under IP guidelines*	
	1998	2002
Accepted responsibility	92.7%	95.5%
Abused position of trust	1.0	7.5
Manager/leader organizer	11.0	7.5
Minimal/minor role in offense	9.5	6.0
Number of defendants	137	134

*Copyright/trademark infringement as primary guideline used at sentencing (§3B5.3).

Forty-one (46%) of the 92 defendants sentenced under post-May 2000 amendments received an aggravated adjustment to their sentence for manufacturing, importing, or uploading infringing items to the Internet (for example, causing goods to enter stream of commerce) (not shown in table).

Table 5. Sanctions imposed for IP theft, 1998 and 2002

Sanction	1998 ^a				2002 ^b			
	Number	Percent	Median	Range	Number	Percent	Median	Range
Total*	137	100%	--	--	134	100%	--	--
Prison ^a	46	33.6	10.0 mos	1-30 mos	58	43.3	15.0 mos	1-46 mos
Probation	89	65.0	36.0 mos	6-60 mos	76	56.7	36.0 mos	12-60 mos
Fine	65	47.4	\$2,000	\$250-\$15,000	47	35.1	\$2,000	\$200-\$50,000
Restitution	33	24.1	\$25,700	\$120-\$4 million	37	27.6	\$25,238	\$603-\$10 million
Community service	26	19.0	100 hrs	20-300 hrs	33	24.6	200 hrs	40-500 hrs
Home detention	40	29.2	6.0 mos	1-9 mos	44	32.8	6.0 mos	2-14 mos

Note: Defendants were sentenced with copyright/trademark infringement as the primary sentencing guideline.

*Detail will not sum to total as defendant could be sentenced to more than one sanction.

^aCalculation of 1998 medians excludes 4 defendants with a suspended prison sentence, 2 with missing or indeterminate restitution amounts, 4 missing amounts of community service imposed, and 6 defendants missing amounts of home detention ordered.

^bCalculation of 2002 median excludes 4 defendants who received a suspended prison sentence.

Source: U.S. Sentencing Commission, FY1998 and FY2002 monitoring files.

Trademark, copyright, and patent protections

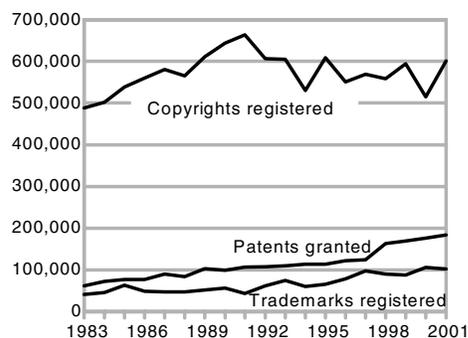
Trademarks are brand names distinguishing manufactured goods. Registration with the U.S. Patents and Trademark Office establishes Federal jurisdiction in a criminal prosecution. From 1983 to 2001 registrations increased 148% (41,200 in 1983 to 102,300 in 2001).

Copyright registration establishes ownership in criminal and civil infringement deliberations. From 1983 to 2001, the number of registrations increased from 1983 to a peak of 663,700 in 1991 and then decreased to 601,700 in 2001. From 1990 to 2002, copyright registrations increased for monographs (including computer software and machine readable works), decreased for serials and musical works (including dramatic works, accompanying music and motion pictures), and

remained at about the same level for sound recordings and works of visual arts (including fine and graphic art and photographs). The number of patents granted increased by 197% from 62,000 in 1983 to

184,000 in 2001. Unlike trademark and copyright laws, U.S. patents are enforceable only against infringements occurring in the United States.

U.S. copyrights and trademarks registered and patents granted, 1983-2001



Sources: U.S. Patent and Trademark Office (annual reports).
U.S. Copyright Office (annual reports).

Figure 5

Most defendants were sentenced within the guideline range in 2002 (59%); 31% received a downward adjustment for providing substantial assistance to the prosecution; and 11% received a downward departure for other reasons. IP defendants were less apt to be sentenced within the guidelines in 2002 (59%)⁴ than in 1998 (72%), attributable in part to increased use of substantial assistance (20% of cases received in 1998 compared to 31% in 2002) and other downward departures (4% in 1998 compared to 11% in 2002).

Forty-three percent of defendants received some prison time in 2002, up from 34% in 1998. In 2002 a smaller share of defendants (29%) received probation only, compared to 1998 (42%), and a greater share received probation with confinement (27% in 2002 and 24% in 1998).

Of the 134 IP theft defendants sentenced in 2002, 58 (43%) received some imprisonment with a term ranging from 1 to 46 months and a median of 15 months. In 1998, 34% of defendants were sentenced to prison with a range of 1 to 30 months and median of 10 months. Fifty-seven percent received probation as some part of their sentence in 2002 and 35% of defendants received a fine in 2002

⁴See appendix table 1 for differences by the guideline amendment year applied for defendants sentenced in FY 2002.

Number of copyright, patent, and trademark civil suits in cases terminated, by Federal judicial district, 2002

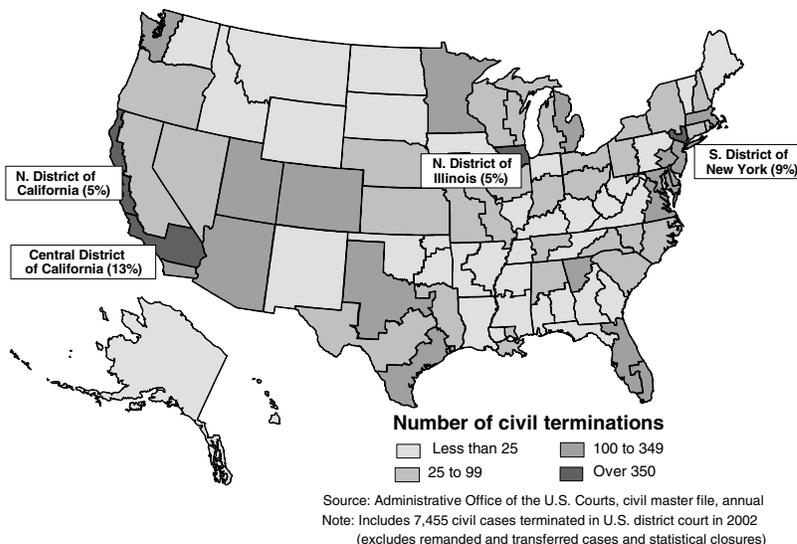


Figure 6

Table 6. Jurisdiction of civil intellectual property complaints filed in U.S. district courts, 1994-2002

Year	Civil intellectual property complaints filed in U.S. district courts								
	Overall total	As a percent of all civil cases filed	U.S. cases			Private cases (Federal question)			
			Total	Patent	Trade-mark	Total	Copyright	Patent	Trademark
1994	6,902	2.9%	30	14	16	6,872	2,828	1,603	2,441
1995	6,866	2.0	27	17	10	6,839	2,417	1,706	2,716
1996	7,028	2.6	36	28	8	6,992	2,263	1,812	2,917
1997	7,559	2.8	23	14	9	7,536	2,258	2,098	3,180
1998	7,748	3.0	41	31	10	7,707	2,082	2,187	3,438
1999	8,242	3.2	41	32	9	8,201	2,093	2,286	3,822
2000	8,738	3.4	41	24	17	8,697	2,050	2,460	4,187
2001	8,314	3.3	32	24	8	8,282	2,446	2,496	3,340
2002	8,254	3.0	32	20	12	8,222	2,084	2,680	3,458

Source: Administrative Office of the U.S. Courts, *Annual Report of the Director*, annual, Washington D.C. Special C-3 table - Copyright, Patent, and Trademark.

(compared to 47% in 1998). Restitution was ordered for 37 (28%) defendants in 2002 (amounts imposed ranged from \$600 to \$10 million with a median of \$25,200).

Civil litigation

Civil remedies can include injunctions used to halt further infringement, forfeiture, or monetary relief to include a defendant's profits, damages sustained, costs of actions, and trebled damages. In 2002 a total of 274,841 civil cases were filed in U.S. district courts (up 9.5% from 2001). The scope of civil IP cases differs from criminal as it includes patent but excludes trade secret offenses. The 8,254 IP cases filed comprised 3% of this total in 2002. IP case filings increased 20% from 1994 to 2002 (6,902 to 8,254). From 1994 to 2002 patent filings grew at the greatest rate (67%), followed by trademark filings (42%). Copyright filings decreased 26% (table 6).

Between 1994 and 2002 the number of intellectual property complaints between private parties increased 20% (from 6,872 in 1994 to 8,222 in 2002) due to increases in patent and trademark filings (up 67% and 42%, respectively). Copyright complaints decreased 26% (from 2,828 in 1994 to 2,084 in 2002).

U.S. attorneys have authority to pursue civil litigation on behalf of the United States. In 2002 the United States Government was plaintiff or defendant in 32 intellectual property complaints filed (63% patent and 37% trademark cases).

In 2002, 7,445 copyright, patent, and trademark suits were disposed of (down 5% from 2001). Federal judicial districts with the largest share of cases included the Central and Northern Districts of California (13% and 5%, respectively), the Southern District of New York (9%), and the Northern District of Illinois (5%) (figure 6).

Most civil cases were dismissed (76%), rather than disposed of by judgment (24%) (table 7). Overall, 40% were

settled, 22% were voluntarily dismissed, and 22% received judgment other than trial (such as judgment on default, consent, motion before trial, and award of arbitrator). Less than 2% of cases were disposed by trial verdict.

Among types of IP offenses, patent (3.2%) suits were more likely than copyright (1.5%) and trademark (1.2%) suits to terminate with a trial verdict. Copyright suits were slightly more likely to end in settlement (42%). Of the 140 IP cases terminated by trial verdict in U.S. district courts in 2002, patent cases comprised 52% (73); trademark cases, 28% (39); and copyright cases, 20% (28).

Of the 140 complaints terminated by trial, 61% were disposed of by jury verdict, 35% by decision of judge or magistrate, and 4% by directed verdict. Juries decided 69% of patent trials, 64% of copyright trials, and 46% of trademark trials.

During 2002 plaintiffs were winners in 59% (83) of the 140 cases terminated by trial. Of the 83 plaintiff winners, 52% (43) were patent cases, 19% (16) copyright cases, and 29% (24) trademark cases.

Of the 83 plaintiff winners, 53 (64%) received a monetary award (table 8). The median award was \$965,000 with 42% less than \$500,000, 31% between \$500,000 and \$5 million, and 27% greater than \$5 million. Monetary awards varied by type of IP suit: The median award for patent suits was \$2.3 million, followed by copyright (\$159,000) and trademark (\$84,500) suits.

The median case processing time (from case filing to disposition) for all IP theft cases terminated in 2002 was 7 months. Median case processing time varied by type of IP complaint: patent (9 months), copyright (7 months), and trademark (6 months) cases.

Table 7. Disposition of intellectual property complaints terminated in U.S. district court, 2002

Nature of suit	Total cases disposed ^a	Dismissed				Judgment				
		Total	Set-tled	Voluntary	Other ^b	Total	Trial ^c	Other ^d		
Total	7,445	5,683	76.3%	40.0%	21.8%	14.6%	1,762	23.7%	1.9%	21.8%
Copyright	1,889	1,466	77.6	42.3	19.1	16.3	423	22.4	1.5	20.9
Patent	2,283	1,774	77.7	39.7	23.2	14.9	509	22.3	3.2	19.1
Trademark	3,273	2,443	74.6	38.8	22.3	13.5	830	25.4	1.2	24.2

^aExcludes remanded and transferred cases and statistical closures.

^bIncludes dismissed for want of prosecution, lack of jurisdiction, and other.

^cIncludes jury and directed verdict judgments and bench trials.

^dIncludes judgment on default, consent, motion before trial, award of arbitrator, or by other final judgment method.

Source: Administrative Office of the U.S. Courts, civil master file.

Table 8. Plaintiff winners and awards in intellectual property complaints terminated by trial in U.S. district courts, 1994-2002

Year	Number of cases terminated by trial verdict*	Plaintiff winners							
		Total		Monetary awards			Award amount		
		percent	Total number	Percent	Number	Median	Less than \$500,000	\$500,000-\$5 million	More than \$5 million
1994	174	57.5%	100	71.0%	71	\$435,000	53.5%	22.5%	23.9%
1995	182	51.1	93	68.8	64	224,000	64.1	21.9	14.1
1996	166	52.4	87	55.2	48	157,000	70.8	14.6	14.6
1997	181	61.3	111	58.6	65	162,000	64.6	16.9	18.5
1998	180	58.9	106	66.0	70	662,500	44.3	34.3	21.4
1999	164	57.3	94	72.3	68	267,500	57.4	19.1	23.5
2000	143	62.2	89	69.7	62	193,000	62.9	19.4	17.7
2001	144	55.6	80	61.3	49	300,000	53.1	28.6	18.4
2002	140	59.3	83	63.9	53	965,000	42.3	30.8	26.9

*Number of trial cases disposed for which a judgment was known. Includes jury trials, court trials, and directed verdicts.

Source: Administrative Office of the U.S. Courts, civil master file, annual.

Selected Federal criminal intellectual property theft statutes and maximum penalties

Criminal IP theft offenses in this report are defined according to copyright, trademark, and trade secrets statutes:

Copyright

17 U.S.C. § 506 & 18 U.S.C. § 2319
Criminal infringement of a copyright. Statutory maximum penalty of 5 years in prison and \$250,000 fine and 10 years in prison for repeat copyright offenders.

18 U.S.C. § 2318
Trafficking in Counterfeit Labels for phonograph records, copies of computer programs, and similar materials. Maximum penalty of 5 years in prison and \$250,000 fine.

18 U.S.C. § 2319A
Unauthorized Fixation of and Trafficking in Sound Recordings and Music Videos of Live Musical Performances. Maximum penalty of 5 years in prison and \$250,000 fine for first time offender and 10 years in prison for repeat "bootlegging" offender.

17 U.S.C. § 1201-1205
Circumvention of copyright protection systems. Maximum penalty of 5 years in prison and \$500,000 fine for first time offender and 10 years in prison and \$1,000,000 fine for repeat offender.

47 U.S.C. § 553
Unauthorized reception of cable services. Maximum penalty of 6 months in prison and \$1,000 fine for individual use and 2 years in prison and \$50,000 fine for commercial/financial gain with first time offender and 5 years in prison and \$100,000 fine for repeat offender.

47 U.S.C. § 605
Unauthorized publication or use of communications. Maximum penalty of 6 months in prison and \$2,000 fine for individual use and 2 years in prison and \$50,000 fine for commercial/financial gain with first time offender and 5 years in prison and \$100,000 fine for repeat offender.

Trademark

18 U.S.C. § 2320
Trafficking in Counterfeit Goods of Services. Maximum penalty of 5 years in prison and 10 years in prison and \$5,000,000 fine for repeat offenders. Corporations subjects to fines up to \$15,000,000.

Trade secrets

18 U.S.C. § 1831
Economic espionage. Maximum penalty of 15 years in prison and \$500,000 fine for individual and \$10,000,000 fine for corporate offender.

18 U.S.C. § 1832
Theft of trade secrets. Maximum penalty of 10 years in prison and \$250,000 fine for individual and \$5,000,000 fine for corporate offender.

Property associated with the IP offense is subject to civil forfeiture pursuant to civil forfeiture statutes unique to IP theft and as a predicate offense to money laundering under 18 U.S.C. § 981. The CPB can seize, forfeit, and destroy imported products which violate copyright infringement (see 17 U.S.C. § 603(c)), trafficking in bootleg musical performance recordings (18 U.S.C. § 2319A(c)), and trademark infringing products (19 U.S.C. § 1526(e)). Criminal forfeiture is mandatory for trafficking in counterfeit labels (18 U.S.C. § 2318) and for copyright infringement

can include all copies of infringing articles as well as the equipment used to manufacture items after court order following judgment of conviction (see 17 U.S.C. § 506(b)).

Methodology

The source of the data used in this report is the BJS Federal Justice Statistics Program (FJSP) database. The FJSP compiles comprehensive information on individuals and corporations processed through the Federal justice system from source files

provided by the Executive Office for United States Attorneys (EOUSA), the Administrative Office of the United States Courts (AOUSC), the United States Sentencing Commission (USSC), and other agencies.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is director.

Mark Motivans wrote this report under the supervision of Steven K. Smith. The following individuals reviewed this report and provided substantive comments: Eric Klumb and Martha Stansell-Gamm of the Computer Crime and Intellectual Property Section of the Department of Justice; B. Frederick Williams of the U.S. Attorney's Office for the Western District of North Carolina; and Pragati Patrick and Maurice Galloway of the Administrative Office of the U.S. Courts. William Adams, Avi Bhati, and Christine Arriola of the Federal Justice Statistics Resource Center verified this report. Tom Hester edited the report.

October 2004, NCJ 205800 C

Civil intellectual property complaints terminated in U.S. district courts, 2002

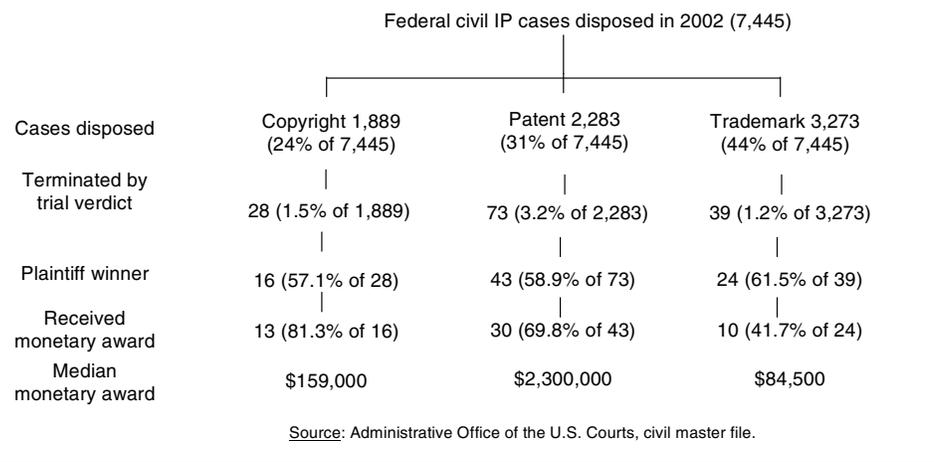


Figure 7

In this report, intellectual property offenders were defined according to selected Federal criminal statutes. (See textbox on page 9.) For suspects in matters referred to U.S. attorneys, the “lead charge” is the basis for investigation and for which at least 1 hour of investigation time was spent. As secondary charges are not available, IP theft is undercounted to the extent it is present as a secondary charge. In table 2 and figure 3, organizational suspects were manually identified in the Executive Office for the U.S. Attorneys central system file by inspecting the name field on suspects in matters referred from 1994-2002 with an IP statute as the lead charge.

AOUSC data were used to describe the distribution of IP theft defendants in cases adjudicated resulting in conviction. The “most serious terminating offense” designation is the offense that yields the maximum statutory penalty. For more information see the methodology section in the *Compendium of Federal Justice Statistics, 2002* (NCJ 205368).

The USSC provided data on IP defendants convicted and sentenced under the Sentencing Reform Act of 1984. The primary guideline (§2B5.3) was used to describe defendants as it provided the largest and most representative group of defendants sentenced for IP theft. The guideline, §2B5.3, includes each of the criminal IP theft statutes listed on page 9 with exception of theft of trade secrets (18 U.S.C. § 1831) and economic espionage (18 U.S.C. § 1832) offenses. These IP offenses are included under the general theft guideline (§2B1.1).

IP theft defendants sentenced under the guidelines were compared from 1998 and 2002 as these years represented two periods of comparable size as well as points before and after the 2000 guideline amendment to §2B5.3. As about a third of IP defendants convicted in 2002 were sentenced under pre-2000 amendments to the §2B5.3 guideline, appendix table 1 was included to show the break-out by amendment year. The cut-points used in describing loss amounts (see figure

Appendix table 1. IP theft offenders sentenced under Federal Sentencing Guidelines by amendment year of guideline applied, 2002

Characteristic	IP theft offenders sentenced in 2002 under U.S. Sentencing Guidelines which were amended —					
	Prior to May 1, 2000		May 1, 2000 – Oct. 31, 2001		On or after Nov. 1, 2001	
	Percent	Number	Percent	Number	Percent	Number
Total	100%	42	100%	75	100%	17
Sentencing range						
Sentenced within range	52.5%	21	59.7%	40	68.8%	11
Guideline minimum	76.2	16	75.0	30	100.0	11
Lower and upper range	19.0	4	17.5	7	--	0
Guideline maximum	4.8	1	2.5	1	--	0
Other ^a	--	0	5.0	2	--	0
Downward departure	12.5	5	10.5	7	6.2	1
Substantial assistance	35.0	14	29.8	20	25.0	4
Upward departure	--	0	--	0	--	0
Sentence imposed						
Any prison	23.8%	10	56.0%	42	35.3%	6
Probation only	45.2	19	18.7	14	35.3	6
Probation with confinement	31.0	13	24	18	29.4	5
Fine only	--	0	1.3	1	--	0

Note: Table reports on 134 defendants sentenced with §2B5.3 as the primary sentencing guideline. Percents were calculated based on nonmissing data.
 --No cases of this type occurred in the data.

^aMissing range information.

Source: U.S. Sentencing Commission, FY2002 monitoring data.

- In 2002, 67% of the 134 IP theft defendants sentenced under Federal sentencing guidelines were subject to two major guideline amendments which went into effect on May 1, 2000, and November 1, 2001, respectively (see footnote 3 on page 6).
- Of those sentenced under post-2000 amendments, 55% were sentenced within range of the guidelines compared to 53% of those sentenced under pre-2000 guidelines.
- 26% received a substantial assistance motion under post-2000 guidelines compared to 35% under pre-2000 guidelines.
- 52% received some prison time under post-2000 guidelines compared to 24% of defendants sentenced under pre-2000 guidelines.

4) were the categories which could be collapsed across years of data. The November 1, 2001 guideline amendment changed loss categories and this affected direct comparison with previous years.

The source of civil data presented in this report is the Federal Judicial Center’s Integrated Data Base (Civil). The database is derived from data provided by the Administrative Office of the U.S. Courts (AOUSC). The Federal intellectual property categories used in this report are based on the codes established by the Administrative Office of the United States Courts (AOUSC). For cases that involved more than one

filed action, the most definitive (as determined by the plaintiff’s attorney) is recorded, and it is this nature of suit code that was used in the analysis for this report.

For more information:
 Computer Crime and Intellectual Property Section of the Criminal Division of the Department of Justice. see <<http://www.cybercrime.gov>>.