S. HRG. 110–782

EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

WEDNESDAY, NOVEMBER 7, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:11 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy and Cornyn.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Senator Leahy has been detained, but he is en route and in the interest of time asked that we go ahead and get started. Let me start with a brief opening statement, and then I will turn it over to our distinguished colleague from Indiana, Senator Bayh.

First of all, I want to express my gratitude to Senator Leahy for convening this important hearing on protection of intellectual property. He and I are introducing a bill today that provides additional tools to the Justice Department and which strengthens our anti-piracy and anti-counterfeiting laws. Our bill reflects extensive input from the content community as well as the Department of Justice, particularly the DOJ's Task Force on Intellectual Property.

The Leahy-Cornyn Intellectual Property Enforcement Act of 2007 is another example of bipartisan cooperation on an issue of critical importance to the United States economy and U.S. consumers. This legislation builds on previous legislation Senator Leahy and I cosponsored, the Protecting American Goods and Services Act of 2005, which passed the Senate during the 109th Congress.

I am proud that the Chairman and I have been able to work together on this and other IP legislation, like the Patent Reform Act and the Vessel Hull Design Protection Act. I am also proud of the work that this Committee has done and to be able to work with another distinguished colleague on the Judiciary Committee, Senator Feinstein, on the Artists' Rights and Theft Prevention, or ART, Act. That legislation, which was signed into law by President Bush in 2005, criminalized the use of recording devices in movie theaters and provided stiff penalties for violators.

Earlier this year, Senator Feinstein and I were alerted to the fact that Canadian-sourced camcordings had jumped in 2006 by 24 per-

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cent and Canadian theaters were suspected to be the source for nearly half of all illegal camcordings. It became clear to us that changes to the U.S. law was not enough, and we wrote to Prime Minister Harper and urged the Canadian Government to consider similar legislation. We are pleased to learn that, in June, Canada took a decisive step toward combating camcording-generated piracy by enacting legislation modeled on the ART Act.

I know there is another area of bipartisan agreement, and that is the hard work that is done by our anti-counterfeiting and anti-piracy experts and enforcement personnel throughout the Federal Government. We should endeavor to give them all the tools that they need to fight this growing problem.

To its credit, the administration has devoted significant resources and personnel to fighting pirated and counterfeit goods. The Department of Justice's Task Force on Intellectual Property, represented here today by Mr. O'Connor, is an integral part of these efforts and provided significant input into the legislation that the Chairman and I have introduced today.

I think it is important to recognize a few of the recent accomplishments in this regard. For example, there has been a surge of seizures in counterfeit goods by Customs and Border Protection, nearly a doubling from 2005 to 2006. The Department of Justice has deployed more than 230 specialized intellectual property prosecutors across the country since 2004, and there has been a significant increase in the number of Federal IP prosecutions, 287 convictions in fiscal year 2007 versus 2,013 convictions in fiscal year 2006.

The President has launched the Anti-Counterfeiting Trade Agreement, which is a major new initiative with several trading partners, including the European Union and Japan. This accord aims to raise the bar on IP enforcement across the globe.

The administration has implemented, I believe, effective and coordinated strategies to address key concerns like China and Russia. This administration brought the first intellectual property cases against China in the WTO and is leading the effort to improve intellectual property enforcement in Russia prior to that Nation joining the WTO. These are significant developments, and there is much more to be done. The FBI estimates that counterfeiting costs companies in the United States somewhere on the order of $250 billion a year. And we must confront the fact that profits from counterfeiting and piracy wind up in the hands of those who may wish America harm.

We know, for example, that confiscated al Qaeda training manuals have recommended the sale of counterfeit goods as a revenue stream for its operatives. This disturbing fact alone should motivate our work to combat counterfeiting and piracy.

When the Founding Fathers put the protection of intellectual property in the Constitution, they recognized the unique and unlimited creativity of the American people and the impact that American innovators would have on the world in the areas of art and technology. It is our obligation to protect those innovations as well as American consumers, and I look forward to learning here today about the administration's progress and the ways that Congress can continue to provide the necessary tools.

Finally, again, I want to welcome our distinguished colleague, Senator Bayh, who has contributed with his own intellectual property legislation, along with Senator Voinovich, which I look forward to learning more about this afternoon.

Senator Bayh, let me turn it over to you.

STATEMENT OF HON. EVAN BAYH, A UNITED STATES SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Thank you, Senator Cornyn. I appreciate your courtesy in allowing me to offer my thoughts today about an issue that is of great importance to businesses and workers across our country, and particularly in my home State of Indiana. I hope you will relay my thanks to the Chairman. I know the Committee has many pressing matters before it, including the matter you dealt with yesterday, the next Attorney General of the United States, judicial nominations, patent protection, among other things. And so I thank you and the Chairman for making intellectual property protection a priority by having this hearing today.

On a personal note, I cannot help but come before your Committee with at least some nostalgia. My father served on this Committee for 18 years, and so I know firsthand about the good work that you do, and it is an honor to be with you again today.

Since the founding of our Republic, innovation has been a driving force behind our national prosperity. As you pointed out, Senator, the Constitution's Framers listed intellectual property protection as the eighth enumerated power of Congress in Article I, Section 8. It is listed even before governing imperatives like forming a court system.

Consistent with our historic responsibility, members of this body have over time crafted a system of intellectual property rights protection that has become a successful catalyst for economic growth and job creation. A recent study traced 30 to 40 percent of all U.S. productivity gains over the last century to economic innovation. Further studies have found that IP-intensive industries pay wages almost 50 percent higher than firms that are not IP focused.

Today however, many of our innovators are being undermined by countries that refuse to play by the rules of the global marketplace. American companies have lost almost 750,000 jobs because of intellectual property theft, making it a major impediment to employment growth.

Consumer safety concerns are also very real. Counterfeit pharmaceuticals and auto and aviation parts have caused serious injuries and death. An estimated 2 percent of the 26 million airline parts installed each year are counterfeit. Fake goods account for 10 percent of all pharmaceuticals.

Finally, as you pointed out, Senator, there is a serious national security dimension to this problem. For example, the United States seized an al Qaeda training manual in Afghanistan that recommended the sale of counterfeit goods as a source of terrorist funding. And also, at the time of the first attack on the World Trade Center, there were reports that that attack might have been funded in part by the sale of counterfeit goods. So there is a pressing national security dimension to this challenge.

Earlier this year, I joined with Senator Voinovich in introducing S. 522, the Intellectual Property Rights Enforcement Act, to improve the Government response to this problem. The administration has taken some good first steps with its STOP initiative, but we are still lacking the kind of high-level coordination and accountability needed to deal effectively with this problem.

Our legislation was crafted—welcome, Mr. Chairman, at least temporarily. That is all right.

Our legislation was crafted after extensive consultations with private industry groups to identify the flaws with our domestic and international IP enforcement regime. What emerged from these consultations was a consensus that interagency coordination is lacking in a number of important areas, and international cooperation on enforcement is weak at best.

Under our current fragmented approach, we see a stovepiping effect in which communication occurs vertically within agencies but not horizontally throughout the Government. As you know all too well, interagency coordination is critical to the success of any large-scale Federal effort.

Currently, there is no plan for how agencies should work together on this problem. Current reporting requirements to Congress merely show what agencies are doing individually, not collectively as part of the united force. There is no indication of which organizations will provide the overall framework for oversight and accountability.

Last November, the GAO released a study that echoes this critique of the shortcomings of our current approach. With the Chairman's permission, I would like to enter this GAO report into the record, along with my statement.

Chairman LEAHY. Without objection.

Senator BAYH. Thank you, Mr. Chairman.

I hope that members of the Committee will review this report and promptly move legislation to the floor, because there are many systemic problems in our Government's approach to IP rights enforcement that require immediate corrective action. Our legislation requires a permanent strategy that addresses some of these flaws. It requires U.S. Government agencies to unify as part of an intellectual property enforcement network. It would vest responsibility for IP enforcement with a Senate-confirmed Government official—the Deputy Director for Management of the OMB. The Deputy Director would be responsible for submitting to Congress a strategic plan that includes objectives for IP enforcement, means for measuring results, and how agencies are to work together.

Currently, Congress plays no meaningful role in IP enforcement other than appropriating funds and asking for briefings from administration officials. American workers, businesses, and taxpayers have the right to expect that we will take more of a leadership role in the face of a serious problem affecting our national economy and so many of our constituents.

The OMB is uniquely situated to address the flaws in our current approach. Curbing global IP theft involves criminal prosecutions, border enforcement, trade policy, and international relations. Setting priorities and budgets for such a broad multi-agency effort is outside the scope of the Department of Justice, Homeland Secu-

rity, or the U.S. Trade Representative alone. We need a stronger management presence to ensure that separate agencies are part of a single mission, thereby increasing overall efficiency and effectiveness.

Our approach would also establish an international task force of concerned countries to track and identify IP criminals. The task force would be modeled on a similar international team that fights money laundering and other black market crimes. The task force will grant membership solely to countries with adequate IP protection laws and a track record of enforcing those laws. Today, international cooperation in many organizations is hampered by the worst global actors being part of those organizations. Our legislation envisions the United States sharing information on criminal activity and even engaging in joint enforcement operations. Such a close-knit arrangement can only flourish among trusted allies.

A broad coalition of interests dissatisfied with the current approach supports our legislation. More than 500 companies, labor groups, and other organizations as diverse as the U.S. Chamber of Commerce, the AFL–CIO, the National Association of Manufacturers, and United Auto Workers have endorsed our strategy.

Mr. Chairman, time is of the essence on this issue. The STOP program expires when the President leaves office. Our legislation will ensure that robust IP protection is a permanent priority regardless of the politics of the moment.

In closing, Mr. Chairman, I would simply say this: The heart of America's competitive advantage lies in the economy of tomorrow, an economy that is being invented and discovered each and every day. Until we take more aggressive action to curtail IP theft, we will continue to be robbed of profits, jobs, and legal protection for our best ideas. A stronger and more effective approach is needed to prevent the United States from losing its most valuable asset in the global marketplace—our innovators and entrepreneurs.

Mr. Chairman, I want to take this opportunity to thank you for making this subject a priority—I know how busy the Committee is—and for your courtesy in allowing me to share my thoughts with you today.

Thank you.

Chairman LEAHY. Well, thank you, Senator Bayh. I also want to thank Senator Cornyn for stepping in. He has been a partner with me on so much of this material where we tried to demonstrate to the Senate that it is not a partisan matter. We have passed, I think, the PIRATE bill three times, John, in the Senate? And we have reintroduced it again this morning to allow the Department of Justice the authority to prosecute copyright violations and civil wrongs, and we will continue to support that.

I know you have to be at other places, Senator Bayh, so you are welcome to stay, but you are welcome to leave, too.

John, do you have anything?

Senator CORNYN. No. Thank you.

Senator BAYH. Thank you very much, Mr. Chairman.

Thank you, Senator Cornyn.

[The prepared statement of Senator Bayh appears as a submission for the record.]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. You know, I was going to say earlier that intellectual property—our copyrighted works, our trademarked goods, our patented inventions—is the engine that drives our U.S. economy. Intellectual property, I am told, accounts for around 40 percent of our Nation's exports. At a time when the dollar is sliding so precipitously against other currencies, we have to increase our exports.

We also consume it voraciously here at home. IP is the medicine that cures us, the movies that thrill us, the music that inspires us, the software that empowers us, the technology that aids us. It is everywhere in our lives, and it is very important in our economy.

Unfortunately, the piracy and counterfeiting of intellectual property is at an unprecedented high, certainly way beyond anything I saw when I first came to the Senate. Copyright infringement alone costs the U.S. economy at least $200 billion and also 750,000 jobs each year. Not only does piracy infringe these rights, but it can also endanger our health and safety when there is counterfeiting of things that we depend upon for our health or our safety—fake drugs that look just like the real thing or tainted infant formula sold to unsuspecting parents, electrical appliances that have shoddy insulation, automobile parts that fail under stress—like brakes. These kinds of goods are proliferating. They are often difficult to distinguish from the real ones.

I have worked for years to strengthen our laws and to give our law enforcement the powers they need. We passed in the last Congress the Stop Counterfeiting in Manufactured Goods Act, which expanded the prohibition on trafficking in counterfeit goods to include trafficking in labels or similar packaging with knowledge that a counterfeit mark had been applied to those goods. I have regularly authored amendments to the State Department's appropriations bill. My amendments have provided millions to the Department in order to send staff overseas specifically to combat piracy in countries that are not members of the Organization for Economic Co-Operation and Development, or OECD.

In the current Congress, there are a number of other bills along with Senator Cornyn's and my PIRATE Act. Senator Bayh introduced a bill focused on interagency coordination. Senator Biden recently introduced omnibus crime legislation that has many provisions suggested by the Department of Justice. There are bound to be more.

I worry that anything like this, if it is addressed piecemeal, could be a mistake. It is far too important to be addressed piecemeal. To have the greatest change, we have to examine enforcement efforts from the top down. So in our second panel—and I would invite you to come forward. I will first let the people who actually make this place run, the staff, put up the names.

Mr. Chris Israel is the United States Coordinator for International Intellectual Property Enforcement, serving as head of the National Intellectual Property Law Enforcement Coordination Council. Is it true that it is called NIPLECC?

Mr. ISRAEL. Yes. We did not name it, Senator.

Chairman LEAHY. I know you did not. But what it does, it includes the Departments of Commerce, Justice, State, and Homeland Security, and the U.S. Trade Representative. Before becoming the U.S. Coordinator, Mr. Israel was Deputy Chief of Staff first to Commerce Secretary Donald Evans, then to the current Commerce Secretary, Carlos Gutierrez.

Chris Moore is the Deputy Assistant Secretary of State for Trade Policy and Programs in the Bureau of Economic, Energy, and Business Affairs, and oversees the State Department's activities to strengthen intellectual property rights protection. Prior to the State Department, he served in both the Office of the U.S. Trade Representative and the Department of Commerce.

Kevin O'Connor currently serves as United States Attorney for the District of Connecticut, as Chief of Staff to the United States Attorney General, as Chairman of the Department of Justice Task Force on Intellectual Property, and was a partner before that in the law firm of Day, Berry & Howard. I believe you served in the Securities and Exchange Commission, too. Is that correct, Mr. O'Connor?

Mr. O'CONNOR. That is correct, Senator.

Chairman LEAHY. Mr. Israel, why don't we begin with you, sir.

STATEMENT OF CHRIS ISRAEL, U.S. COORDINATOR FOR INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, D.C.

Mr. ISRAEL. Thank you, Chairman Leahy. I am pleased to join you today to discuss the U.S. Government's intellectual property enforcement efforts.

As the U.S. Coordinator for International Intellectual Property Enforcement, it is the task of my office to leverage the capabilities and resources of the U.S. Government to promote effective global enforcement of intellectual property rights. Today I would like to discuss the ongoing leadership and prioritization of the Bush administration regarding IP enforcement, provide an account of some of the progress we have made, and, finally, give some insight on how we are coordinating our efforts.

The reasons for the administration's leadership on IP enforcement and for its prioritization are clear.

Few issues are as important to the current and future economic strength of the United States as our ability to create and protect intellectual property. U.S. IP industries account for over half of all U.S. exports. They represent 40 percent of our economic growth and employ 18 million Americans, who earn 40 percent more than the average U.S. wage. This growth in prosperity is put in jeopardy, however, by rampant theft of intellectual property. Quite simply, a secure and reliable environment for intellectual property is critical to the strength and continued expansion of the U.S. economy. Therefore, the protection of intellectual property is a major trade, economic, health, and safety issue for the Bush administration. We seek every opportunity at every level to engage our trading partners, strengthen our enforcement capabilities, and collaborate with industry.

As this Committee understands, the problem of global piracy and counterfeiting confronts many industries, exists in many countries,

and demands continuous attention. With finite resources and seemingly infinite concerns, how we focus our efforts is crucial. A critical element of our overall coordination is the Strategy Targeting Organized Piracy, or STOP! Initiative, launched by the administration in October of 2004. STOP is built on five key principles:

First, empowering innovators to better protect their rights at home and abroad;

Second, increasing efforts to seize counterfeit goods at our borders;

Third, pursuing criminal enterprises involved in piracy and counterfeiting;

Fourth, working closely and creatively with industry;

And, fifth, aggressively engaging our trading partners to join our effort.

STOP is a broad interagency effort led by the White House that draws upon the capabilities of the Department of Commerce, the Department of Justice, USTR, the State Department, the Department of Homeland Security, and FDA. The principles of STOP are essentially our combined action plan. They are the things that this administration is committed to expanding, coordinating, and executing in order to protect American IP and demonstrate leadership around the world.

On a number of fronts, our efforts have brought meaningful results. We have provided useful tools and information that has reached thousands of American rights holders. As you will hear from Mr. O'Connor, criminal enforcement has increased dramatically, and Justice is leading our effort to promote even stronger domestic IP laws. U.S. seizures of counterfeit goods doubled from 2005 to 2006, in total over 50,000 since 2002. Finally, we are leading an aggressive effort around the world to promote IP enforcement. We have launched a major new initiative, the Anti-Counterfeiting Trade Agreement, with the EU, Japan, Korea, Mexico, Canada, New Zealand, and Switzerland, to create a global gold standard for IP enforcement. We have also established strong IP enforcement programs with the EU, the G–8, and through the Security and Prosperity Partnership with Canada and Mexico.

To confront major concerns, we have filed the first complaint with the WTO regarding China's failure to enforce intellectual property rights and made IP enforcement a major premise for our support of Russia's accession to the WTO.

To achieve these results, we have established a permanent and comprehensive U.S. Government strategy that draws upon multiple agencies and spans the globe. We have utilized the statutory National Intellectual Property Law Enforcement Coordination Council as a cornerstone for implementing our key priorities, and we have taken steps to be more transparent and accountable, such as through our quarterly IP enforcement updates and an improved annual report to the President and Congress.

These are significant steps in a very long and difficult journey to combat global IP theft. Piracy and counterfeiting is an expanding global business led by sophisticated and organized criminals. Mr. Chairman, we are dedicated to stopping intellectual property theft and providing businesses with the tools they need to flourish in the global economy. We look forward to working with this Committee

to promote strong intellectual property rights protection for American businesses and entrepreneurs around the world.

Thank you very much, and I welcome your questions.

[The prepared statement of Mr. Israel appears as a submission for the record.]

Chairman LEAHY. Thank you very much. I think we will have each one of you testify and then ask some questions. So, Mr. Moore?

STATEMENT OF CHRIS MOORE, DEPUTY ASSISTANT SECRETARY FOR TRADE POLICY AND PROGRAMS, BUREAU OF ECONOMIC, ENERGY, AND BUSINESS AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, D.C.

Mr. MOORE. Thank you, Chairman Leahy. Thank you for this opportunity to speak today about the State Department's work to combat counterfeiting and piracy and enforce intellectual property rights around the world.

A strong intellectual property rights regime has made the United States economy one of the most innovative and competitive on Earth, and the administration is working aggressively to combat counterfeiting and piracy and to strengthen intellectual property enforcement at home and abroad using all available tools.

The United States was instrumental in building a robust worldwide legal infrastructure for innovation and creativity through the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. This administration has built on the strong legal protections in the WTO by including groundbreaking IPR provisions that improve on the TRIPS foundation in a dozen free trade agreements reached with 17 countries since 2001, and we have brought new tools and partnerships to our work in this critical area through STOP, the administration's Strategy Targeting Organized Piracy Initiative.

In close coordination, agencies across the Federal Government are successfully engaging our partners around the world to promote full implementation of the IPR protections in America's trade agreements and to strengthen laws and take other steps to improve enforcement. The State Department plays a vital role in supporting and complementing the enforcement activities of other Federal agencies with lead responsibilities in this area. Secretary Rice is a strong champion of intellectual property protection, and top Department officials regularly press their overseas counterparts to improve enforcement.

In 2005, at the request of Congress, the State Department established its first Office of International Intellectual Property Enforcement. This office is marshalling and leveraging the full range of often unique tools and resources at our disposal to achieve real results for American innovators and creative artists.

Through the State Department's network of more than 260 embassies, consulates, and missions around the world, America's Ambassadors, consul generals, and economic officers are playing a powerful role in advancing and implementing the administration's global IPR enforcement policies and activities, acting as first responders for U.S. right holders facing counterfeiting and piracy challenges abroad, engaging regularly and successfully with foreign

government officials to secure tougher enforcement, and promoting full implementation of trade agreement commitments.

Capitalizing on our central role in negotiations leading to annual G–8 leaders meetings, the State Department is leading work among the industrialized nations of the world to prioritize and build a common agenda for IPR enforcement. Through this work, G–8 leaders are giving priority to substantially reducing global trade in counterfeit and pirated goods.

Thanks to your leadership, Mr. Chairman, and to the leadership of Representative Diane Watson and others in Congress, the State Department has significantly increased the funding available for its IPR law enforcement training programs from less than $1 million in fiscal year 2003 to $3 million in fiscal year 2007, and we are working to ensure these funds are effectively managed and deployed to maximum impact around the world.

Our training programs are delivering real results. In Indonesia, for example, we support two full-time U.S. advisors who have helped the Indonesian Government launch a recent series of large-scale enforcement actions.

Finally, the State Department is utilizing its extensive global public diplomacy tools to help build public understanding of the value of IPR and public support for stronger enforcement in countries around the world.

In closing, I would like to thank you, Mr. Chairman, and the other members of this Committee for your continued leadership, focus, and engagement on this vital issue and for emphasizing the need for stronger intellectual property enforcement with foreign government officials, legislators, and media in your overseas travel. Our trading partners pay close attention to what Members of Congress say, and your actions play a big part in helping us to effectively meet the challenge of global counterfeiting and piracy.

Thank you again, Mr. Chairman, for the opportunity to testify today. I look forward to answering any questions you or other members of the Committee may have.

[The prepared statement of Mr. Moore appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Moore.

Mr. O'Connor, please go ahead. Is your microphone on?

The little red button there.

STATEMENT OF KEVIN J. O'CONNOR, UNITED STATES ATTORNEY FOR THE DISTRICT OF CONNECTICUT, AND CHAIRMAN, TASK FORCE ON INTELLECTUAL PROPERTY, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. O'CONNOR. Chairman Leahy, good afternoon, and thank you for the opportunity to discuss the Department of Justice's role in the coordinated effort to protect intellectual property rights.

Today the Department is dedicating more energy and resources than ever before to the protection of intellectual property. As part of President Bush's Strategy Targeting Organized Piracy, or the "STOP," initiative, the Department created a task force that you previously referred to on intellectual property, which conducted a thorough review of the Department's IP enforcement efforts and

implemented numerous recommendations, 31 in all, to improve those efforts.

At the core of that task force's mission is enforcement, specifically increasing our criminal prosecutions of those who violate our IP laws. We have done just that. Through the dedicated efforts of U.S. Attorney's Offices, our Criminal Division, and law enforcement across the country, the Department has convicted and sentenced 287 defendants on intellectual property charges in this past fiscal year, which is a 35-percent increase over the prior fiscal year and a 93-percent increase over fiscal year 2005.

The Department is also dedicating more prosecutors to IP crime. In 2001, the Department had one Computer Hacking and Intellectual Property Unit, otherwise known as a CHIP Unit. Today we have 25 units and over 230 prosecutors in U.S. Attorney's Offices across the country dedicated exclusively to prosecuting IP and other computer crimes. In fiscal year 2007, those CHIP units successfully convicted and sentenced 80 percent more defendants than they did last year.

Time does not allow me to cover all the prosecutions listed in my written testimony, but I would like to take a moment to highlight a recent case from the District of Connecticut, where I am proud to serve as the U.S. Attorney.

Recently, an individual by the name of Eli El was sentenced to 30 months' imprisonment for conspiracy to distribute over the Internet more than 20,000 copies of pirated software. His conviction arose from an undercover investigation targeting an underground Internet community specializing in cracking and distributing copyrighted works online.

I cite this case not only because it is from Connecticut, but also because this prosecution exemplifies the Department's strategy against the growing global threat of online software piracy. We were attacking the high end of the supply chain and prosecuting the sources and first suppliers of the pirated material so widely available online. We hope Mr. El's 30-month sentence will send the message that this type of conduct will not be tolerated.

Our enforcement strategy is not and cannot, however, be confined to our borders. Recently, in a joint investigation with the FBI, China's Ministry of Public Security arrested 25 individuals and seized more than half a billion dollars of counterfeit software and another $7 million in assets. This case, known as "Operation Summer Solstice," dismantled one of the largest international piracy syndicates. To continue to promote these types of joint international investigations, the Department established an IP Law Enforcement Coordinator for Asia. This week, a second Coordinator for Eastern Europe just began work in Bulgaria. These seasoned prosecutors with experience in IP prosecutions will coordinate our joint investigations in those parts of the world and promote training and outreach efforts with our foreign counterparts.

Just last month, with assistance from our colleagues with the State Department and the U.S. Patent and Trademark Office, we hosted the first IP Crime Enforcement Network in Bangkok. This conference brought together key law enforcement officials from 12 nations in Asia with the aim of developing an international network targeting large-scale intellectual property crimes.

While the Department is pleased with its record, more work remains. In May, the Department transmitted to Congress comprehensive legislation to provide prosecutors with additional tools to combat organized piracy and hacking networks. This legislation would strengthen sentences for repeat copyright offenders, increase the penalties for counterfeiters whose actions threaten public health and safety, and create a new crime for attempting to commit copyright infringement. I want to thank the Committee and your staffs for continuing to work with the Department toward enactment of as many of these bills' provisions as possible.

Finally, Mr. Chairman, despite the divergent roles played by many of the Government agencies involved in STOP, coordination has not been a significant problem. In fact, thanks in no small part to the leadership of my colleague Chris Israel, support and cooperation amongst the agencies involved in this effort and important endeavor has been outstanding and has produced unprecedented results.

Thank you for the opportunity to highlight this afternoon the Department's role and achievements in the coordinated U.S. Government effort to protect intellectual property rights. I am pleased to answer any questions you may have.

[The prepared statement of Mr. O'Connor appears as a submission for the record.]

Chairman LEAHY. Thank you, and I am glad to hear you speaking of the cooperation and how that works. I want to get into this a little bit.

It was interesting during the days when I was a prosecutor, and you worried about people who stuck a gun in the face of a bank teller or something like that and off you would go. And here you are talking about somebody who may be doing the stealing and could be a thousand miles away from where they stole it and be selling it thousands of miles away from there. It is an entirely different situation. And we know that the way it is going, we are always going to have more battles to fight, and we are always going to have a finite amount of resources to use.

So let me ask you this, and I will ask each of you: What pirates and counterfeiters do the most harm? And what kind of enforcement targets, assuming you could use whatever you wanted, would be best to bring them down? Mr. Israel? And I realize there are all kinds of people out there. Who causes the most harm?

Mr. ISRAEL. Well, Mr. Chairman, that is a very insightful question, obviously, and I think we are seeing—with the deployment of technology around the world, I think the Internet has become a very efficient and preferred platform for a variety of different types of IP crimes. I think you obviously see the quick-to-market type of applications when it comes to movies and music and really moving those products globally very quickly. And it has changed dramatically the entire business model of a number of industries.

One thing that is certainly alarming is the trend in the sophistication, moving upscale in terms of the sophistication of the types of products that we see—electronics, pharmaceutical products. If you look into the Customs' seizure data over the last couple of years, you see a pretty dramatic uptick in the number of seizures they are making of IT products—consumer electronics, pharma-

ceuticals. So higher value-added, more sophisticated products I think is a trend that clearly is drawing a tremendous amount of attention from the enforcement resources within the Federal Government and from industry itself.

Chairman LEAHY. And what would be the targets?

Mr. ISRAEL. The targets are clearly the products that have high brand-name recognition.

Chairman LEAHY. But would the people that we want to bring down, are they in this country? Are they outside of this country? Or both?

Mr. ISRAEL. It is going to be both. You are going to see distribution mechanisms that are set up within this country using direct mail, using a variety of different methods to get product to consumers who are demanding it. That is a piece of this we need to address, too, the demand side.

But you see a large sourcing of these products in Asia; 80 percent of the counterfeit goods coming to this country that we seize come from China. So, clearly, that is the nexus of the production for a vast majority of the counterfeit goods in the world.

Chairman LEAHY. Thank you. You know, it is interesting. We had another matter. We had people who made movies in the digital age, very easy to copy, and the man who had spent a considerable amount of his life to produce the movie "Ray" about Ray Charles. He talked about how he had mortgaged his home, had done all these other things to raise the money, and was so proud when it opened in New York. And he is walking up the street the day after it opens and admiring it on the marquee, walks around the corner and somebody is trying to sell him a counterfeit copy of "Ray."

Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. I think as we look out at this challenge globally, what we find most alarming are the examples of organized and sophisticated transnational groups that are involved in counterfeiting and piracy. Where we see organizations that are counterfeiting and pirating goods on a commercial scale, who are causing those goods to be distributed around the world, these are the companies or the organizations that tend to be one of the largest problems for us. They are the companies and the organizations that are causing significant damage to many of our small businesses. Oftentimes, our small businesses are not aware that if you have a website, you are a global company today. And so we have instances of counterfeiters and pirates in China basically looking at the product lists that they have on their website, downloading that product list, reproducing the items that are there to quite a high and sophisticated quality level, and then distributing those products in many countries around the world, undermining the market and value of—

Chairman LEAHY. Gorilla Glue.

Mr. MOORE. I am sorry?

Chairman LEAHY. Gorilla Glue is one.

Mr. MOORE. Yes, exactly. And so that is one of the key challenges that I think we see.

In terms of solutions to that, I think it underscores the need for us to continue to engage aggressively with our trading partners around the world. When you are talking about transnational coun-

terfeiting and piracy, the production of these goods in one country and the distribution through others and finding markets in still third countries, we need to be working aggressively with our partners so that—

Chairman LEAHY. Well, and in that regard, if you take China, which has been a very significant problem—it is a very significant problem in legal goods, as we have found with lead in children's toys—something that every parent or every grandparent is looking at especially as the holiday seasons are coming up. But China is a country that if they really wanted to bring a stop to that, could. I mean, you have got as controlled a distribution system and economy and law enforcement and so on there. And you have to assume that in many instances there is a blind eye being turned to this. Am I correct?

Mr. MOORE. Well, I think we have seen—

Chairman LEAHY. I do not want to get you on the carpet when you get back to the office, but isn't that a fact?

Mr. MOORE. What I think we have seen in China is certainly some will to have additional raids and crackdowns. As a result of our bilateral engagement, they have taken certain other steps that have been helpful. But I think what they are looking at, what we are looking at, is a systemic problem. It is not enough to have raids and crackdowns if that is not followed up by effective prosecution and enforcement, if it is not followed up by deterrent penalties, including criminal penalties, if the market is not open to legitimate copyrighted and trademarked items.

And so all of these things added together, I think they are looking at a systemic problem, but they are dealing with just one piece of that.

Chairman LEAHY. And when you have instances like you have a factory that is basically controlled by the military, and when pressure is brought, they will bring counterfeit goods out in the parking lot in front and run some kind of a crushing machine over it for all the cameras rolling, and out the back door there are large tractor-trailers filling up with the same product being shipped out, I think that raises a real concern.

Mr. O'Connor, your view on this?

Mr. O'CONNOR. I do not want to, Senator—

Chairman LEAHY. You are coordinating with U.S. Attorneys around the country. I mean, what pirates and counterfeiters are doing the most harm?

Mr. O'CONNOR. Well, I would agree with and echo the comments of my colleagues here today in the sense that obviously the organized criminal syndicates, whether they are the "warez scene" that we have seen in Connecticut and across the country, they probably are the biggest threat because they can do the most harm and do it most efficiently, because they are organized, they are extensive, they use the Internet to distribute stuff in seconds that would otherwise take months or years. And so they pose the biggest threat.

But I must say, in fairness to the victims of these crimes, they are probably less concerned whether it is an organized criminal syndicate or somebody sitting behind their computer by themselves. I mean, it still has affected them as any defendant would feel.

So we have to be sure to balance our efforts to go after organized criminal syndicates with also the ability to prosecute what you might call "Lone Rangers," and that is, you know, the balance we are trying to strike.

Chairman LEAHY. Well, let me just followup on that a little bit, and then I will yield to Senator Cornyn, if he is able to come back. But let me just followup a little bit on this. Let's look at it from the view of state and local law enforcement. I look at my little State of Vermont. We have only got 650,000 people, but on a per capita basis, we are the largest exporting state in the country. We have a great deal of intellectual property that is sent out, computer software and so on. I remember years ago, when he was first starting, the man who began Burton Snowboards—it is now worldwide—Jake Burton—I was getting on a plane in Chicago with him, and we were both kind of squeezed into—those of us who are large enough know how uncomfortable some of these seats are way back in steerage, and Jake and I were squished in with a third person in a row in the back, and he said, "See that guy who is going in first class?" I said, "Yes." He said, "He is a pirate." I said, "What do you mean?" He said, "We just spent a fortune designing a new boot for our snowboards. He just took it over to China. They are copying it, and they are underselling us. He gets to fly first class."

Now, Jake has done well enough that—I still ride in those seats in the back. I will wave to him as he goes up front. But you see what I am getting at.

Now, I was thinking, okay, he has got a business in Burlington, Vermont. What can the State do? I mean, how do local prosecutors or even up to the level of the Federal prosecutor within a district, or in our case the district is the whole State, what do they do? How do they go after this?

Mr. O'CONNOR. Well, I would think in most States in situations like that, they would work very closely with Federal authorities, particularly if there is an international element to the offense. You know, the State and locals generally do not have the amount of resources the Federal level does. They do not have the ability to do international or multi-State investigations.

That being said, in many States, including Connecticut, and I am sure Vermont, they are doing great work on the local level on other computer crimes, whether it is tracking child predators—so it is a question of, I think if you are a U.S. Attorney and this is a problem, you should have a very close working relationship with your State's authority or local DA and be sharing information and utilizing the laws that fit the situation best.

In some States, they may have—I doubt it as a general rule, but they may have strong IP laws, and in that case it might make sense to help out federally, but let the case be prosecuted by the State.

Chairman LEAHY. In other words, if they put together a good law, but there may be one assistant or one half of an assistant, as it sometimes is in a local prosecutor's office, if the Feds can come in and help them make the case, then prosecute it under State law.

Mr. O'CONNOR. Yes, that is what we do, whether it is Project Safe Neighborhoods, Project Safe Childhood, you can oftentimes use the Federal resources to leverage State pleas. At the end of the

day, I think we are less concerned where the person pleads guilty than that they are held accountable in some court of law.

Chairman LEAHY. Mr. Israel has the job of coordinating efforts, and notwithstanding the acronym, but what does that mean, we support each other, we complement each other, whether it is the State Department or Justice Department? Each agency seems to conduct its own training seminars on IP enforcement. Give me actual cases of how across agencies you are actually supporting each other.

Mr. ISRAEL. Sure. Thank you, Mr. Chairman. I will give you two examples that indicate a good deal of cooperation with the number of agencies, and I will leave the questions of actual tactical law enforcement engagement to Mr. O'Connor.

Just 2 weeks ago, in China, our U.S. Ambassador there, Ambassador Randt, has the sixth of his annual IP enforcement roundtables, which was a product organized by the State Department, put together in large measure with a U.S. Patent and Trademark Office IP Attache who has been posted in Beijing now for about 3 years; our U.S. Trade Representative's Office participated, as did ICE, Customs and Protection, and the Department of Justice. So we had literally every Federal agency that has a role to play in IP enforcement present at this day-long session in Beijing hosted by the Ambassador that listened for the entire day to U.S. industry and the concerns they have got and some of the specific cases that we are going to try to—

Chairman LEAHY. Well, what comes of that?

Mr. ISRAEL. We are putting together as a result of that—it essentially formulates the action strategy for the U.S. Embassy's IP enforcement efforts in Beijing for the coming year. From that will come the specific projects and the followup that they will do with our industry, and some of those things are diplomatic relationship issues with the Chinese. There are some specific law enforcement activities that will come as a result of that. So really there I think you see the coming together of just about every agency involved in China.

Chairman LEAHY. But if China just ignores you, there is not much you can do in China.

Mr. ISRAEL. We every day have to deal with the challenge of getting and sustaining the attention of the Chinese and—

Chairman LEAHY. And I do not mean that dismissively saying that. I have dealt with the Chinese. I know how difficult that is. But—

Mr. ISRAEL. We are constrained certainly by the attention and the focus of the Chinese, and we will keep trying to work on that.

A second quick example I would cite is the ACTA Agreement that Ambassador Schwab announced about 2 weeks ago. That is really the result of about a year's worth of discussion and dialogue with all the member countries that are involved in that, and that was truly an interagency, U.S. interagency process. The things we are talking about doing with these countries go well beyond just trade enforcement and operating under the WTO. They involve law enforcement cooperation, establishing networks of law enforcement officials across all these countries to work with each other, share information, work on operations that could lead to law enforcement

activities. Customs is involved in that. Our Patent and Trademark Office is involved in that effort, as is the State Department. So that really was about a year-long process that involved a number of agencies and culminated in what we think is a pretty cutting-edge agreement with some very relevant nations that the Ambassador announced 2 weeks ago.

Chairman LEAHY. Thank you.

Mr. Moore, would you like to add anything to that?

Mr. MOORE. Sure. I will just give you a couple of examples from the different areas that I mentioned in my prepared testimony.

Chris has already mentioned the ways that our embassies can be very supportive, talking about the Ambassador's roundtable in Beijing. Our embassies around the world play a vital role in supporting the enforcement actions and monitoring of our trade agreements that are done by the Commerce Department and by USTR, helping to advise in those issues, helping to conduct on the ground what is needed to support the activities here in Washington.

Through our training programs, my colleague from the Department of Justice talked about some work that we are doing in Eastern Europe, through the intellectual property law enforcement. Oftentimes, the programs that are done by DOJ and by some of the other agencies are funded through our training programs, and so we help to support those.

In our international efforts, we are also helping to build global coalitions through our work in the G–8 and other international forums.

Chairman LEAHY. Are you getting cooperation there?

Mr. MOORE. We are. We are getting very good cooperation there.

Chairman LEAHY. I would think that some of these countries, while they may think, gosh, they could make a short-term gain by kind of ignoring us, especially as they become more technically adept themselves, and many of them have equal technical abilities as we do, in the long term it is going to hurt them.

Mr. MOORE. One of the things that has been most striking about our engagement with other countries through these international forums is the degree to which they are seeing many of the same challenges that we are with global counterfeiting and piracy, the trade in counterfeit and pirated goods. They are looking to cooperate with us. They want to cooperate with us. And so I think we are getting a good response in the forums and—

Chairman LEAHY. And when you think of some of the countries that have large pharmaceuticals, countries that are beginning to go if not to the degree we do but into the entertainment world, whether music, movies, or software, and how that goes. We have it with manufactured goods. We have it with computers, telephones, automobiles, and replacement parts for automobiles, which is a significant aftereffect of having sold you—the car may have been made in Germany or France or elsewhere. But they also want to make sure, if they are going to have replacement parts, that they know where they come from.

Mr. MOORE. Exactly, and it is on that basis, I think, they are seeing some of the economic damage that we are. They are concerned about the public health and safety, the implications of counterfeit

and pirated goods. And so all of those are areas where we have seen good cooperation.

Chairman LEAHY. And, Mr. O'Connor, you get the last word on this, because what I am going to do after you finish, I am going to place in the record, without objection, a statement by Senator Specter, and I am going to leave the record open for questions others might have. What we are trying to do is prepare enough of a record for legislation that we will keep trying to get through before we get out of here.

Mr. O'CONNOR. At the risk of delaying things, I will simply say that—

Chairman LEAHY. Take all the time you want, Mr. O'Connor. I am actually fascinated by this, so go ahead.

Mr. O'CONNOR. Thank you, Mr. Chairman. I think from the Department's perspective, perhaps the biggest benefit to us from working with State and Commerce in particular is State is really our bridge to our foreign counterparts who we must work with in light of the international aspects of this problem very closely. And they can open up doors to help establish good working relationships, whether it is China, India, Russia, or anywhere else.

I would say with respect to Commerce, they are our bridge, but our bridge to the industry, those victimized the most by these crimes. They understand the industry. They know the key players in the industry, and they are always the vehicle by which we are able to set up forums, including, I believe, one in Vermont not too long ago, to discuss this in—

Chairman LEAHY. I was there.

Mr. O'CONNOR. I know you were. I was supposed to be, but could not be, but I know we did have a Department of Justice—

Chairman LEAHY. You had Department representation there, and we have gotten nothing but great feedback from the people, and we went from IBM, which, of course, has all sorts of worldwide—connect down to people, a three- or four-person business, but making a very, very unique product that has been copyrighted and trademarked and everything else and terrified about somebody else just duplicating it.

Mr. O'CONNOR. And those forums are key for us as prosecutors because that is where we learn not only, you know, the impact on the victims. I think we are fairly sensitized to that by now. But it is really how we learn about the tools of the trade because the victims are usually the ones who first discover the newest techniques, whether it is by the Internet or elsewhere, that they are victimizing people. So they are tremendous, useful forums, and our friends in the Commerce Department have always been very good about including us, and I expect in the future we will continue to play a role in that.

Chairman LEAHY. Well, the Committee will stand in recess, and I thank you very much.

[Whereupon, at 3:06 p.m., the Committee was adjourned.]

[Questions and answers and submissions follows.]

PRE-HEARING QUESTIONS AND ANSWERS

Post-Hearing Questions for the Record
Submitted to Chris Israel and Kevin J. O'Connor
From Senator Tom Coburn

"Examining U.S. Government Enforcement of Intellectual Property Rights"
Before the Senate Judiciary Committee
November 7, 2007

1. **What is the status of the Article 63 request for IP enforcement information made by the U.S. of China earlier this year?**

In October 2005, the United States, in parallel with requests by Japan and Switzerland, requested that China provide additional IPR enforcement data pursuant to Article 63.3 of the TRIPS Agreement. After initial resistance, China invited a USTR team to Beijing in March 2006 for a full day of constructive discussions on improving transparency in the field of IPR enforcement. China provided previously unavailable IPR criminal prosecution data, and the two governments identified specific areas in which China will work toward greater transparency on IPR enforcement matters. On the whole, the two governments achieved progress. The United States does not consider, however, that China provided a full response to the October 2005 Article 63.3 request. Consequently, China missed an opportunity to take full advantage of the capacity of this transparency tool to clarify issues and aid in the exploration of possible solutions. The United States continues to pursue concerns at the WTO regarding IPR-related issues in China, including the IPR enforcement concerns that prompted the Article 63.3 request. In April 2007, the United States filed two requests for WTO dispute settlement consultations – one on deficiencies in China's legal regime for the protection and enforcement of intellectual property rights, and the other on market access for products and services of certain IPR-intensive industries. The WTO has established dispute settlement panels to examine both matters.

2. **What is the current level of engagement with China regarding IP enforcement and what specific steps has the US taken to address longstanding concerns regarding China's record on IP enforcement. Please include in your general response specific updates on the following issues:**
   a. **US efforts to train Chinese customs and borders agents to improve their ability to catch counterfeit products before they leave the Chinese borders.**
   b. **US efforts to gain commitments and implementation from the Chinese to actually destroy counterfeited products and the equipment used to manufacture them.**

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c. US efforts to gain commitments and implementation from the Chinese to make counterfeiting punishable as a criminal offense and not an administrative fine.

As was noted above, in April 2007, the United States filed two requests for WTO dispute settlement consultations – one on deficiencies in China's legal regime for the protection and enforcement of intellectual property rights, and the other on market access for products and services of certain IPR-intensive industries. Since the filing of our WTO dispute settlement actions involving China in April, Chinese officials have expressed a reluctance to engage in certain aspects of bilateral trade dialogue on IPR. The United States continues to believe, however, that deeper multilateral and bilateral dialogue and cooperation is the path to progress. The United States will continue to put serious efforts into its work with China on innovation policy, intellectual property protection strategies, and the range of other important matters in our bilateral economic relationship through the U.S.-China Strategic Economic Dialogue, the Joint Commission on Commerce and Trade and other bilateral engagement. We hope that China will fully embrace all of those opportunities. Indeed, we view the current WTO disputes as evidence of the need for more bilateral and multilateral cooperation on China's IPR issues, not less.

Recent U.S.-China cooperation and engagement in the field of IPR law enforcement has produced notable results. For example:

- In July, as a result of the ongoing work of experts in the U.S.-China Joint Liaison Group for Law Enforcement, Chinese and FBI law enforcement successfully worked together in their largest joint IP investigation to date, Operation Summer Solstice. Among other things, this operation dismantled a major international criminal network engaged in optical disc piracy, seized half-a-billion dollars in pirated U.S. software and over $7 million in assets, arrested 25 suspects in China, and dismantled 6 manufacturing and retail facilities.
- In May, the U.S. Customs and Border Protection (CBP) signed an agreement with China Customs to help strengthen enforcement of intellectual property rights laws in China. This landmark agreement provides for the exchange of seizure information and best practices related to IP enforcement and also calls for the Chinese to cooperate in preventing exports of counterfeit and pirated goods. Additionally, in both February and August, CBP sent customs experts to the China Customs Academy in Shanghai to train Chinese Customs officers under a program administered by the U.S. Trade and Development Agency.

We have continued to use the annual Special 301 report to highlight the problems of China's infringing exports, the need to confiscate and destroy the machinery and materials of China's commercial pirates and counterfeiters, and the problem of China's over-reliance on administrative rather than criminal penalties. In addition, in the pending WTO dispute on certain IPR measures, the United States is challenging the quantitative thresholds in China's legal regime that must be met in order to start criminal prosecutions of copyright piracy and trademark counterfeiting, and that appear to create a safe harbor for pirates and counterfeiters in China. We are also challenging inadequate rules for disposal of IPR infringing goods seized by Chinese customs authorities, as well as the apparent denial of copyright protection to works poised to enter the Chinese market but awaiting Chinese censorship approval.

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3. What can Congress do to help the Administration's strategy for continuing to work with China on IP matters?

The Administration looks forward to continuing to work with Congress to promote China's active participation in trade and its adherence to the norms of the global trading system. This policy has worked well for the last 30 years. The economies and people of both our economies have benefited. Over the past 15 years, bilateral trade in goods between our two countries has increased by some 1200 percent. U.S. exports of manufactured goods, agricultural products, and services have grown an average of 23 percent a year since China joined the WTO in December of 2001. China is today our fourth largest export market, and the fastest growing export market for the United States in the world.

As the Administration stated 18 months ago in the Top to Bottom Review of U.S.-China bilateral trade, we must work for more "equity and balance" in our relationship with China. That includes urging China to do a better job of protecting and enforcing IPR, which we are addressing by working with China and by asserting our rights within the WTO. We look forward to continuing to work closely with Congress in that effort.

We welcome continued engagement by Members of Congress with China on IPR-related matters, both through meetings in Washington with visiting Chinese officials as well as with the very constructive visits by Members to China, which provide an invaluable opportunity for Members to convey the concerns of the American Government and people related to IPR directly to Chinese officials. These visits also allow Members to observe for themselves the situation on the ground in China that affect efforts to obtain better protection and enforcement of IPR. We also welcome continuation of regular briefings and consultations between Congressional and Executive agency staff, which promotes a coordinated U.S. Government strategy to obtain better protection and enforcement of IPR in China.

We also appreciate Congress' consideration of enhancements to the statutory framework for IPR law enforcement. In the Intellectual Property Protection Act of 2007 ("IPPA"), which the Attorney General transmitted to Congress on May 14, 2007, the Department of Justice proposed provisions that will help ensure that U.S. law enforcement is equipped to better protect intellectual property rights and provide real deterrence against criminals seeking unjust enrichment by exploiting the creativity, innovation, and reputation of American artists, inventors, and businesses.

Members of Congress can also help by directing constituents facing IPR challenges in China to some of the resources that the U.S. Government makes available that may be of interest to them. The U.S. Government has developed resources and programs to help U.S. intellectual property owners deal with overseas infringement. These resources, listed at www.stopfakes.gov, include:

- Online toolkits giving basic information on IPR enforcement in key markets.
- An International IPR Advisory Program and an SME China Advisory Program established by the Department of Commerce, in cooperation with the American Bar

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Association, which let American small and medium-sized enterprises request a free, one-hour consultation with a volunteer attorney experienced in overseas IPR issues.

- An IPR Ombudsman at the Chinese Embassy in Washington, Mr. Yang Guohua, posted at the request of the U.S. Government, to serve as a point of contact for U.S. businesses seeking to secure and enforce their IPR in China or experiencing IPR problems there.

- IPR specialists at the Department of Commerce who are trained to work with companies to develop a strategy for confronting IPR problems around the world. Members of the public can learn more by visiting www.stopfakes.gov, or by calling 1-866-999-HALT.

4. It is often said that China's laws on IPR are not being effectively enforced at the local level. What is the United States doing to influence IPR enforcement at the local level in China?

USTR conducted a special provincial review in 2006-07 to examine the adequacy and effectiveness of IPR protection and enforcement at China's provincial level. This was an unprecedented review of progress on IPR issues in several key provinces and independent municipalities of China. Many of these provinces and municipalities are huge economies in their own right, and they attract significant U.S. investment. They are also on the front lines of IPR problems for some U.S. right holders. The results of that review were reported at the end of the 2007 Special 301 report,[1] spotlighting weaknesses at local levels, but also highlighting positive efforts. We see value in continuing to look at China's provincial level in the future.

The Department of Commerce's U.S. Patent and Trademark Office (USPTO) has begun engaging directly with provincial IP offices throughout China. In November 2006, USPTO sponsored a series of roundtable discussions on local enforcement issues, bringing a NYC police officer and Bronx prosecutor to meet with their counterparts in five cites in China. In FY 2008, the USPTO plans to conduct enforcement training for provincial officials in Guangdong and other regions of China. USPTO also regularly hosts provincial officials visiting the U.S. to educate Chinese officials about how the United States protects and enforces intellectual property in the U.S.

Additionally, the USPTO has posted at U.S. embassies and consulates abroad dedicated IP specialists to address country-specific and regional issues involving IPR protection and enforcement. Started in 2005 with the U.S. Embassy in Beijing, the IP Attaché offices are strategically placed across the globe to provide technical level support and coordination on IP issues, leveraging the resources of the NIPLECC agencies. In China, USPTO has two individuals posted in Beijing and another newly posted in Guangzhou. The three attaches are complemented by seven full-time local attorneys with expertise in Chinese patent, trademark, copyright and enforcement matters. In addition, the IP attachés work closely with a USPTO

[1] http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_Special_301_Review/asset_upload_file230_11122.pdf

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country team consisting of patent, trademark, copyright and enforcement officials, as well as with a local Embassy task force, U.S. Embassies, and Consulates worldwide.

In Beijing specifically, the IP Attaché office supports an interagency IP Task Force of the U.S. Mission in China consisting of over fifty members. This task force involves nearly all sections of the Embassy, Commerce's Foreign Commercial Service and Trade Facilitation Office, USTR personnel, and both ICE and FBI Attachés. The Beijing office has also supported and developed interagency training programs for officials based in Washington, D.C.—including members of Congress.

5. **Is the United States working with other nations who are also adversely affected by Chinese piracy and counterfeiting to jointly pressure the Chinese government to do more to protect intellectual property rights?**

Yes. For example, cooperation regarding IPR problems in third countries is an important component of the U.S. IPR cooperation strategy with the European Union, and the Security and Prosperity Partnership with Canada and Mexico. We have worked closely with numerous other governments on China IPR matters. For example, we partnered with Japan and Switzerland to seek greater transparency from China on IPR enforcement matters through requests in 2005. The pending WTO IPR dispute represents another opportunity for cooperation with interested trading partners. Third parties in the dispute include, among others, Australia, Canada, the European Communities, Japan, and Mexico.

In addition, the IP attaché in Beijing meets regularly with his counterparts in the European Union, Swiss, French and Japanese Missions. The IP experts leverage their presence in China by working together on shared goals to improve China's IP system.

6. **Is the United States working to modify existing WTO laws, including the TRIPS agreement, in order to strengthen accountability for weak IPR enforcement?**

While the United States is not seeking to amend the enforcement-related provisions of the WTO TRIPS Agreement at this time, the United States continues to seek to ensure that the IPR enforcement obligations in the TRIPS Agreement are fully implemented. We are also actively working to strengthen cooperation with our trading partners in the fight against counterfeiting and piracy. In October 2007, U.S. Trade Representative Susan C. Schwab announced a major new leadership initiative, in partnership with several key trading partners, to fight counterfeiting and piracy by seeking to negotiate an Anti-Counterfeiting Trade Agreement (ACTA). The ACTA effort brings together a number of countries that are prepared to embrace strong IPR enforcement in a leadership group to negotiate a new agreement calling for a "gold standard" on cooperation, best practices, and a strong legal framework for IPR enforcement. Trading partners engaged in discussions so far include Canada, the European Union (with its 27 Member States), Japan, Korea, Mexico, New Zealand, and Switzerland. We hope others will join, marking an emerging consensus on stronger IPR enforcement.

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QUESTIONS AND ANSWERS

Questions for the Record on
United States Intellectual Property Enforcement Coordination
Before the Senate Committee on the Judiciary
November 7, 2007

Chairman Leahy - Panel Question #2
As the testimony each of you has provided makes clear, there are numerous agencies necessarily involved in protecting U.S. intellectual property.

How should resources and assets be distributed to provide the greatest level of protection? In which agencies are more assets needed?

Our strategy has focused on maximizing the already significant assets that the Federal Government has to address the problem of international and domestic intellectual property theft. We have also found that our efforts coordinated under the National Intellectual Property Law Enforcement Coordinating Council (NIPLECC) and focused through the Administration's Strategy Targeting Organized Piracy (STOP!) have allowed us to more fully leverage our resources.

Through better coordination we also have a clearer sense of where our intellectual property (IP) enforcement resources are targeted and what benefits are accruing as a result. For instance, in FY 2006 we began tracking more precisely U.S Government IP training and capacity building programs to better understand how much we spend, where it is targeted, the topics we focus on and how we can strategically target these valuable programs in the future.

Several factors contribute to decisions made regarding the distribution of IP enforcement resources. Through the recent work of NIPLECC there is a much higher degree of information sharing among agencies and this does impact the process of developing annual budget proposals and the requests that are ultimately made to Congress.

It is our view that the current budget process has very effectively included a variety of important IP-related priorities and achieved an important balance among the work done by very diverse NIPLECC agencies. Our interagency process and the STOP! initiative have increased the overall focus on IP protection. For example, we have seen increased budget requests for law enforcement activities, and greatly expanded business outreach programs from the Departments of Homeland Security and Commerce. Additional resources are not needed at this time to administer the Trade Policy Staff Committee (TPSC) and the Trade Policy Review Group (TPRG), the two groups in the U.S. Government that are responsible for the formulation of trade policy, including efforts to promote strong intellectual property laws and effective enforcement worldwide. For example, these interagency groups oversee decisions relating to the highly successful Special 301 process that examines in detail the adequacy and effectiveness of intellectual property rights and enforcement in more than 75 countries.

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Chairman Leahy - Chris Israel Question

Mr. Israel, there is a thicket of acronyms that appear to make up our intellectual property enforcement efforts, but it would be helpful for the Committee to have a better sense of what role you play as the coordinator. For instance, the USTR recently announced its Anti-Counterfeiting Trade Agreement.

What role does your office play in developing that and other initiatives and how do you coordinate it with the other agencies to ensure a comprehensive approach?

Since its establishment in July 2005, the Office of the IP Enforcement Coordinator has sought to pursue the mission of leveraging the capabilities and resources of the United States to promote effective, global enforcement of intellectual property rights. Working directly within the Office of the Secretary of Commerce and in collaboration with the White House, our office has helped direct interagency initiatives such as STOP!, led efforts to promote strong IP protection and respect for innovation globally, developed strong relationships with U.S. industry, increased the flow of information to Congress and improved overall accountability.

The Coordinator's office has been active in the development of the vision for an Anti-Counterfeiting Trade Agreement (ACTA) and nearly every other major Administration IP enforcement initiative since July 2005. As Ambassador Schwab observed in her October 23, 2007, ACTA announcement, the initiative to join with our trading partners in seeking to negotiate the ACTA builds on cooperation that the Administration has already established bilaterally and regionally since the Administration launched STOP! in October 2004. The Coordinator's office has led or been deeply involved in efforts such as the US-EU IP Working Group, the Security and Prosperity Partnership IP Working Group and the IP enforcement initiatives at the G8, all of which provided a foundation for the innovative approach represented by the ACTA initiative. Our office worked closely with USTR as they led the development of the concept for ACTA, approached our partners, and laid out a strategic direction for the negotiation of the Agreement. Going forward, our key role will be to continue working with USTR and other agencies to continue the seamless integration of the ACTA initiative into the broader spectrum of interagency efforts to fight piracy and counterfeiting.

Senator Hatch - Panel Question #1

Do you think that the current interagency process for the enforcement of intellectual property rights is working effectively?

As you are aware, there are at least three cooperative groups devoted to help coordinate enforcement of intellectual property rights:

1) **the Strategy Targeting Organized Piracy, or "STOP!," initiative;**

2) **the National Intellectual Property Law Enforcement Coordination Council (NIPLECC); and,**

3) **the Trade Policy Review Group (TPRG).**

Despite all of these important programs, it seems that we are in an upward trajectory in intellectual property theft. In other words, it does not seem that we have slowed down the rate of intellectual property rights violations.

Do you think it is time to rethink the fundamental approach to protecting our IPR both here and abroad?

It is our view that the current interagency process for the enforcement of intellectual property rights (IPR) is working effectively. We continue to focus on the key actions and processes that the U.S. Federal Government must perform well in order to have an impact on the global problem of piracy and counterfeiting. We are working extensively with U.S. industry to continue to strengthen all of our law enforcement and customs efforts, and we are making IP protection and enforcement a major priority with our trading partners. All of these efforts are done through a coordinated and collaborative process that includes a range of government agencies.

- We believe our efforts have led to significant progress. For example, U.S. seizures of counterfeit goods doubled from 2005 to 2006 and total over 50,000 since 2002.

- Efforts by the Department of Justice resulted in an 80% increase in the number of defendants convicted of IP offenses from FY 2006 to FY 2007.

- We are reaching thousands of U.S. rights-holders and businesses every year with practical information and assistance as they seek to develop and protect their IP.

We have raised the level of engagement with our trading partners through efforts such as the recently announced initiative to negotiate an Anti-Counterfeiting Trade Agreement, initiatives such as the US-EU IP Working Group, G8 IP Enforcement Initiative, Security and Prosperity Partnership IP Working Group with Canada and Mexico, the Strategic Economic Dialogue and Joint Commission on Commerce and Trade with China, as well as cooperation with trading partners to address IPR issues in a variety of other international settings. It is clear to us,

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however, that it will take a strenuous and long-term commitment to see a permanent reduction in global IP theft. There are a number of key factors that are essential and, in our estimation, do not require fundamental change. First, the United States must maintain and enforce a strong set of domestic laws to promote and protect IP. Leadership of this Committee over the years has contributed greatly to this effort through efforts such as the Digital Millennium Copyright Act, the No Electronic Theft Act, the Stop Counterfeiting in Manufactured Goods Act and the Family Entertainment and Copyright Act. Second, the United States must sustain a strong message internationally that strong IP protection and enforcement are essential for innovation, economic growth and the protection of citizens and consumers. Finally, we must maintain a well-coordinated U.S. Government IP enforcement strategy. It is our experience that this strategy will necessarily evolve over time and must remain flexible enough to contribute to, and build upon, the success of the diverse missions and priorities of the diverse set of Federal agencies involved. We have used the NIPLECC framework to provide a consistent and accountable coordination structure and established a strong strategy through the Administration's STOP initiative. Going forward the tenets of strong coordination, clear strategic goals and accountability will continue to be the fundamental elements for success.

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Senator Hatch -Chris Israel Question #1

I much appreciated your comments about existing federal services and programs to help American innovators secure and enforce their intellectual property rights abroad.

No doubt, the government has many talented and experienced individuals who are committed to helping U.S. businesses navigate through the intricacies of foreign IP laws. I believe so much can be mitigated if companies will seek out experts in these areas to create an individualized IP protection plan.

Do you have a sense of how much these services and programs are being used by U.S. innovators?

As I testified to during the recent hearing, the U.S. Government has a number of programs and services designed to help U.S. entrepreneurs, artists, and corporations defend their intellectual property rights (IPR) overseas in markets in which they conduct business. The emphasis of these services is to help educate and advise the private sector, especially U.S. small and medium-sized enterprises (SMEs).

First and foremost, my office manages the Administration's official website, www.STOPfakes.gov, to help businesses combat counterfeiting and piracy by gathering and disseminating information from all involved federal agencies on events, initiatives, and results.

Stopfakes.gov has seen a steady increase in its online activity within the last year: in FY 2007, the site had more than 75,000 visitors, up from 44,000 in FY 2006. Through this site, businesses are also able to file complaints about IP-related trade problems. If Department of Commerce staff identifies a trade agreement compliance issue, we work directly with the complainant and relevant NIPLECC agencies to help U.S. businesses secure and enforce their IPR through international treaties.

Additionally, the U.S. Patent and Trademark Office (USPTO) manages a STOP! hotline (1-866-999-HALT) that helps SMEs leverage U.S. Government resources to protect their IPR in the United States – and abroad. A staff of over three-dozen IP attorneys at the USPTO – with expertise on how to secure patents, trademarks, and copyrights, and enforcement of these rights throughout the world – are readily available to answer questions.

Use of the STOP! hotline has grown remarkably each year since its inception in 2005. In its first year of operation, the hotline received 955 calls, but in 2006, 1460 calls were received, and in 2007, 1730 calls were answered.

The USPTO also reaches out to U.S. businesses through a series of programs entitled "*A Conference on Intellectual Property and the Global Marketplace*" or, more familiarly, "Road Shows". In partnership with the U.S. Chamber of Commerce, the USPTO conducts these programs across the country to provide a primer on intellectual property for a target audience of small businesses – and give in-depth information on protecting and enforcing IP both domestically and abroad. This year, USPTO and the Chamber reached record numbers of SMEs: over 1,300 participants. In 2007 alone, programs were held in Raleigh, North Carolina; Detroit,

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Michigan; Burlington, Vermont; Los Angeles, California; Seattle, Washington; San Antonio, Texas; and Portland, Oregon.

Furthermore, Commerce provided additional educational support for SMEs through live presentations and web-based seminars. In 2006, Commerce staff traveled to 12 cities and presented 6 "webinars," speaking before a total of 22 audiences, representing over 1,000 attendees.

The Department of Commerce, in cooperation with the American Bar Association (ABA) and the Coalition Against Counterfeiting and Piracy (CACP), re-launched the "IPR Legal Advisory Program" in 2007. This program allows SMEs to request a free, one-hour individualized consultation with a volunteer attorney with expertise in both IP issues and foreign law. Through such a consultation, SMEs can get an overview of how to protect and enforce their patents, trademarks, and copyrights, in a particular country. Expertise is now available for Brazil, Russia, India, China, Egypt, and Thailand.

In addition to the one-hour Legal Advisory Program, Commerce has been working with the State Department to create more detailed IPR toolkits to guide businesses in protecting and enforcing their intellectual property in key foreign markets. Received with favorable feedback, these toolkits are now available for China, Brazil, Korea, Malaysia, Mexico, Russia, and Taiwan. Available on *stopfakes.gov*, the toolkits provide in-depth information about local IP laws and resources, as well as local contact information.

Finally, I wanted to take a moment to specifically mention government services and programs geared toward helping U.S. right holders seeking to enforce their intellectual property in China, since over 80% of all counterfeit and pirated goods seized at our borders originate in China.

The Commerce Department regularly sponsors seminars and one-on-one counseling sessions with U.S. companies to discuss the prevention of piracy and counterfeiting, with particular focus on best practices for protecting IPR in China. In 2007, Commerce conducted eight programs across the country, including New York, Boston, Los Angeles, Philadelphia, and Washington, D.C. Commerce also hosted monthly web-based seminars, known as the "China Webinar Series," on IP issues in China. Latest statistics indicate that these seminars have reached over 900 participants and the archived programs have been downloaded on over 7,000 occasions. Also, with the encouragement of the U.S. Government, China posted an IPR Ombudsman at the Chinese Embassy in Washington, D.C. to serve as a point of contact for U.S. businesses seeking to secure and enforce their IPR in China or experiencing IPR problems there.

Senator Hatch – Chris Israel Question #2

Mr. Israel, first and foremost, I applaud you for your commitment to the protection of intellectual property rights. You have at times been a lone voice within the government on the importance of interagency coordination in the enforcement of intellectual property rights. Unfortunately, your coordinating role is not statutorily mandated.

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Do you agree that Congress needs to explicitly provide a framework for individuals, like yourself, who are able to contribute so greatly in the protection of intellectual property rights around the world?

Senator Hatch, thank you for that kind complement and vote of confidence. With regards to your question, I must first note that the Administration considers my current role in intellectual property enforcement to be created by Congress and, in fact, based on a statutory mandate.

In December 2004, via Public Law 108-447, Congress amended the original statute of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) to create my Presidentially appointed position, the U.S. Coordinator for International Intellectual Property Enforcement (Coordinator).

The original interagency NIPLECC statute, enacted in 1999 (via Public Law No. 106-58, section 633), included Council co-chairs: the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (USPTO) and the Assistant Attorney General of Justice of the Criminal Division. NIPLECC continues to serve as an interagency council responsible for coordinating the U.S. domestic and international IP enforcement activities through its structured framework consisting of the Departments of Justice, Commerce, State, Homeland Security and the Office of the U.S. Trade Representative. Its mission is "to leverage the capabilities and resources of the Federal Government to provide a secure and predictable global environment for American intellectual property."

In 2004, Congress created my position to serve as the head of NIPLECC with duties to include, (1) the establishment of policies, objectives, and priorities concerning international intellectual property protection and enforcement; (2) the development of a strategy for protecting intellectual property overseas; and (3) the coordination and oversight of agency activities relating to the implementation of such policies and strategies to protect and enforce intellectual property rights. In line with the NIPLECC statute, these functions are not intended to derogate from agencies' responsibilities.

Using the effective statutory framework provided by NIPLECC – and the President's Strategy Targeting Organized Piracy (STOP!) – collectively my office has been able to coordinate and interagency effort that has achieved encouraging progress in the ongoing effort to globally enforce IP rights and to combat the scourge of counterfeiting and piracy through building strong internal government coordination, establishing effective industry partnerships, and aggressively engaging our trading partners to join in this fight.

Our overarching goal remains the preservation of the U.S. economy and our global leadership in technology and competitiveness, as well as to ensure the health, safety and security of American citizens.

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Senator Hatch - Panel Question #3

Do you agree that there needs to be more cooperation among the agencies that deal with intellectual property rights issues within our government beyond the current interagency clearance process?

In particular, what framework should there be?

Who should spearhead the coordination process?

What about people on the ground in foreign countries, is that necessary? If so, who?

Over the last few years, the level of cooperation and coordination among the Federal agencies entrusted with the monumental task of protecting and enforcing American intellectual property rights has increased significantly, based on the current statutory framework and the effectiveness of the President's Strategy Targeting Organized Piracy (STOP!) initiative.

Going into its fourth year, the STOP! Initiative has provided the guiding principles for the Administration to accomplish numerous goals on behalf of American intellectual property owners. Guided by STOP!, the agencies of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) are achieving results, maintaining the commitment of senior Administration officials, and institutionalizing an unprecedented level of coordination within the U.S. Government.

Since its enactment in1999, NIPLECC has provided a favorable statutory framework for the interagency council to coordinate closely and leverage the capabilities and resources of the Federal Government to provide a secure and predictable global environment for American intellectual property. NIPLECC consists of the Departments of Justice, Commerce, State, Homeland Security and the Office of the U.S. Trade Representative, with the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (USPTO) and the Assistant Attorney General of the DOJ Criminal Division serving as Council co-chairs.

In 2004, Congress created the Presidentially appointed Coordinator for International Intellectual Property Enforcement (Coordinator) to serve as the head of NIPLECC. The duties of this office include: (1) the establishment of policies, objectives, and priorities concerning international intellectual property protection and enforcement; (2) the development of a strategy for protecting intellectual property overseas; and (3) the coordination and oversight of agency activities relating to the implementation of such policies and strategies to protect and enforce intellectual property rights. In line with the NIPLECC statute, these functions are not intended to derogate from agencies' responsibilities.

The Coordinator has spearheaded the coordination of U.S. Government resources to help maximize effective communication among federal agencies, with private industry, and between our trading partners. In driving toward these goals, the Coordinator has held monthly meetings of the NIPLECC agencies plus other agencies, including the Food and Drug Administration, which are charged with enforcement of IP rights and the assurance of health and safety for U.S.

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citizens. The Coordinator's Office also publicly releases a Quarterly Report, featuring policy and program updates, law enforcement developments, statistics, and schedules for upcoming training events.

With regard to having an in-person presence in foreign countries, this is an absolutely necessary resource and the Administration has made great strides to satisfy this need.

The Federal Government has made a strong commitment toward international deployment of personnel – stationed at embassies in key countries around the globe – who are specially trained officials in the area of intellectual property protection and enforcement. For example, the State Department has made a priority of training their respective diplomats to be "first responders" on IP issues.

Additionally, the Commerce Department's Foreign Commercial Service's (FCS) Commercial Officers serve a primary function as advocates for American industry to foreign governments on a daily basis. FCS officers work with American businesses to address their concerns on an individual, case-by-case basis, helping them take their problems to the respective foreign agency.

The Department of Justice (DOJ) and the Department of Homeland Security (DHS) also have officials posted in embassies worldwide. These officials are primarily tasked with liaising with their foreign counterparts, but they are also actively working with American industry on law enforcement cases, particularly when it comes to intelligence when investigating a case of IP crime.

In 2006, the DOJ established the first ever Intellectual Property Law Enforcement Coordinator (IPLEC) for Asia in Bangkok, Thailand. Building on this success, in November 2007 DOJ has established another IPLEC office in Sophia, Bulgaria, to cover the Eastern Europe region. Both IPLEC positions are dedicated to advancing the Department's regional IP goals through, training, outreach, and coordinating investigations.

For DHS, Immigration and Customs Enforcement (ICE) has 50 Attaché Offices overseas in approximately 39 countries around the world which coordinate investigative efforts with the host government's law enforcement agencies. Since the majority of counterfeit goods in the United States are produced abroad, domestic ICE agents work closely with the ICE attachés to coordinate international investigations.

Finally, the Administration has developed a new attaché program to lead embassies' efforts on IP enforcement. Deployed by the Commerce Department and dedicated solely to IP enforcement issues, these IP attachés are key players in assisting American rightsholders. Eight attachés – stationed in American embassies in Sao Paulo, Brazil; New Delhi, India; Beijing, China; Guangzhou, China; Cairo, Egypt; Bangkok, Thailand; and Moscow, Russia – have been deployed to serve as representatives from the U.S. Government to the respective foreign government, as well as liaisons to industry. This program has led to the development of strong relationships with government officials and expert assistance of many American companies in navigating local laws and customs in the protection and enforcement of their intellectual property rights.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 11, 2007

The Honorable Patrick J. Leahy
Chairman
Committee the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed a response to questions arising from the appearance of United States Attorney Kevin J. O'Connor before the Committee on November 7, 2007, at a hearing entitled "Examining U.S. Government Enforcement of Intellectual Property Rights."

We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter
Ranking Minority Member

"Examining U.S. Government Enforcement of Intellectual Property Rights"

November 7, 2007

Questions for the Hearing Record
for
Kevin J. O'Connor
United States Attorney for the District of Connecticut
Chairman, Department of Justice Task Force on Intellectual Property
United States Department of Justice

LEAHY

(To the Panel)

Q: Your testimony speaks a good deal about efforts on the international stage, which is clearly important, but I want to ask about piracy within our own borders. I am interested, as are other Senators, in leveraging the efforts of state and local law enforcement through the strategic use of federal aid and personnel. How can we best do that? Through a fund at the Justice Department, perhaps?

A: State and local law enforcement authorities play an important role in effective intellectual property ("IP") enforcement within the United States. Every State has laws to address counterfeit goods, and State authorities around the country are active in enforcement operations against manufacturers and sellers of counterfeit products. Similarly, State trade secret laws often provide criminal penalties for the most serious instances of trade secret theft. Additionally, some jurisdictions have used creative means, such as business licensing and tenancy regulations, to disrupt markets where counterfeits are sold, while other State authorities have developed expertise in combating the theft of trade secrets and high-tech IP offenses. There are no State prosecutions of copyright offenses because copyright law is an exclusively Federal matter; however, many States have labeling laws for commercially-distributed CDs and DVDs, which State authorities use to help combat piracy.

The efforts of State and local law enforcement are a vital component of an overall strategy to combat counterfeiting and piracy. State law enforcement often works with Federal officials to increase the level of IP enforcement beyond what either could accomplish alone. In several areas of the country, State, Federal and local law enforcement officials have formed task forces to address IP and high-tech crime, and the results have been encouraging. For example, in the Northern District of California, three defendants were prosecuted federally as part of

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Operation Remaster for their involvement in the largest CD manufacturing piracy scheme ever uncovered in the United States. Operation Remaster was investigated by the Rapid Enforcement Allied Computer Team ("REACT") Task Force in the San Francisco Bay Area, a partnership of 16 local, State, and Federal law enforcement agencies, with the FBI designated as the lead agency.

There are five similar task forces in California alone, and others spread across the country, that are in a position to provide critical resources for fighting IP and high-tech crimes. We will continue to encourage the creation of such task forces where appropriate, especially in regions where there is a high incidence and/or reporting of IP crime.

Q: **As the testimony each of you has provided makes clear, there are numerous agencies necessarily involved in protecting U.S. intellectual property.**

How should resources and assets be distributed to provide the greatest level of protection? In which agencies are more assets needed?

A: [We understand that the International IPR Enforcement Coordinator, Department of Commerce, will respond to this question.]

(To Mr. O'Connor)

Q: **Mr. O'Connor, your testimony provides some very helpful examples of criminal prosecutions related to piracy. Clearly not all incidents of piracy deserve a criminal response. In fact, one of the tools the law provides intellectual property owners is the right to seek damages in court through civil actions. Do you agree that not all Americans who commit infringement should be prosecuted criminally and, if so, shouldn't the Department be given civil enforcement authority?**

A: The right of copyright owners to enforce their rights in court through civil actions is critical to the protection of IP rights. In fact, civil enforcement has been the predominant method of copyright enforcement throughout the history of U.S. copyright law. Copyright owners are in the best position to identify potential infringements of their works and to determine whether a particular use of their work is authorized. If unauthorized, they are in the best position to decide whether the unauthorized use warrants legal action for infringement, or other action falling short of filing a lawsuit (such as sending a cease and desist letter or other warning).

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To strengthen copyright protection, U.S. law provides copyright owners with a wide array of tools to enforce their rights. An owner may recover actual damages (where they can be proven), or opt instead for substantial statutory damages of up to $150,000 per infringed work in cases where the infringement is willful, in addition to costs and attorneys' fees. Copyright owners also may obtain injunctions against infringement, and courts, in considering preliminary injunction motions, generally presume irreparable harm in copyright cases. The Digital Millennium Copyright Act also provides a "notice and takedown" mechanism giving copyright owners an expedited mechanism to get infringing materials removed from the Internet and to obtain identifying information about infringers.

The Department continues to believe that its resources and criminal enforcement efforts are most effectively applied to criminal violations of the intellectual property laws, including cases that pose a direct threat to public health and safety or which present the greatest risk of harm to copyright owners. This avoids duplication of civil remedies and maximizes the deterrent value of Federal enforcement efforts. For example, it permits the Department to focus its efforts on the very types of cases that rights holders generally find most difficult to pursue civilly – including but not limited to sophisticated multi-district and international conspiracies that require compulsory criminal process such as pen registers, search warrants, and electronic intercepts to successfully investigate.

HATCH

(To the Panel)

#1: Do you think that the current interagency process for the enforcement of intellectual property rights is working effectively?

As you are aware, there are at least three cooperative groups devoted to help coordinate enforcement of intellectual property rights:

1) the Strategy Targeting Organized Piracy, or "STOP!" initiative;

2) the National Intellectual Property Law Enforcement Coordination Council (NIPLECC); and,

3) the Trade Policy Review Group ("TPRG").

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Despite all of these important programs, it seems that we are in an upward trajectory in intellectual property theft. In other words, it does not seem that we have slowed down
the rate of intellectual property rights violations.

Do you think it is time to rethink the fundamental approach to protecting our IPR both here and abroad?

A: [We understand that the International IPR Enforcement Coordinator, Department of Commerce, will respond to this question.]

#2: I believe any solution to curtailing intellectual property rights abuse will take an integrated approach with both domestic and international prongs which incorporate educational, judicial, and enforcement components to halt this insidious attack on our intellectual property.

With that said, what role do you think the Federal government should have in this important endeavor?

A: The Federal government takes a leadership role in pursuing an integrated approach to IPR protection, one that includes domestic and international criminal enforcement, education, and legislative reform. The Department's Task Force on Intellectual Property ("Task Force") recognized the need for an integrated approach when it published its 31 recommendations in 2004, and the Task Force has since led and coordinated the Department's implementation of those recommendations.

Criminal enforcement was at the core of the Task Force's work, and many of its recommendations were focused on increasing criminal prosecutions. Since 2004, the Department has substantially increased both the number of Federal IP prosecutions and the number of prosecutors who are specially trained on IP crimes. During these three years, the Department has more than doubled the number of defendants charged with IP offenses per year, and it has significantly expanded its Computer Hacking and Intellectual Property ("CHIP") program to include specialized units in 25 United States Attorney's Offices – an increase of nearly 100% since 2004 -- and at least one CHIP prosecutor in each United States Attorney's Office nationwide, for a total of approximately 230 CHIP attorneys.

The Task Force's *Criminal Recommendation #11* called for the Department to "Enhance Victim Education Programs and Increase Cooperation." On November 28, 2007, the Department co-hosted a victim education conference with the U.S. Chamber of Commerce in Miami, Florida. This was the fourth such program the

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Department has hosted in the past two years, intended to educate and encourage victims of intellectual property offenses to report IP crime and cooperate in criminal investigations.

Another example is the Task Force's *International Recommendation #1*, which called for the Department to deploy Intellectual Property Law Enforcement Coordinators ("IPLECs") in Asia and Eastern Europe, to coordinate intellectual property enforcement operations and capacity building in those important regions. In January 2006, the Department deployed the first IPLEC to Bangkok, Thailand, and in November 2007, a second IPLEC was stationed in Sofia, Bulgaria. Both IPLEC positions are filled by experienced Federal prosecutors with a background in enforcing U.S. intellectual property laws.

Moreover, as the Task Force recommended in *International Recommendation #4*, the Department has significantly increased its international outreach and training efforts. In 2006, the Criminal Division trained over 3300 prosecutors, investigators, judges, and IP experts from over 107 nations on IP enforcement matters, which represented a 50% increase from the previous year.

These are but a few examples of the many ways that the Department is pursuing an integrated approach to IP enforcement. The *Progress Report of the Department of Justice's Task Force on Intellectual Property* (June 2006) provides a more complete picture of the Department's overall enforcement programs in the areas of domestic and international criminal enforcement, civil enforcement, education, and legislative reform. The *Progress Report* can be found online at http://www.usdoj.gov/opa/documents/ipreport61906.pdf.

(To Mr. O'Connor)

Question #1:

Mr. O'Connor, the Administration has garnered widespread commendation for initiating and pursuing the Strategy Targeting Organized Piracy, or "STOP!" initiative. The Government Accountability Office has noted that the Initiative has no permanent basis, and could, in fact, be discontinued at any time.

Based on its success, do you believe that Congress should explore ways to make the STOP! Initiative permanent?

A: Prosecuting IP crime has been and will remain one of the Department of Justice's top priorities. Market and technological developments have converged to create an environment where IP theft is increasing dramatically despite ramped-up enforcement efforts. Under the umbrella of the STOP! initiative and led by the

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Department of Justice's Task Force on Intellectual Property, we have significantly increased our domestic enforcement efforts with special emphasis on organized criminal operations and counterfeiting crimes that threaten the health and safety of Americans. For example, in the past three years, the Department has more than doubled the number of defendants prosecuted federally for IP offenses. Despite the success of these increased enforcement efforts, we are under no illusion that the IP crime problem has been significantly reduced. We are committed to doing more.

The STOP! initiative has indeed helped to coordinate and improve the U.S. government's overall response to protecting intellectual property rights. One of the reasons it has been effective is that it has sought to work through existing interagency coordinating mechanisms and statutory regimes. In 2005, Congress created the Office of the International IPR Enforcement Coordinator, and made the head of that office also the Director of the National IP Law Enforcement Coordination Council ("NIPLECC"). Because the STOP! initiative provides a government-wide strategy for protecting American intellectual property, the Office of the International IPR Enforcement Coordinator, working through NIPLECC and other agencies, has been uniquely situated to coordinate implementation of the STOP! strategy initiatives.

To the extent that there is a need to create more "permanence" than the statutory regime already in place, we think it especially important that due care be taken not to create additional bureaucracy and rigidity at the expense of actual enforcement. The STOP! initiative, as coordinated by the International IPR Enforcement Coordinator, has been successful in large part because it has allowed agencies the necessary flexibility to maximize the effective use of their resources to best fulfill their individual statutory missions.

Question #2

Mr. O'Connor, thank you for your testimony. I found the section on the need for new enforcement tools particularly interesting. It appears to be very comprehensive in scope.

What do you think are the root causes for IPR abuse?
How do your enforcement measures address these root causes?
Do you think that these measures alone will incentivize good behavior?

A: Intellectual property plays an increasingly important and valuable role in the health of our economy. IP crime offers the opportunity to make high profits with relatively low risks. In many countries, even significant commercial transactions in counterfeit goods are punished with administrative fines - merely a cost of

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doing business. High profits and low risks may be motivation enough for most criminals. However, certain types of IP crime may have different objectives. For instance, economic espionage may be motivated by a desire to gain a competitive advantage in the marketplace, or a desire to provide an economic advantage to a foreign government, whereas selling counterfeit pharmaceuticals may be motivated by pure greed at the expense of public health and safety.

Regardless of its root cause, one thing is certain: the Internet and other technological advancements have all contributed to a dramatic increase in intellectual property crime on a global scale. Federal prosecutors must have an arsenal of tools to combat this growing threat, and U.S. criminal laws must be updated and strengthened to respond to emerging crime trends and technologies.

The Department of Justice's IP legislative package, the Intellectual Property Protection Act of 2007 ("IPPA"), which was transmitted to Congress on May 14, 2007, is intended to better equip law enforcement with the tools necessary to protect IPR and deter IP crime. It provides for tougher penalties, stronger forfeiture provisions, and new investigative tools. These legal tools, combined with our existing and ongoing enforcement, training, and education efforts, will help make IP crime a less profitable and higher risk activity, which in turn should provide stronger *disincentives* for *bad behavior*.

COBURN

Q: What is the status of the Article 63 request for IP enforcement information made by the U.S. of China earlier this year?

Q: What is the current level of engagement with China regarding IP enforcement and what specific steps has the US taken to address longstanding concerns regarding China's record on IP enforcement. Please include in your general response specific updates on the following issues:

- **US efforts to train Chinese customs and borders agents to improve their ability to catch counterfeit products before they leave the Chinese borders.**
- **US efforts to gain commitments and implementation from the Chinese to actually destroy counterfeited products and the equipment used to manufacture them.**
- **US efforts to gain commitments and implementation from the Chinese to make counterfeiting punishable as a criminal offense and not an administrative fine.**

Q: What can Congress do to help the Administration's strategy for continuing to work with China on IP matters?

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Q: It is often said that China's laws on IPR are not being effectively enforced at the local level. What is the United States doing to influence IPR enforcement at the local level in China?

Q: Is the United States working with other nations who are also adversely affected by Chinese piracy and counterfeiting to jointly pressure the Chinese government to do more to protect intellectual property rights?

Q: Is the United States working to modify existing WTO laws, including the TRIPS agreement, in order to strengthen accountability for weak IPR enforcement?

A: I would like to briefly highlight some of the ways in which the Department of Justice has pursued bilateral efforts with China to improve law enforcement cooperation, and in particular, how we have sought to develop more joint operations against IP criminal syndicates and manufacturers of counterfeit goods.

China remains a major production center for pirated and counterfeit goods, and the STOP agencies have pursued an integrated approach to this massive enforcement problem. As part of that approach, the Department of Justice has sought greater bilateral cooperation and coordination on joint criminal investigations and prosecutions. In March 2007, the Criminal Division hosted and chaired the inaugural meeting of the Intellectual Property Criminal Enforcement Working Group ("IPCEWG") of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation ("JLG"), which included 15 Chinese law enforcement officials and the Ministry of Public Security's Vice Director General of the Economic Crimes Investigation Department, as well as officials from the FBI and the Department of Homeland Security (Customs and Border Protection ("CBP") and Immigration and Customs Enforcement ("ICE")). The IPCEWG met again alongside the annual JLG Plenary meeting in Beijing, China in June 2007. The working group's focus has been on the development of more U.S.-China joint operations to combat transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety.

The Criminal Division's leadership of the IPCEWG has already yielded unprecedented results. On July 23, 2007, 25 Chinese nationals were arrested along with the seizure of more than half a billion dollars worth of counterfeit software, as a result of the largest ever joint investigation conducted by the FBI and the People's Republic of China. This operation, code-named Operation Summer Solstice, was one of several cases nominated to the IPCEWG for joint investigation and prosecution. China's Ministry of Public Security ("MPS") searched multiple businesses and residential locations, seized more than $7

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million in assets, and confiscated over 290,000 counterfeit software CDs and Certificates of Authenticity. MPS and FBI dismantled a criminal piracy syndicate that is believed to be the largest of its kind in the world, estimated to have distributed more than $2 billion in counterfeit Microsoft software.

The Department will continue to work with the MPS in the IPCEWG in order to develop more joint enforcement operations like Summer Solstice. Integral to the success of these bilateral efforts will continue to be the offices of the FBI Legat and ICE Attache in Beijing, China, which serve as the primary investigative liaisons with the MPS.

[We understand that the International IPR Enforcement Coordinator, Department of Commerce, will provide additional responses to these questions.]

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Senator Orrin G. Hatch
Hearing before the
Senate Judiciary Committee
"Examining U.S. Government Enforcement of Intellectual Property Rights"
November 7, 2007

Question for Chris Moore, Deputy Assistant Secretary for Trade Policy and Programs, Bureau of Economic, Energy, and Business Affairs, U.S. Department of State:

Mr. Moore, from my perspective, The Department of State has been hesitant to become fully engaged in aggressively defending American intellectual property rights abroad. There is much monetary assistance that our government gives through grants or other partnering agreements to foreign countries.

Why do we continue to reward countries that engage in illegal activities and thumb their noses at enforcement of intellectual property rights?

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SUBMISSIONS FOR THE RECORD

Testimony of Senator Evan Bayh
Senate Judiciary Committee
"Examining U.S. Government Enforcement of Intellectual Property Rights"
November 7, 2007
(as prepared for delivery)

Thank you, Mr. Chairman. I want to express my appreciation for this opportunity to speak with you on a matter of great urgency for American workers and businesses, including many in my home state of Indiana.

Since the founding of our republic, innovation has been a driving force behind our national prosperity. The responsibility of government to foster American ingenuity is so fundamental that the Constitution's framers listed intellectual property protection as the eighth enumerated power of Congress in Article I, Section 8. It is listed even before governing imperatives like forming a court system, declaring war, or raising an army and navy.

Consistent with our historic responsibility, members of this body have over time crafted a system of intellectual property rights protection that has become a successful catalyst for economic growth and job creation. A recent study traced 30 to 40 percent of all U.S. productivity gains in the 20th century to economic innovation in its various forms. Further studies have found that IP-intensive industries pay wages almost 50 percent higher than firms that are not IP-focused.

However, today many of our innovators are being undermined by countries that refuse to play by the rules of the global marketplace. Since intellectual property protection is a core focus of this committee, I know you are aware of the damage being inflicted on America as a result of rampant product piracy and counterfeiting of American products.

Estimates are that American businesses lose $250 billion annually because of intellectual property theft. These resources could be going to profits, wages, investment, and tax revenues so government can meet the long-term costs of Social Security, Medicare, and other critical priorities.

Additionally, American companies have lost 750,000 jobs because of intellectual property theft, making it a major impediment to employment growth.

Consumer safety concerns are also very real. Counterfeit pharmaceuticals and auto and aviation parts have caused serious injuries and deaths. An estimated 2% of the 26 million airline parts installed each year are counterfeit. Fake drugs account for 10% of all pharmaceuticals. Fake auto parts are being manufactured around the world with faulty materials, including brake linings made of sawdust, cardboard, and compressed grass. The U.S. auto industry estimates that it could hire another 200,000 workers if counterfeit auto parts were eliminated.

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Finally, there is a serious national security dimension to this problem. I serve on the Intelligence Committee and the Armed Services Committee, where we frequently hear about the role that counterfeiting activities play in the funding of terrorist groups. The United States seized an Al Qaeda training manual in Afghanistan that recommended the sale of counterfeit goods as a source of terrorist financing. A 2003 investigation revealed that the 1993 World Trade Center bombing was partially financed through the sale of counterfeit goods. We also know that North Korea engages in illicit sales of counterfeit goods. So we have a compelling national security interest in redoubling efforts to cut off funding sources for terrorist organizations.

Earlier this year I was joined by Senator Voinovich of Ohio in introducing S. 522, the Intellectual Property Rights Enforcement Act, to improve the government response to this problem. The Administration has taken some good first steps with its STOP Initiative, but we are still lacking the kind of high-level coordination and accountability needed to deal effectively with this problem.

The Bayh-Voinovich legislation was crafted after extensive consultations with private industry groups to identify the flaws with our domestic and international IP enforcement regime. What emerged from these consultations was a consensus that interagency coordination is lacking in a number of areas, and international cooperation on enforcement is weak.

Under our current fragmented approach, we see a "stove-piping" effect, in which communication occurs vertically within agencies but not horizontally throughout the government. We must aggressively combat this stove-piping, because we know that inter-agency coordination is critical to the success of any large-scale, federal effort.

There are other significant problems with the current federal approach:

- There is no plan for how agencies should work together on this problem.
- Current reporting requirements to Congress merely show what agencies are doing individually, not collectively as part of a united force.
- Our government has no clearly stated objectives on IP enforcement, and no means for measuring progress.
- There is no indication of which organizations will provide the overall framework for oversight and accountability.
- Lastly, there is no process for how conflicts should be resolved, and no cost estimation for resources needed to carry out a national strategy for IP enforcement.

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Last November the GAO released a study that echoes this critique of the shortcomings of our current approach. With the Chairman's permission, I would like to enter this GAO report into the record with my statement.

I hope members of the Committee will review this report and promptly move our legislation to the floor, because there are many systemic problems in our government's approach to IP rights enforcement that require immediate corrective action to be taken.

Our legislation articulates a permanent strategy that addresses some of these flaws. It requires U.S. government agencies to unify as part of an Intellectual Property Enforcement Network. This network would detail the goals, objectives and priorities of the U.S. government and how each agency's work fits within an overall plan.

It would vest responsibility for IP enforcement with a Senate-confirmed government official: the Deputy Director for Management of the OMB. The Deputy Director would be responsible for submitting to Congress a Strategic Plan that includes objectives on IP enforcement, means to measure results, and how agencies will work together.

Every Senator would have the right to ask questions and cast an up-or-down vote on the leader of this critical issue. Each Senator could also make demands on priorities, including the contents of the Strategic Plan. Currently, Congress plays no meaningful role in IP enforcement other than appropriating funds and asking for briefings from administration officials. American workers, businesses and taxpayers have the right to expect that we will take more of a leadership role in the face of a serious problem affecting our national economy and so many of our constituents.

The OMB is uniquely situated to address the flaws in our current approach. Curbing global IP theft involves criminal prosecutions, border enforcement, trade policy, and international relations. Setting priorities and budgets for such a broad, multi-agency effort is outside the scope of the Justice Department, Homeland Security, or the U.S. Trade Representative alone. Furthermore, asking individual agencies with such broad coordination responsibilities would only subject the process to the rivalries and turf battles endemic in the federal bureaucracy.

Mr. Chairman, we have an abundance of IP experts in each federal agency. What we lack is a management presence to ensure that separate agencies are part of a single mission, thereby increasing overall efficiency and effectiveness. Without such oversight and accountability, the problems identified by the GAO will continue.

The OMB Deputy Director for Management position is charged with overseeing government-wide coordination efforts on a broad array of issues. This official routinely develops inter-agency coordination plans, establishes objectives and performance measurements, provides oversight and ensures accountability.

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The Bayh-Voinovich bill also would require the United States to begin setting high standards of enforcement with foreign governments, with the goal of establishing an international task force of concerned countries to track and identify IP criminals. The task force would be modeled on a similar international team that fights money laundering and other black-market crimes.

The task force will grant membership solely to countries with adequate IP protection laws *and* a track record of enforcing those laws. Today, international cooperation in many organizations is hampered because the worst global actors are members. Our legislation envisions the United States sharing information on criminal activity, and even engaging in joint enforcement operations. Such a close-nit arrangement can only flourish among trusted allies.

Recently, the administration unveiled a draft "Anti-Counterfeiting Trade Agreement" that includes many of the standards of international cooperation that we have been advocating. I have reviewed the text of this proposal, and believe it includes many good provisions. But my overriding concern is that accession to this agreement would be granted for reasons unrelated to a country's commitment to IP protection.

A broad coalition of interest groups dissatisfied with our government's current approach supports our legislation. Groups as diverse as the U.S. Chamber of Commerce, the AFL-CIO, the National Association of Manufacturers, and the United Auto Workers have all endorsed our strategy. Business and labor are united behind our bill.

Last month, the Coalition Against Counterfeiting and Piracy—a group of more than 500 companies concerned with IP theft—identified our legislation as a top priority for their members. Additional endorsements have come from key labor organizations that recognize the threats posed to American workers.

Mr. Chairman, time is of the essence on this issue. The STOP program expires when the President leaves office. The Bayh-Voinovich legislation would set in stone a comprehensive blueprint the new President will have to follow immediately after inauguration.

In closing, Mr. Chairman, I would simply say this: The heart of America's competitive advantage lies in the economy of tomorrow. We invest in research and development to create new goods, new services, and new cures.

Until we take more aggressive action to curtail IP theft, we will continue to be robbed of profits, jobs, and legal protection of our brightest ideas.

America will not be able to lead the global economy if we buy from our trading partners when they have a comparative advantage, while they steal from us when we have a comparative advantage.

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A stronger and more effective approach is needed to prevent the United States from losing its most valuable asset in the global marketplace: our innovators and entrepreneurs.

I urge this committee to give Intellectual Property Rights Enforcement Act swift consideration so it can move to the floor without delay. Thank you.

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U.S. Immigration and Customs Enforcement

WRITTEN STATEMENT

OF

MARCY M. FORMAN

DIRECTOR, OFFICE OF INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS"

BEFORE THE

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

November 7, 2007 – 2:00 p.m.
226 Dirksen Senate Office Building
Washington, D.C.

Chairman Leahy, Ranking Member Specter and members of the Committee, thank you for the opportunity to provide this written testimony to be entered into the record.

I want to thank this Committee for its continued support and leadership on issues concerning the protection of intellectual property. I look forward to the opportunity to work together to ensure that the heart of America's innovation economy, its intellectual property, is effectively protected around the world.

Among the Department of Homeland Security (DHS) law enforcement agencies, ICE has the most expansive investigative authority and the largest number of investigators. ICE systematically disrupts and dismantles international and domestic operations that traffic in counterfeit merchandise, identifies and seizes assets and illicit proceeds, and identifies systemic vulnerabilities that may be exploited by criminal elements to undermine border controls.

In addition, the ICE-led National Intellectual Property Rights Coordination Center (IPR Center) is the U.S. Government's central point of contact in the fight against violations of intellectual property rights (IPR) laws and the flow of counterfeit goods into U.S. commerce. Located in Washington, D.C., the IPR Center is a multi–agency facility responsible for coordinating a unified U.S. Government response regarding IPR enforcement issues. Particular emphasis is given to protecting the public health and safety of U.S. consumers, investigating major criminal organizations engaged in transnational IP crime, and pursuing the illegal proceeds derived from sales of smuggled counterfeit merchandise.

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With global counterfeiting operations costing American companies in excess of $250 billion dollars per year, ICE, through the IPR Center works to identify and address growing IPR issues and criminal trends. The IPR Center advances that information through outreach to the IP industry, Federal, State and international law enforcement officials and prosecutors. Our IPR investigations continue to demonstrate that enforcement successes are closely tied to outreach and the relationships developed with agencies enforcing IPR statutes.

As this committee is well aware, IPR criminal activity represents a "triple threat" to our country and is the focus of the IPR Center. This threat undermines our national security by creating smuggling operations that expose point-of-entry vulnerabilities; they threaten public safety because the products involved are not regulated and are often sub-standard and dangerous; and they threaten our economic security by siphoning profits away from legitimate trademark and copyright holders. Experience has shown that it's not at all uncommon for those who traffic in counterfeit or pirated goods to be associated with criminal enterprises that may, in turn, seek to use their criminal proceeds to fund other, more deadly, operations. To deal with this the IPR Center advocates a four-pronged approach to taking down IPR violators, a strategy based on interdiction, investigation, prosecution and intelligence forged from critical partnerships with IP Trademark and Copyright holders.

The danger of IPR crimes often extends far beyond the financial damage they cause. Past ICE investigations into IPR crimes have found violators also involved in human smuggling, narcotics trafficking, money laundering and crimes of violence. Our investigative efforts seek to deny these criminal organizations the opportunity to thrive. By cracking down on IPR

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violators, we aim to help steer transactions to legitimate businesses and individuals who rightfully hold trademarks and copyrights.

In September 2005, ICE, San Diego, began an investigation of AFFPOWER.COM. AFFPOWER.COM and its associates, in conjunction with numerous conspiring U.S. physicians and pharmacists, were directly involved in the acquisition, marketing, and distribution of more than $126 million in misbranded, controlled, and prescription-only pharmaceuticals. The investigation has resulted in the first RICO indictment targeting rogue Internet pharmacies and associates.

ICE personnel assigned to the IPR Center have provided training to ICE field offices focusing on investigative techniques and legal requirements necessary to successfully identify, investigate and prosecute IPR violators, with emphasis on large-scale, complex transnational conspiracies. In FY2007, ICE IPR Center personnel developed a pilot training program designed to enhance the working relationships between ICE and Customs and Border Protection (CBP) while simultaneously providing the IP Industry with specific training to identify infringing products.

The IPR Center has since expanded this training program and developed IPR Best Practices Training module tailored to the concerns of specific regions. The one-day training sessions focus on best practice interdiction, investigation and prosecution and are ongoing throughout the country.

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As I previously noted, intelligence forged from partnerships with IP Trademark and Copyright holders is critical to our enforcement efforts. Our joint landmark investigative successes experienced during FY2004 and FY2005 with the People's Republic of China (PRC) in Operations Spring and Ocean Crossing clearly demonstrated the effect of that partnership. In FY2004, Operation Spring targeted counterfeit DVDs and established the first joint U.S.-PRC case in which ICE investigators conducted undercover activity in Mainland China with the assistance of our PRC counterparts. A year later, Operation Ocean Crossing took our agents back to China, where counterfeit Viagra and Cialis were targeted, in what became the largest seizure of counterfeit pharmaceuticals in the history of the PRC.

Consequently, during FY2006, the IPR Center intensified its outreach efforts, conducting 60 IP industry outreach and/or IPR Enforcement Training initiatives, directed at increasing and strengthening the bond and lines of communication with U.S. rights holders. In FY2007, ICE IPR Center personnel continued those efforts and conducted, or were involved in, 93 IP industry outreach and/or IPR Enforcement Training initiatives, a more than 50% increase over FY2006. These have included the ICE led Annual Pharmaceutical and Biotechnology Training Conference,; IPR Enforcement Training at the Special Agent in Charge offices in Los Angeles, Chicago, and Boston; and conducting IPR enforcement and best practices training at the International Law Enforcement Academies in Bangkok, Thailand and Lima, Peru.

The IPR Center is also a participating member in the Security & Prosperity Partnership (SPP) and the U.S. – Sino Joint Liaison Group (JLG) and the Interpol Intellectual Property Crimes Action Group. This year, IPR Center personnel provided critical input at the SPP Senior Law Enforcement Plenary in Mexico City, Mexico, as well as the JLG Intellectual Property Crime

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Enforcement Working Group meetings in Washington, D.C., Los Angeles, CA, and Beijing, PRC.

In May 2007, ICE provided in depth IP investigative and enforcement training to investigators and prosecutors from all seven Central American countries imparting best practice models based on U.S. successes, but directed at violations and commodities present in Central America. This was the first Regional IPR Enforcement Training for Central America, partnering ICE with the U.S. Chamber of Commerce.

In June 2007, ICE New York arrested 29 individuals including Customs Brokers, Container Freight Station operators, cartmen, bonded warehouse operators, and persons trafficking in counterfeit merchandise. These arrests culminated an 18-month investigation of three cases (collectively known as KDL) involving the exploitation of the customs in-bond system through several different schemes. These individuals were responsible for illegally entering over 950 containers of counterfeit merchandise during a two-year period. The investigation resulted from information provided to ICE by a concerned citizen. Public awareness and responsibility will form the basis for additional anti-counterfeiting efforts by ICE.

ICE IPR Center personnel are regularly asked to speak at IP Industry conferences, such as the industry's largest event in the nation, the Consumer Electronics Show, and at various Pharmaceutical Industry and Anti-Counterfeiting Coalition Conferences.

On or about February 2008, the IPR Center will relocate to Arlington, Virginia, to a new publicly accessible facility dedicated to U.S. Industry outreach and training. The new ICE IPR

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Center will allow for ready interaction with all facets of the IP Industry and provide ICE with the facility to chair IP Industry outreach and training. The new IPR Center will also host space for our partners in this enforcement arena and we look forward to representation by the Food and Drug Administration's Criminal Investigations Division, the Federal Bureau of Investigation, and U.S. Customs and Border Protection.

The growth in transnational counterfeiting organizations has created the need to better coordinate Law Enforcement resources required in these complex multi-jurisdictional investigations. The new Center will bring those coordination and enforcement resources under one roof, maximizing our joint efforts to fight this growing transnational problem. ICE has been and continues to be the lead investigative agency addressing the global threat of counterfeiting.

Thank you again for providing me with this opportunity to provide written testimony for the record. I will be happy to provide responses to any questions for the record that the Committee may have.

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United States Government Accountability Office

GAO

Report to the Chairman, Committee on Government Reform, House of Representatives

November 2006

INTELLECTUAL PROPERTY

Strategy for Targeting Organized Piracy (STOP) Requires Changes for Long-term Success

GAO
Accountability * Integrity * Reliability

GAO-07-74

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GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-07-74, a report to the Chairman, Committee on Government Reform, House of Representatives

Why GAO Did This Study

U.S. government efforts to protect and enforce intellectual property (IP) rights are crucial to preventing billions of dollars in losses and mitigating health and safety risks from trade in counterfeit and pirated goods. These efforts are coordinated through the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, and the Strategy for Targeting Organized Piracy (STOP), initiated by the Bush administration in 2004. This report describes the evolution of NIPLECC and STOP, assesses the extent to which STOP addresses the desirable characteristics of an effective national strategy, and evaluates the challenges to implementing a strategy for protecting and enforcing IP rights. GAO examined relevant documents, interviewed agency and industry officials, and assessed STOP using criteria previously developed by GAO.

What GAO Recommends

To improve strategic planning for IP protection, GAO recommends that the IP Coordinator, in consultation with the National Security Council and the STOP agencies (1) take steps to ensure that STOP fully addresses the six characteristics of a national strategy and (2) clarify how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy. The IP Coordinator concurred with both recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-74.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4128 or yagerl@gao.gov.

November 2006

INTELLECTUAL PROPERTY

Strategy for Targeting Organized Piracy (STOP) Requires Changes for Long-term Success

What GAO Found

Although NIPLECC and STOP originated under different authorities, the lines between them have become increasingly blurred. NIPLECC is a coordinating council, while STOP is a strategy involving coordination led by the National Security Council. While NIPLECC has struggled to define its purpose, STOP generated coordination and attention to IP protection from the outset. Congress gave NIPLECC an oversight role, funding, and an IP Coordinator as its head in 2005, but STOP remains prominent. Their functions, however, increasingly overlap. The IP Coordinator regularly conducts STOP activities and speaks for STOP before Congress and private industry. Most significantly, NIPLECC recently adopted STOP as its strategy.

STOP is a good first step toward a comprehensive integrated national strategy to protect and enforce IP rights and has energized protection efforts. GAO found, however, that STOP's potential is limited because it does not fully address the characteristics of an effective national strategy, which GAO believes helps increase the likelihood of accountability, as well as effectiveness. STOP does not fully address characteristics related to planning and accountability. For example, its performance measures lack baselines and targets. STOP lacks a discussion of costs, the types and sources of investments needed, and processes to address risk management. Finally, STOP lacks a full discussion oversight responsibility.

The current structures present several challenges to implementing a long-term strategy. First, NIPLECC retains an image of inactivity, and many private sector groups GAO interviewed were unclear about its role. STOP, despite its energy and prominence, lacks permanence beyond the current administration. Second, NIPLECC's commitment to implementing an effective strategy is unclear. For instance, NIPLECC's recent annual report does not explain how it plans to provide oversight. NIPLECC officials have sent mixed signals about STOP's role, with one saying STOP should include metrics to measure progress, and another calling STOP an account of administration efforts, not a strategy.

Extent STOP Addresses GAO's Desirable Characteristics of an Effective National Strategy

1. Clear purpose, scope, methodology	◐
2. Detailed discussion of problems and assessment of risks	◐
3. Desired goals, objectives, activities, and performance goals	◐
4. Description of resources, investments and risk management	○
5. Delineation of organizational roles, responsibilities, and coordination	◐
6. Description of strategy's integration with other agencies	◐

● Fully addresses ◐ Partially addresses ○ Does not address

Source: GAO.

United States Government Accountability Office

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Abbreviations

APEC	Asia Pacific Economic Cooperation
CACP	Coalition against Counterfeiting and Piracy
CBP	Customs and Border Protection
CAFTA-DR	Central America-Dominican Republic Free Trade Agreement
CHIP	Computer Hacking and Intellectual Property
CRM	Case Referral Mechanism
DOJ	Department of Justice
DHS	Department of Homeland Security
EU	European Union
FDA	Food and Drug Administration
FBI	Federal Bureau of Investigation
GPRA	Government Performance Results Act
ICE	Immigration and Customs Enforcement
IP	intellectual property
IPR	intellectual property rights
NIPLECC	National Intellectual Property Law Enforcement Coordination Council
MOFCOM	China's Ministry of Commerce
OECD	Organization for Economic Cooperation and Development
SPP	Security and Prosperity Partnership
STOP	Strategy for Targeting Organized Piracy
USPTO	U.S. Patent and Trademark Office
USTR	U.S. Trade Representative
WTO	World Trade Organization

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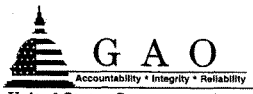

United States Government Accountability Office
Washington, DC 20548

November 8, 2006

The Honorable Tom Davis
Chairman
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

U.S. government efforts to protect and enforce intellectual property (IP) rights overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners and addressing health and safety risks resulting from the trade in counterfeit and pirated goods. IP protection and enforcement cut across a wide range of U.S. agencies and functions, as well as those of foreign governments, making coordination among all parties essential.

The U.S. government has developed a complex structure to achieve coordination of IP enforcement efforts. In 1999, Congress created the interagency National Intellectual Property Law Enforcement Coordination Council (NIPLECC) as a mechanism to coordinate U.S. efforts to protect and enforce IP rights in the United States and overseas.[1] In October 2004, the President announced the Strategy for Targeting Organized Piracy (STOP) to "smash the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets." STOP also calls for collaboration among U.S. agencies. Then, in the Consolidated Appropriations Act of 2005, Congress created the position of Coordinator for International Intellectual Property Enforcement to head NIPLECC.[2] In addition, the act mandated, among other things, that NIPLECC promulgate a strategy for protecting American intellectual property abroad and oversee its implementation. Recently, NIPLECC adopted STOP as that strategy.

[1]NIPLECC was established under Section 653 of the Treasury and General Government Appropriations Act, 2000 (Pub. L. No.106-58), 15 U.S.C. 1128.

[2]The Consolidated Appropriations Act, 2005 (Pub. L. No. 108-447), Division B, Title II.

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In response to your request to understand more fully U.S. government efforts to develop a comprehensive and integrated strategy with a long-term perspective to combat IP counterfeiting and piracy, this report (1) describes the evolution of the relationship between NIPLECC and STOP, (2) assesses the extent to which STOP addresses the desirable characteristics of an effective national strategy, and (3) evaluates the challenges to ensuring the implementation of a long-term integrated strategy for protecting and enforcing IP rights.

To meet these objectives, we examined NIPLECC and STOP official documents and reviewed the legislative history of NIPLECC. To determine the extent to which STOP serves as a national strategy for combating trade in counterfeit and pirated goods, we assessed STOP using the six desirable characteristics of an effective national strategy developed in previous GAO work.[3] GAO has used this methodology to assess and report on the administration's strategies relating to combating terrorism, restructuring DOD's global force posture, and rebuilding Iraq.[4] National strategies with these desirable characteristics offer policymakers and implementing agencies a management tool that can help ensure accountability and more effective results.[5] We also obtained and analyzed documents required under the Government Performance Results Act (GPRA) of 1993, as well as IP-related planning documents from the government agencies involved with STOP. We assessed the extent to which these agency documents support STOP goals and add information that may support elements necessary for an effective national strategy. In addition, we interviewed agency officials involved in NIPLECC and STOP, including the Coordinator for International Intellectual Property Enforcement. We also interviewed members of the private sector, which we selected

[3]GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, GAO-04-408T (Washington D.C.: Feb. 3, 2004).

[4]GAO, *Defense Management: Comprehensive Strategy and Annual Reporting Are Needed to Measure Progress and Costs of DOD's Global Posture Restructuring*, GAO-06-852, (Washington D.C.: Sept. 13, 2006); and *Rebuilding Iraq: More Comprehensive National Strategy Needed to Help Achieve U.S. Goals*, GAO-06-788 (Washington D.C.: June 28, 2006).

[5]The six characteristics are (1) a clear purpose, scope, and methodology; (2) a discussion of the problems, risks, and threats the strategy intends to address; (3) the desired goals and objectives, activities, and performance measures; (4) a description of the resources needed to implement the strategy; (5) a clear delineation of the organizational roles and responsibilities, including oversight as well as mechanisms for coordination; and (6) a description of how the strategy relates to subordinate levels of government and their plans to implement the strategy. These six characteristics can be subdivided into 29 separate elements for more detailed assessment.

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judgmentally to ensure that we obtained the views of major cross-industry associations, as well as individual associations and companies representing key industries that are heavily affected by IP violations such as the manufacturing, entertainment, and pharmaceutical industries. In all we spoke to 20 representatives from 16 private sector groups. We conducted our work from January 2006 through October 2006 in accordance with generally accepted government auditing standards. See appendix I for a more detailed description of our scope and methodology. See appendix II for a detailed discussion of GAO's analysis of STOP using the six desirable characteristics of an effective national strategy. See appendix III for the STOP strategy.

Results in Brief

NIPLECC and STOP originated under different authorities, but the lines between them have become increasingly blurred, creating overlapping structures to protect and enforce IP rights. NIPLECC is a coordinating council created by Congress in 1999, while STOP is a strategy initiated by the White House in 2004 under the auspices of the National Security Council, with a strong coordination component; both involve nearly the same agencies.[6] However, unlike NIPLECC, which has struggled to define its purpose, STOP generated active coordination and has sponsored IP protection related activities from the outset. Although Congress augmented NIPLECC's capabilities and clarified its purpose through passage of the Consolidated Appropriations Act of 2005,[7] STOP remains more prominent. NIPLECC's Coordinator for International Intellectual Property Enforcement (also known as the IP Coordinator), a position created by the 2005 act and filled by presidential appointment in July 2005 to head NIPLECC, has regularly been participating in STOP activities and acted as a STOP spokesperson to Congress and private industry. In addition, NIPLECC cites STOP activities as among its accomplishments in

[6]NIPLECC legislation includes Departments of Commerce (U.S. Patent and Trademark Office and International Trade Administration), Homeland Security (originally Legacy Customs), Justice (Criminal Division), State (Bureau of Economic and Business Affairs), and the Office of the United States Trade Representative. STOP includes the same agencies with the addition of the Federal Drug Administration.

[7]In December 2004, Congress augmented NIPLECC's capabilities in the Consolidated Appropriations Act of 2005, which created the Coordinator for International Intellectual Property Enforcement position and provided $2 million for NIPLECC's expenses through fiscal year 2006.

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its September 2006 report to Congress and the President.[8] Significantly, the NIPLECC principals recently identified STOP as their strategy for protecting American IP overseas, as one of the requirements under the Consolidated Appropriations Act. (See app. III for the complete STOP strategy.)

STOP is a good first step toward a comprehensive, integrated national strategy to protect and enforce U.S. intellectual property, and it has energized agency efforts. However, we found that STOP's full potential as a strategy is limited because it does not fully address the six desirable characteristics of an effective national strategy. We believe these characteristics would improve the likelihood of STOP's long-term effectivenss and ensure accountability.[9] STOP does not fully address key characteristics related to planning and accountability, missing key elements such as a discussion of performance measures, resources, risk management, and designation of oversight responsibility. While STOP generally addresses goals and subordinate objectives and activities, it only partially addresses performance measures; for example, it reports the number of calls to the U.S. Patent and Trademark Office (USPTO) hotline, but it does not provide data on baselines or targets to assess how well the activities are being implemented. The strategy does not address resources, investments, and risk management; for instance, it lacks a discussion of current or future costs, the types or sources of investments needed to target organized piracy, and processes to effectively balance the threats from counterfeit products with the resources available. In addition, STOP also partially addresses organizational roles and responsibilities by citing many examples of agency roles with respect to their STOP activities; however, it does not discuss a framework for accountability among the STOP agencies, such as designating responsibility for oversight. While some of these elements are addressed in individual agency documents, the need to consult multiple agency documents underscores the strategy's lack of integration and limits its usefulness as a management tool for effective oversight and accountability.

[8] *Report to the President and Congress on Coordination of Intellectual Property Enforcement and Protection*, September, 2006. The National Intellectual Property Law Enforcement Coordination Council.

[9] While national strategies are not required by executive or legislative mandate to address a single, consistent set of characteristics, GAO has identified six desirable characteristics of an effective national strategy.

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Several challenges to the implementation of an effective long-term strategy result from the current structures. First, despite NIPLECC's key role of providing permanence, it continues to have leadership problems. NIPLECC retains an image of inactivity among the private sector despite its enhanced mandate and, in July 2006, Senate appropriators expressed concern about the lack of information provided by NIPLECC on its progress. Second, while agency and private sector officials praise STOP for energizing U.S. IP protection efforts, STOP lacks permanence. The authority and influence STOP enjoys as a presidential initiative could disappear after the current administration. Third, NIPLECC's commitment to implementing STOP as a successful strategy remains unclear, creating a challenge for accountability. NIPLECC' September 2006 report describes numerous STOP activities but does not articulate how NIPLECC plans to carry out its oversight responsibility mandated by Congress. Agency officials we interviewed generally considered STOP to be the U.S. government's IP strategy. However, NIPLECC officials have sent mixed signals about the extent to which they believe STOP is meant to provide performance measures and information on resource levels. For instance, one NIPLECC representative said that STOP should include metrics to measure progress that should be reported on by the IP Coordinator. Yet, another NIPLECC representative told us that STOP was a fact sheet rather than a strategy. While the IP Coordinator stated in congressional testimony that STOP is NIPLECC's strategy, he also told us that STOP was never meant to be an institutional method for reporting priorities and metrics to the President or Congress. Furthermore, the STOP strategy neither makes reference to NIPLECC's oversight role, nor does STOP articulate a framework for oversight and accountability among the STOP agencies carrying out the strategy.

To improve STOP's effectiveness as a planning tool and its usefulness to Congress:

We recommend that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, including the Departments of Commerce, Homeland Security, Justice, and State; and the Office of the U.S. Trade Representative; and the Food and Drug Administration, take steps to ensure that STOP fully addresses the six characteristics of a national strategy.

To clarify NIPLECC's oversight role with regard to STOP:

We recommend that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, including the Departments of

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Commerce, Homeland Security, Justice, and State; and the Office of the U.S. Trade Representative; and the Food and Drug Administration, clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy.

We provided USTR, the Departments of Commerce, Justice, Homeland Security, and State; and USPTO, Food and Drug Administration, and the IP Coordinator with a draft of this report for their review and comment. The IP Coordinator, through the Department of Commerce in consultation with the USPTO and the International Trade Administration, provided technical comments. The Department of Homeland Security, the Food and Drug Administration, and the Office of the U.S. Trade Representative also chose to provide technical comments. We modified the report where appropriate. The Departments of Justice and State did not provide any comments. We also received written comments from the U.S. Coordinator for International Property Enforcement (IP Coordinator), which are reprinted in appendix IV. The IP Coordinator reiterated our message that STOP was a good first step toward a comprehensive, integrated strategy to protect and enforce U.S. intellectual property rights and that it had energized U.S. efforts. He concurred with our recommendations, stating that his office would review them, and planned to identify opportunities for improvement based on those recommendations, where appropriate.

Background

Intellectual property is an important component of the U.S. economy, and the United States is an acknowledged global leader in its creation. However, the legal protection of intellectual property varies greatly around the world, and several countries are havens for the production of counterfeit and pirated goods. Technology has facilitated the manufacture and distribution of counterfeit and pirated products, resulting in a global illicit market that competes with genuine products that complicates detection and actions against violations. High profits and low risk have drawn in organized criminal networks, and the public is often not aware of the issues and consequences surrounding IP theft. The Department of State has cited estimates that counterfeit goods represent about 7 percent of annual global trade, but we note that it is difficult to reliably measure what is fundamentally a criminal activity.[10] Industry groups suggest,

[10]The Organization for Economic Co-operation and Development (OECD) is conducting a study on IP, examining the extent to which counterfeit goods are entering global trade and associated data reliability issues.

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however, that counterfeiting and piracy are on the rise and that a broader range of products, from auto parts to razor blades, and from vital medicines to infant formula, are subject to counterfeit production. Counterfeit products raise serious public health and safety concerns, and the annual losses that companies face from IP violations are substantial.

Eight federal agencies, as well as entities within those agencies including the Federal Bureau of Investigation (FBI) and USPTO, undertake the primary U.S. government activities in support of IP rights. These eight agencies are: Departments of Commerce, State, Justice, and Homeland Security; the U.S. Trade Representative (USTR); the Copyright Office; the U.S. Agency for International Development; and the U.S. International Trade Commission. These agencies undertake a wide range of activities that fall under three categories: policy initiatives, training and technical assistance, and law enforcement. U.S. international trade policy initiatives to increase IP protection and enforcement are primarily led by USTR, in coordination with the Departments of State, Commerce, USPTO, and the Copyright Office, among other agencies. The policy initiatives are wide ranging and include reviewing IP protection abroad and negotiating agreements that address intellectual property. Key activities to develop and promote enhanced IP protection through training or technical assistance are undertaken by the Departments of Commerce, Homeland Security, Justice, and State; the FBI; USPTO; and the Copyright Office.

A smaller number of agencies and their entities are involved in investigating IP violations and enforcing U.S. IP laws. Working in an environment where counterterrorism is the central priority, the Department of Justice, including the FBI, and the Department of Homeland Security take actions that include engaging in multicountry investigations involving intellectual property violations and seizing goods that violate IP rights at U.S. ports of entry. The Food and Drug Administration (FDA) also investigates intellectual property violations for FDA-regulated products as part of its mission to assure consumer safety. Finally, the U.S. International Trade Commission has an adjudicative role in enforcement activities involving patents and trademarks. These agencies, and their entities, may be affiliated with NIPLECC, STOP, or both as indicated by figure 1.

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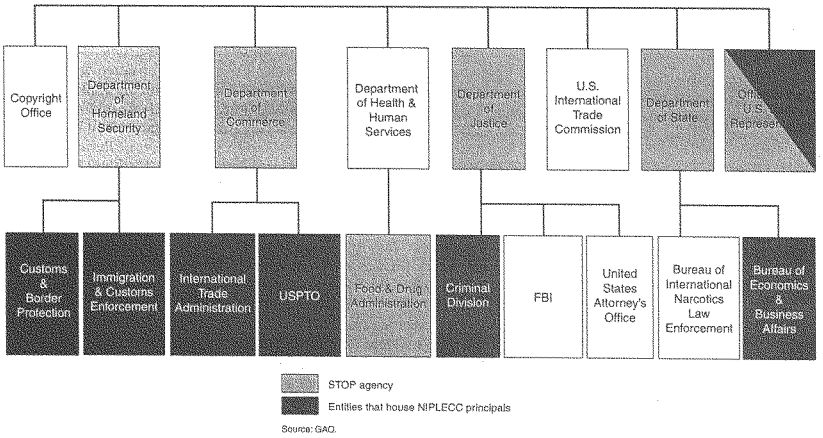
Figure 1: Primary U.S. Government Agencies and Entities Supporting U.S. Intellectual Property Rights



Source: GAO.

Note: NIPLECC is required to consult with the Register of Copyrights on copyright law enforcement matters. Immigration and Customs Enforcement, while not an original member, was reported as a member of NIPLECC in the council's fifth annual report issued in September 2006.

Lines between NIPLECC and STOP Have Blurred into Overlapping Structures

NIPLECC and STOP originated separately under different authorities, but the lines between them have become increasingly blurred. They share similar goals, including coordination of IP protection and enforcement, and involve nearly the same agencies. Five of the six STOP agencies house NIPLECC principals. NIPLECC is a coordinating council created by Congress, while STOP is a strategy initiated by the White House with a strong coordination component. NIPLECC has struggled to define its purpose, while STOP has generated active coordination and sponsored IP protection related activities from the outset. Although Congress passed legislation to enhance NIPLECC's mandate, STOP remains more prominent and is characterized by a high level of activity and visibility. The IP Coordinator, who heads NIPLECC, regularly participates directly in STOP-sponsored activities and represents STOP before Congress and

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private industry. Finally, significantly, NIPLECC adopted STOP as its strategy for protecting IP overseas in February 2006.

NIPLECC and STOP Originated under Different Authorities but with Similar Goals

NIPLECC and STOP were created under different authorities, NIPLECC as a congressional mandate and STOP as a presidential initiative. In 1999, Congress created NIPLECC to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities. The council's membership is designated by statute and includes (1) Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (USPTO); (2) Assistant Attorney General, Criminal Division (Justice); (3) Under Secretary of State for Economic and Agricultural Affairs (State); (4) Ambassador, Deputy United States Trade Representative (USTR); (5) Commissioner of Customs (Legacy Customs);[11] and (6) Under Secretary of Commerce for International Trade (Commerce). NIPLECC is also required to consult with the Register of Copyrights on copyright law enforcement matters. In addition, officials from the USPTO and the Department of Justice are the co-chairs of NIPLECC. Congress required NIPLECC to report its coordination efforts annually to the President and to the Committees on Appropriations and the Judiciary of the Senate and the House of Representatives. NIPLECC's authorizing legislation included no specific dollar amount for funding or staff.

Although created to coordinate U.S. IP law enforcement efforts, NIPLECC has had difficulties. In our September 2004 report, we stated that NIPLECC had struggled to define its purpose. Our 2004 report noted that NIPLECC had little discernible impact and had not undertaken any independent activities, according to interviews with both industry officials and officials from its member agencies, and as evidenced by NIPLECC's own annual reports. From 1999 through the end of 2004, NIPLECC produced three annual reports that did little more than provide a compilation of individual agency activities. Indeed, we reported that officials from more than half of the member agencies offered criticisms of

[11]NIPLECC's authorizing legislation designates the Commissioner of Customs as a council member. This individual remained a NIPLECC member after the formation of the Department of Homeland Security in 2003, but under the new title of Department of Homeland Security's Commissioner of Customs and Border Protection. NIPLECC's fifth annual report, issued in September 2006, added a second representative from the Department of Homeland Security, the Assistant Secretary for Immigration and Customs Enforcement, which includes investigative functions that had been conducted under the former Legacy Customs.

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NIPLECC, remarking that it was unfocused, ineffective, and "unwieldy." In official comments to the council's 2003 annual report, major IP industry associations expressed a sense that NIPLECC is not undertaking any independent activities or having any impact. However, some officials interviewed did cite positive contributions supporting IP efforts, including an IP training database Web site. Finally, we noted in our 2004 report that if Congress wished to maintain NIPLECC and take action to increase its effectiveness, it should consider reviewing the council's authority, operating structure, membership, and mission.[12]

In October 2004, the President launched STOP, a separate initiative led by the White House under the auspices of the National Security Council, to target cross-border trade in tangible goods and strengthen U.S. government and industry IP enforcement actions. While STOP made no mention of NIPLECC's role, STOP members are the same agencies that house NIPLECC members, except that STOP includes the FDA. According to a high-level official who participated in the formation of STOP, the initiative was intended to protect American innovation, competitiveness, and economic growth. It stemmed from the recognition that U.S. companies needed protection from increasingly complex and sophisticated criminal counterfeiting and piracy. As part of STOP, agencies began holding meetings, both at working levels and higher, to coordinate agency efforts to tackle the problem.

Congress Enhanced NIPLECC While STOP Continues to Play the Prominent Role in Coordination

Congress addressed NIPLECC's lack of activity and unclear mission in the 2005 Consolidated Appropriations Act in December 2004. The act called for NIPLECC to (1) establish policies, objectives, and priorities concerning international IP protection and enforcement; (2) promulgate a strategy for protecting American IP overseas; and (3) coordinate and oversee implementation of the policies, objectives, and priorities and overall strategy for protecting American IP overseas by agencies with IP responsibilities. The act appropriated $2 million for NIPLECC's expenses through the end of the fiscal year 2006. It also created the position of the Coordinator for International Intellectual Property Enforcement, also known as the "IP Coordinator," to head NIPLECC. The IP Coordinator is appointed by the President and may not serve in any other position in the federal government. The co-chairs for NIPLECC are required to report to

[12]See GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, GAO-04-912 (Washington D.C.: Sept. 8, 2004).

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the IP Coordinator. In July 2005, the Secretary of Commerce announced the presidential appointment of the IP Coordinator. Table 1 compares NIPLECC and STOP.

Table 1: Comparison of Features of NIPLECC and STOP

Features	NIPLECC	STOP
Origin	Congressional mandate	White House initiative
Leadership	• Coordinator for International Intellectual Property Enforcement (IP Coordinator) • Co-Chairs from USPTO and Justice report to Coordinator	• National Security Council
Membership	By agency and position: 1. Department of Justice: Assistant Attorney General, Criminal Division 2. Department of Commerce: Under Secretary for IP and Director of USPTO; and the Under Secretary for International Trade 3. Department of Homeland Security: Commissioner of U.S. Customs and Border Protection; and the Assistant Secretary for Immigration and Customs Enforcement 4. Department of State: Under Secretary for Economic, Business, and Agricultural Affairs 5. Office of the U.S. Trade Representative: Deputy U.S. Trade Representative	By agency: 1. Department of Justice 2. Department of Commerce 3. Department of Homeland Security 4. Department of State 5. Office of the U.S. Trade Representative 6. Food and Drug Administration
Dedicated funding	$2 million (for fiscal years 2005 and 2006)	None
Dedicated staff	Seven (IP Coordinator, four staff members, and two detailees)	None
Meetings	Quarterly	Approximately monthly (scheduled on an ad hoc basis)

Source: GAO.

Note: NIPLECC is required to consult with the Register of Copyrights.

Since obtaining enhanced capabilities under the 2005 Consolidated Appropriations Act, NIPLECC has made some progress, through NIPLECC's administrative staff, including the IP Coordinator, an assistant, a policy analyst, part-time legislative and press assistants, and detailees from USPTO and CBP. Examples of the office's activities include working with the Commercial Law Development Program[13] to train foreign governments on IP enforcement, co-hosting an IP regulation training and

[13]The Commercial Law Development Program, a program of the U.S. Department of Commerce Office of the General Counsel, is uniquely tasked with providing technical assistance in the commercial law arena to the governments and private sectors of transitional countries in support of their economic development goals.

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industry partnership conference in Chicago, working with the Department of State on an IP-related Web site for information sharing among U.S. agencies, working with USPTO to implement a workshop on border enforcement of IP rights in India, working with the Department of Justice to identify IP regulation enforcement needs in India, and producing four country fact sheets highlighting the status of IP protection. In addition, the IP Coordinator has facilitated two NIPLECC meetings, established the practice of holding NIPLECC meetings quarterly, and NIPLECC has issued two annual reports since the 2005 act. The 2004 annual report was made available in June 2005 and is similar to earlier reports in that it is a compilation of individual agency activities. However, the 2005 annual report, which was released in September 2006, represents a departure in substance and style. For example, it provides a broad overview of the problem of IP violations and how the U.S. government is supporting U.S. business to address it, as well as a description of the activities of the IP Coordinator's office. Another new aspect of the report is that it provides examples of U.S. government actions to improve IP protection in China. (See fig. 2 for a time line of key NIPLECC and STOP events.)

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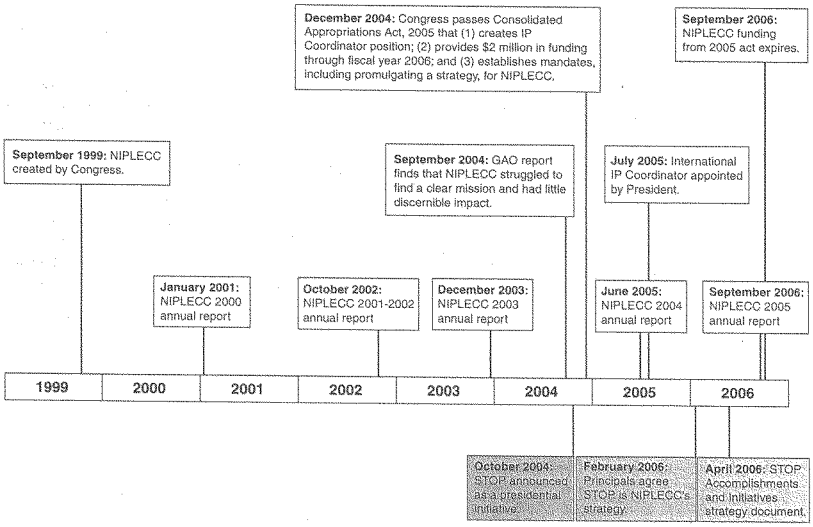
Figure 2: Key Events Relevant to NIPLECC and STOP



Sources: NIPLECC annual reports, www.Stopfakes.gov, and Office of the Intellectual Property Coordinator.

Note: STOP participants meet on an ad hoc basis approximately once or twice a month. According to NIPLECC annual reports, NIPLECC principals met four times in 2000, once in 2001, twice in 2002, and once in 2003. No NIPLECC principals meetings were reported to have been held in 2004 or 2005. NIPLECC principals held two meetings in 2006 with the IP Coordinator, and hereafter plan to meet on a quarterly basis.

Unlike NIPLECC, STOP from its beginning has been characterized by a high level of active coordination and visibility. Agency officials with whom we spoke said that STOP meetings occurred once or sometimes twice a month, and were driven by particular issues or events, and also involved status checks on ongoing efforts and discussing and prioritizing new ones. For example, agency officials met to ensure that IP was given attention at the European Union summits and to share talking points for international trips. In addition, USPTO established a hotline to give businesses a point

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of contact for information on IP rights enforcement and report problems in other countries. The hotline is fielded by attorneys with regional expertise. Commerce developed a Web site to provide information and guidance to right holders on how to register and protect their IP assets in markets around the world. STOP also launched multiagency delegations to engage foreign officials and the private sector on IP protection and enforcement. Officials from STOP agencies traveled to Asia during April 2005 and 2 months later to countries in the European Union. STOP agencies also work with the Coalition Against Counterfeiting and Piracy (CACP), an association jointly led by the U.S. Chamber of Commerce and National Association of Manufacturers, which U.S. private sector officials we interviewed have stated is their primary mechanism of interfacing with agency officials representing STOP. STOP officials work with CACP on their "No Trade in Fakes" program to develop voluntary guidelines companies can use to their supply and distribution chains are free of counterfeits.

NIPLECC Adopts STOP As Its Strategy

The lines between NIPLECC and STOP have become increasingly blurred. The IP Coordinator, who heads NIPLECC, regularly participates directly in STOP activities. For example, the IP Coordinator has effectively functioned as a STOP spokesperson overseas, to Congress, and to U.S. private industry. Significantly, NIPLECC has adopted STOP as the strategy it is required to promulgate under the 2005 Consolidated Appropriations Act. The IP Coordinator told us that STOP was not meant to cover all aspects of IP but represented a good start toward an effective strategy. He believed that it made sense to use STOP as NIPLECC's strategy rather than starting anew. The STOP strategy was updated since it was announced in October 2004 and is encompassed in the June 2006 document, *Bush Administration: Strategy for Targeting Organized Piracy, Accomplishments and Initiative.* The document consists of five general goals and discusses activities associated with each goal. The goals are (1) empowering American innovators to better protect their rights at home and abroad, (2) increasing efforts to seize counterfeit goods at our borders, (3) pursuing criminal enterprises involved in piracy and counterfeiting, (4) working closely and creatively with U.S. industry, and (5) aggressively engaging our trading partners to join our efforts. (See app. III to view this latest document representing the STOP strategy, which we evaluate in the next section.)

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STOP Is a Good Initial Effort but Does Not Yet Fully Address the Desirable Characteristics of an Effective National Strategy

STOP represents progress toward developing a comprehensive integrated national strategy for IP protection and enforcement and has experienced some success. However, we found that STOP does not fully address the six desirable characteristics of an effective national strategy that we believe would improve the likelihood of its long-term effectiveness and ensure accountability. Our analysis showed that STOP does not fully address key characteristics related to planning and accountability, missing elements such as a discussion of performance measures, resources, risk management, and designation of oversight responsibility. While we found that some strategy documents belonging to individual STOP agencies supplemented some of the characteristics not fully addressed in STOP, the need to consult multiple agency documents limits the usefulness of STOP as an integrated strategy to guide policy and decision makers in allocating resources and balancing priorities with other important objectives.

Effective National Strategic Planning Has Six Desirable Characteristics

While national strategies are not required by executive or legislative mandate to address a single, consistent set of characteristics, GAO has identified six desirable characteristics of an effective national strategy. It is important that a national strategy contain these characteristics, and their underlying elements, because they enable implementers of the strategy to effectively shape policies, programs, priorities, resource allocations, and standards so that federal departments and other stakeholders can achieve the desired results. National strategies provide policymakers and implementing agencies with a planning tool that can help ensure accountability and effectiveness. A summary of the six characteristics is presented below, and appendix II provides a more detailed discussion of GAO's criteria.

- *Purpose, Scope, and Methodology*–addresses why the strategy was produced, the scope of its coverage, and the process by which it was developed.
- *Problems, Risks, and Threats*–discusses or defines problems the strategy intends to address, their causes, and the operating environment, and also provides a risk assessment, including an analysis of the threats and reliability of available data.
- *Goals, Objectives, Activities, and Outcome-Related Performance Measures*–addresses what the strategy strives to achieve and the steps needed to reach the goals, as well as priorities, milestones, and performance measures to monitor and evaluate results.

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- *Future Costs and Resources Needed*–addresses what the strategy will cost, the sources and types of resources and investments needed, and a risk management framework to guide where those resources and investments should be targeted.

- *U.S. Government Roles, Responsibilities, and Coordination Mechanisms*–clarifies implementing organizations' relationships in terms of leading, supporting, and partnering, and designates responsibility for the overall framework for accountability and oversight.

- *Strategy's Integration among and with Other Entities*–addresses both how the strategies' goals and objectives relate to those of government agencies and how the agencies plan to implement the strategy.

We believe a national strategy should ideally contain all of these characteristics and present them in this order because they flow logically from conception to implementation. Specifically, the strategy's purpose leads to the definition of the problems and risks it intends to address, which in turn leads to specific actions for tackling those problems and risks, allocating and managing the appropriate resources, identifying different organizations' roles and responsibilities, and finally to integrating action among all relevant parties and implementing the strategy.

We recognize that strategies themselves are not end points, but rather dynamic, working documents. As with any strategic planning effort, implementation is the key. The ultimate measure of these strategies' value will be the extent to which they are useful guidance for policy and decision makers in allocating resources and balancing priorities with other important objectives. It will be important over time to obtain and incorporate feedback from the "user" community as to how the strategies can better provide guidance and how Congress and the administration can identify and remedy impediments to implementation, such as legal, international, jurisdictional, or resource constraints.

STOP Is Missing Several Elements Important to Planning and Accountability

Figure 3 shows that STOP partially addresses five of the six characteristics and their key elements, and does not address any of the elements within one characteristic. Our analysis noted that STOP does not address any elements related to resources, investment, and risk management and only partially addresses a number of elements within the other five characteristics that are important for planning and accountability, including performance measures and designation of oversight

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responsibility. A full discussion of each characteristic and our analysis can be found in appendix II.

Figure 3: Extent to Which STOP Addresses GAO's Desirable Characteristics of an Effective National Strategy

1. Purpose, scope, methodology		◐	
Purpose	1a. The impetus that led to the strategy being written, such as a statutory requirement, mandate, or key event		◐
	1b. The strategy's purpose		●
Scope	1c. Key terms, major functions, mission areas, or activities the strategy covers		●
Methodology	1d. The process that produced the strategy, (e.g., what organizations or offices drafted the document, whether it was the result of a working group, or which parties were consulted in its development)		○
2. Problem definition and risk assessment		◐	
Problem definition	2a. The problems the strategy intends to address		●
	2b. The causes of the problems		◐
	2c. The operating environment		◐
Risk assessment	2d. The threats the strategy is directed toward		◐
	2e. Discusses the quality of data available, e.g., constraints, deficiencies, and "unknowns"		○
3. Goals, subordinate objectives, activities, and performance measures		◐	
Goals and subordinate objectives	3a. Addresses the overall results desired, i.e., an "end-state"		●
	3b. Identifies strategic goals and subordinate objectives		◐
Activities	3c. Identifies specific activities to achieve results		●
Performance measures	3d. Priorities		○
	3e. Milestones		○
	3f. Output-related and outcome-related performance measures		◐
	3g. The process to monitor and report on progress		○
	3h. The limitations on progress indicators		○
4. Resources, investments, and risk management		○	
Resources and investments	4a. The cost of the strategy		○
	4b. The sources (e.g., federal, state, local, and private) of resources or investments needed		○
	4c. The types of sources or investments needed (e.g. budgetary, human capital, information technology, research and development, contracts)		○
Risk management	4d. Where resources or investments should be targeted to balance risks and costs		○
	4e. Resource allocation mechanisms		○
	4f. How risk management will aid implementing parties in prioritizing and allocating resources		○
5. Organizational roles, responsibilities, and coordination		◐	
Organizational roles and responsibilities	5a. Who will be implementing the strategy		●
	5b. Lead, support, and partner roles and responsibilities of specific federal agencies, departments, or offices (e.g., who is in charge during all phases of the strategy's implementation)		◐
	5c. Which organizations will provide the overall framework for oversight and accountability		○
Coordination	5d. How they will coordinate both within agencies and with other agencies		◐
	5e. The process for how conflicts will be resolved		○
6. Integration		◐	
	6a. Addresses how the STOPI strategy relates to each agency's strategies, goals, and objectives		◐

● Fully addresses ◐ Partially addresses ○ Does not address

Source: GAO.

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STOP partially addresses the third characteristic, which is important for planning and accountability. Although STOP identifies five main goals, it does not always provide subordinate objectives and is missing key elements related to performance measures such as priorities, milestones, and a process for monitoring and reporting on progress. For example, under its goal of pursuing criminal enterprises, STOP clearly lists subordinate objectives of increasing criminal prosecutions, improving international enforcement, and strengthening laws. But, subordinate objectives under its goal of working closely and creatively with U.S. industry can only be inferred. Also, STOP mentions implementing a new risk model to target high-risk cargo but does not specify time frames for its completion. Although STOP cites output-related performance measures[14]—such as the USPTO STOP hotline receiving over 950 calls during fiscal year 2005 and a 45 percent increase in the number of copyright and trademark cases filed from fiscal year 2004 to fiscal year 2005—these figures are presented without any baselines or targets to facilitate the assessment of how well the program is being carried out. In addition, STOP cites outcome-related performance measures for a few activities.[15] For example, STOP goal of pursuing criminal enterprises includes shutting down sophisticated international peer-to-peer networks used by over 133,000 members. Without effective performance measures, STOP's goals, objectives, and activities cannot be effectively measured, and policymakers cannot effectively monitor STOP's progress.

STOP does not address any of the elements within the fourth characteristic related to resources, investments, and risk management. As a result, decision makers are limited in their ability to determine necessary resources, manage them, and shift them with changing conditions. STOP neither identifies current or future costs of implementing the strategy, such as those related to investigating and prosecuting IP-related crime or conducting IP training and technical assistance, nor does it identify the sources or types of resources required. While the strategy states that "American businesses lose $200 to $250 billion a year to pirated and counterfeit goods," it does not provide a detailed discussion of the economic threat to U.S. business, discuss other risks such as the potential

[14]An "output measure" records the actual level of activity or whether the effort was realized and can assess how well a program is being carried out.

[15]An "outcome measure" assesses the actual results, effects, or impact of an activity compared with its intended purpose.

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threats to consumer health and safety from counterfeited products, or discuss how resources will be allocated given these risks.

STOP also partially addresses elements within the fifth characteristic of organizational roles, responsibilities, and coordination. STOP identifies lead, support, and partner roles for specific activities. For example, it identifies the White House as leading STOP and indicates partnering roles among agencies, such as the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's FBI joint role of running the National Intellectual Property Rights (IPR) Center. However, STOP does not discuss a process or a framework for oversight and accountability among the agencies carrying out the strategy. Although STOP discusses specific instances of coordination among member agencies, it lacks a clear and detailed discussion of how overall coordination occurs. For instance, there is no mention of STOP meetings, their frequency, objectives, or agendas.

Some Agency Planning Documents Contain Characteristics Missing in STOP

We found that some STOP agency planning documents provided additional detail on missing elements important to planning and accountability. For example, the October 2004, *Report of the Department of Justice's Task Force on Intellectual Property*, and, June 2006, *Progress Report of the Department of Justice's Task Force on Intellectual Property* clearly sets forth the Department of Justice's strategies, objectives, activities and associated milestones and performance measures for improving the department's overall intellectual property enforcement. The June 2006 progress report details how the Department of Justice implemented the 31 recommendations made by the Task Force in 2004 and, where appropriate, how it exceeded those milestones and objectives in a number of important areas. For instance, the 2004 report recommended increasing the number of Computer Hacking and Intellectual Property (CHIP) units by 5; the progress report indicated that, by June 2006, an additional 12 units were added, increasing the total number of CHIP units nationally to 25.

CBP articulates its strategies, objectives, activities, and associated milestones and performance measures related to STOP in its 2006 *Priority Trade Issue: IPR Trade Strategy*.[16] For example, the first objective within

[16]IPR Goal: Improve the effectiveness of IPR enforcement by actively supporting the administration's STOP initiative and by ensuring a single uniform approach and focusing on known or alleged violators with high aggregate values or whose infringing products threaten health, safety, and economic security or have possible ties to terrorist activity.

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CBP's strategy identifies the IPR risk model as a STOP deliverable and provides targets, measures, and milestones to track performance. Associated targets included a 15 percent increase in efficiency, using cargo selectivity criteria to develop a baseline, indicating a milestone of completing a pilot test by March 2005 with implementation pending. Another example of an agency document that addresses other characteristics not addressed in STOP is USPTO's annual Performance and Accountability Report for 2005, which discusses the resources available for USPTO's IP-related operations during that fiscal year, including the costs associated with patent and trademark related programs.

STOP Does Not Fully Integrate Agencies' Planning Documents

We found that STOP partially addresses the sixth desirable characteristic regarding integration, which involves the extent to which the STOP strategy consistently articulates how it relates as a national strategy to STOP agencies' own strategies, goals, and objectives. This characteristic also encompasses how STOP demonstrates the extent to which the agencies' strategies have shared goals and objectives. While STOP refers to agency strategies for some STOP agencies, it does not do so for others. For example, STOP cites the Department of Justice's October 2004 *Report of the Department of Justice's Task Force on Intellectual Property* and links one of its STOP objectives, increasing criminal prosecutions, to the task force. However, STOP does not clearly link its objectives with those cited in other agencies' planning documents relevant to IP enforcement, such as CBP's most recent *Priority Trade Issue: IPR Trade Strategy*.[17] In addition, STOP does not consistently show the linkages among the agencies' goals and objectives supporting STOP. For example, under its objective of pursuing criminal enterprises, STOP does not discuss how the objectives of the Department of Justice's task force might be linked to the goals and objectives found in an ICE strategy. It is important that STOP not only reflects individual agencies' priorities and objectives but also integrates them in a comprehensive manner, enhancing collaboration among the agencies and providing a more complete picture to policy makers with oversight responsibilities. The absence of clear linkages underscores the strategy's lack of integration and limits the usefulness of STOP as a management tool for effective oversight and accountability...

[17]CBP's most recent *Priority Trade Issue: IPR Trade Strategy* was issued on May 16, 2006. The prior *IPR Trade Strategy* was issued on May 20, 2005.

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Current Structures Create Challenges to an Effective Integrated Strategy

Several challenges to implementation of an effective long-term integrated strategy result from the current structures. First, NIPLECC continues to have leadership problems despite enhancements made by Congress. Second, in contrast, STOP has a positive image compared with NIPLECC but lacks permanence. STOP's authority and influence, which results from its status as a presidential initiative, could disappear after the current administration. Third, NIPLECC's commitment to implementing STOP as a successful strategy remains unclear, creating a challenge for accountability.

IP Coordinator Praised, but NIPLECC Retains an Image of Weak Leadership

Since Congress enhanced its powers, NIPLECC has been given a key leadership role in overseeing the development of policies, objectives, and priorities for IP protection and enforcement and in implementing an overall strategy. Yet, NIPLECC retains an image of inactivity within some of the private sector. For example, almost half of the 16 private sector groups with whom we spoke expressed the opinion that NIPLECC was inactive or a nonplayer. In addition, representatives from 10 of these groups were unclear about NIPPLEC's role, and many said that they were unclear about the difference between NIPLECC and STOP. Finally, in July 2006, Senate appropriators expressed concern about the lack of information provided by NIPLECC on its progress.

On the other hand, both agency officials and private sector representatives with whom we spoke consistently praised the IP Coordinator, who heads NIPLECC, saying that he was effectively addressing their concerns by making speeches, communicating with their members, and heading U.S. delegations overseas, although they most often associated his activities with STOP. In fact, most of the activities of the IP Coordinator's office cited in NIPLECC's latest annual report are part of STOP. While the IP Coordinator has noted in congressional testimony that NIPLECC has made some valuable contributions, such as updating a database for IP training overseas and contributing legislative suggestions to improve domestic IP laws, he acknowledged that there is unmet potential for NIPLECC.

Energized STOP Has Features That May Limit Its Long-term Effectiveness

Agency officials and members of the private sector attribute STOP's effectiveness to its status as a White House initiative and its resulting authority and influence. However, there is uncertainty whether this authority and influence will continue beyond the current administration because priorities may shift after the next presidential election. In addition, STOP has weaknesses as a national strategy, including its failure to fully address key characteristics related to planning and accountability

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such as performance measures, resources and investments, risk management, and designation of oversight responsibility. Uncertainty as to whether STOP will have the same White House support in a new administration and its current shortcomings as a strategy may impact NIPLECC's ability to successfully implement and monitor it.

However, despite STOP's lack of permanence, it is viewed as energizing U.S. IP protection and enforcement efforts and is generally praised by agency officials and industry representatives. The IP Coordinator stated in congressional testimony that STOP has built an expansive interagency process that provides the foundation for U.S. government efforts to fight global piracy. Several agency officials participating in STOP cited its advantages. They said that STOP gave them the opportunity to share ideas and support common goals. Many agency officials with whom we spoke said that STOP had brought increased attention to IP issues within their agencies and the private sector, as well as abroad, and attributed that to the fact that STOP came out of the White House, thereby lending it more authority and influence. One agency official pointed out that IP was now on the President's agenda at major summits such as the G8 and the recent European Union summits.[18] Another agency official praised STOP for giving constituent agencies the flexibility to add to and enhance existing IP enforcement and protection efforts.

Private sector representatives with whom we spoke generally had positive views on STOP, although some thought that STOP was a compilation of new and ongoing U.S. agency activities that would have occurred anyway. One industry representative noted that STOP is a coordinated outreach to foreign governments that provided a collaborative alternative to the Special 301 process,[19] whose punitive aspects countries sometimes resented. Another indicated that his association now coordinates training with CBP that is specific to his industry as a result of contacts made through STOP. In addition, most private sector representatives with whom we spoke agreed that STOP was an effective communication mechanism between business and U.S. agencies on IP issues, particularly through

[18]The G8 is an annual summit that involves nine countries, including Canada, France, Germany, Italy, Japan, the United Kingdom, Russia, and the United States. The European Commission President is also a G8 member.

[19]The "Special 301" provisions of the Trade Act of 1974, as amended, require USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection.

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CACP, a cross-industry group created by a joint initiative between the Chamber of Commerce and the National Association of Manufacturers. Private sector officials have stated that CACP meetings are their primary mechanism of interfacing with agency officials representing STOP. There were some industry representatives, though, who questioned whether STOP had added value beyond highlighting U.S. IP enforcement activities. Some representatives considered STOP to be mainly a compilation of ongoing U.S. IP activities that pre-existed STOP. For example, Operation Fast Link[20] and a case involving counterfeit Viagra tablets manufactured in China, both listed as STOP accomplishments, began before STOP was created.

NIPLECC's Unclear Commitment Impairs Accountability

Ambiguities surrounding NIPLECC's implementation of STOP as a successful strategy create challenges for accountability. How NIPLECC will provide accountability through STOP, in practice, remains unclear. For instance, although NIPLECC's most recent annual report describes many STOP activities and the IP Coordinator's direct involvement in them, it does not explain how the NIPLECC principals and the IP Coordinator plan to carry out their oversight responsibilities mandated by Congress to help ensure a successful implementation of the strategy. In addition, the STOP strategy document has not been revised to mention NIPLECC's oversight role or articulate a framework for oversight and accountability among the STOP agencies carrying out the strategy.

Furthermore, while agency officials we interviewed generally considered STOP to be the U.S. government's IP strategy, NIPLECC officials have sent mixed signals about the extent to which they believe STOP is meant to provide accountability in terms of performance measures and resource levels. One official representing NIPLECC said that the STOP strategy should have goals and objectives, including metrics to measure progress about which the IP Coordinator should report. However, a NIPLECC representative from another agency told us that this document was a fact sheet rather than a strategy and that it should not be assessed as a national strategy but as an account of administration efforts. Similarly, a NIPLECC representative from a third agency was skeptical whether STOP should be assessed as NIPLECC's strategy. Finally, the IP Coordinator stated in

[20]Under the Department of Justice's Operation Fast Link, on April 2004, law enforcement authorities executed over 120 total searches during the previous 24 hours in 27 states and in 10 foreign countries. Four separate undercover investigations were simultaneously conducted, striking all facets of the illegal software, game, movie, and music trade online.

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congressional testimony that STOP is NIPLECC's strategy but also told us that STOP was never meant to be an institutional method for reporting priorities and metrics to the President or Congress, or to manage resources. Yet, as mentioned earlier, these are key characteristics of any strategy.

Conclusions

Combating IP counterfeiting and piracy requires the involvement of many U.S. agencies. The STOP strategy has brought attention and energy to IP efforts within the U.S. government. Agency participants and industry observers have generally supported the new effort. At the same time, the challenges of IP piracy are enormous and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry representatives to be successful. The current structure presents several challenges. STOP is an important first step in the development and implementation of an integrated strategy, but it is not well suited to address the problem over the long term. As a presidential initiative, STOP lacks permanence beyond the current administration. This poses challenges to its long-term effectiveness because STOP depends upon White House support. In addition, STOP does not fully address the six desirable characteristics of an effective national strategy that we believe would improve the likelihood of its long-term effectiveness and ensure accountability. This limits its usefulness as a tool to prioritize, guide, implement, and monitor the combined efforts of multiple agencies to protect and enforce IP rights. While NIPLECC offers STOP some permanence and congressional oversight, it is unclear how NIPLECC will carry out its responsibilities in practice, which, along with its legacy of inactivity, raises questions about the prospects for improving STOP and sustaining its positive momentum. NIPLECC's persistent difficulties create doubts about its ability to carry out its mandate – that of bringing together multiple agencies to successfully implement an integrated strategy for IP protection and enforcement that represents the coordinated efforts of all relevant parties.

Recommendations for Executive Action

To improve STOP's effectiveness as a planning tool and its usefulness to Congress:

We recommend that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, including the Departments of Commerce, Homeland Security, Justice, and State; and the Office of the U.S. Trade Representative; and the Food and Drug Administration, take steps to ensure that STOP fully addresses the six desirable characteristics of a national strategy.

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To clarify NIPLECC's oversight role with regard to STOP:

We recommend that the IP Coordinator, in consultation with National Security Council and the six STOP agencies, including the Departments of Commerce, Homeland Security, Justice, and State; and the Office of the U.S. Trade Representative; and the Food and Drug Administration, clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy.

Agency Comments and Our Evaluation

We provided USTR; the Departments of Commerce, Justice, Homeland Security, and State; USPTO; Food and Drug Administration; and the IP Coordinator with a draft of this report for their review and comment. The IP Coordinator, through the Department of Commerce in consultation with USPTO and the International Trade Administration, provided technical comments. The Department of Homeland Security, the Food and Drug Administration, and the Office of the U.S. Trade Representative also chose to provide technical comments. We modified the report where appropriate. The Departments of Justice and State did not provide any comments.

We also received written comments from the U.S. Coordinator for International Property Enforcement (IP Coordinator), which are reprinted in appendix IV. The IP Coordinator reiterated our message that STOP was a good first step toward a comprehensive, integrated strategy to protect and enforce U.S. intellectual property rights and that it had energized U.S. efforts. He concurred with our recommendations, stating that his office would review them, and planned to identify opportunities for improvement based on those recommendations, where appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to appropriate congressional committees; the U.S. Trade Representative; the Secretaries of the Departments of Commerce, Justice, Homeland Security, and State; the Director of the United States Patent and Trademark Office; and the Director of the U.S. Food and Drug Administration. We also will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

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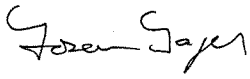
If you or your staff have any questions concerning this report, please contact me at (202) 512-4128 or at yagerl@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.

Sincerely yours,



Loren Yager
Director, International Affairs and Trade

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Appendix I: Scope and Methodology

As part of GAO's review of U.S government efforts to develop a comprehensive and integrated strategy with a long-term perspective to combat intellectual property counterfeiting and piracy, we reviewed documents related to the National Intellectual Property Law Enforcement Council (NIPLECC) and the Strategy for Targeting Organized Piracy (STOP). Specifically, we reviewed legislation authorizing NIPLECC and augmenting its capabilities and mandate, as well as its legislative history. We also examined official STOP documents including the strategy document, Web site contents, IP fact sheets, NIPLECC meeting minutes, and NIPLECC's annual reports.

To determine the extent to which STOP serves as a national strategy for combating trade in counterfeit and pirated goods, we assessed STOP using the six desirable characteristics of an effective national strategy developed in previous GAO work.[1] The six characteristics are (1) the purpose, scope, and methodology; (2) the problem definition and assessment of risks the strategy intends to address; (3) the goals, subordinate objectives, activities, and performance measures; (4) resources, investments and risk management; (5) organizational roles, responsibilities and coordination, including oversight; and (6) the strategy's integration into the goals, objectives and activities of its implementing agencies. (See app. II for a full description of the six characteristics). First, we developed a checklist using the six desirable characteristics of an effective national strategy and verified the relevance of the checklist to the STOP strategy. Specifically, three analysts from the audit team independently reviewed the April 2006 *Bush Administration: Strategy for Targeting Organized Piracy, Accomplishments and Initiatives* document by applying the checklist to the strategy, then met to discuss the relevance of the checklist to the information contained in the document. The analysts concluded that the checklist was relevant and appropriate for assessing STOP as a strategy. Second, six analysts—three from the audit team and three with experience using the methodology for prior GAO work—independently assessed STOP using the checklist. The six analysts then divided into two panels, each with a mix of audit team and nonaudit team members and an adjudicator. Each panel discussed their observations and reached consensus on a consolidated assessment. Finally, the two panels met to reconcile any differences in their consolidated assessments using adjudicators as facilitators if needed. On the basis of these evaluations, we developed a consolidated summary of the extent that STOP addressed the

[1]GAO-04-408T.

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six characteristics and 29 elements of an effective national strategy. We repeated this process when the June 2006 *Bush Administration: Strategy for Targeting Organized Piracy, Accomplishments and Initiatives* document became available. These results are presented in figure 3 of this report.

We gave each of the 29 elements under the six characteristics an individual rating of either: "fully addresses," "partially addresses," or "does not address." According to our methodology, a strategy "fully addresses" an element of a characteristic when it explicitly cites all parts of the element, and the strategy has sufficient specificity and detail. Within our designation of "partially addresses," one or more of the element's individual parts should be addressed. A strategy "does not address" an element of a characteristic when it does not explicitly cite or discuss any parts of the element of that characteristic, or any implicit references to the elements are either too vague or general to be useful. We conducted our review of STOP as a national strategy from April to October of 2006.

We also obtained and analyzed documents required under the Government Performance Results Act (GPRA) of 1993, and IP-related planning documents, from the government agencies involved with STOP. The GPRA documents we reviewed included the "Performance Annual Report," the "Annual Performance Plan," and the "Strategic Plan." We assessed the extent to which these agency documents support STOP goals and add information that may support characteristics and elements necessary for an effective national strategy.

In addition, we interviewed agency officials involved in NIPLECC and STOP, including the Coordinator for International Intellectual Property Enforcement. We also interviewed representatives from the private sector. We used U.S. Customs and Border Protection data on commodities seized for IP violations to select the private sector groups judgmentally to ensure that we obtained the views of major cross-industry associations, as well as individual associations and companies representing key industries that are heavily affected by IP violations such as the manufacturing, entertainment, and pharmaceutical industries. In all we spoke to 20 representatives from 16 private sector groups. Interviewees included the 6 cross-industry associations addressing IP violations, 7 industry level associations, and representatives from three companies. We also reviewed their testimonies before Congress when available. We conducted our audit work from February to October of 2006 in accordance with generally accepted government auditing standards.

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Appendix II: GAO's Analysis of STOP as an Effective National Strategy

In prior work, GAO identified six desirable characteristics of an effective national strategy that would enable its implementers to effectively shape policies, programs, priorities, resource allocations, and standards and that would enable federal departments and other stakeholders to achieve the identified results. GAO further determined that national strategies with the six characteristics can provide policymakers and implementing agencies with a planning tool that can help ensure accountability and more effective results. GAO has applied this set of characteristics in our assessment of strategies for combating terrorism, defense management costs, and the National Strategy for Victory in Iraq.

National strategies are not required by executive or legislative mandate to address a single, consistent set of characteristics, and they contain varying degrees of detail based on their different scopes. Furthermore, we found there was no commonly accepted set of characteristics used for an effective national strategy. Nonetheless, after consulting numerous sources, GAO identified a set of desirable characteristics that we believe would provide additional guidance to responsible parties for developing and implementing the strategies—and to enhance their usefulness as guidance for resource and policy decision makers and to better ensure accountability.

Six Desirable Characteristics Were Developed from Numerous and Diverse Sources

To develop these six desirable characteristics of an effective national strategy, GAO reviewed several sources of information. First, GAO gathered statutory requirements pertaining to national strategies, as well as legislative and executive branch guidance. GAO also consulted the Government Performance and Results Act of 1993, general literature on strategic planning and performance, and guidance from the Office of Management and Budget on the President's Management Agenda. In addition, among other things, GAO studied past reports and testimonies for findings and recommendations pertaining to the desirable elements of a national strategy, as well as recommendations by national commissions and research organizations that have commented on national strategies. Furthermore, we consulted widely within GAO to obtain updated information on strategic planning, integration across and between the government and its partners, implementation, and other related subjects.

GAO developed these six desirable characteristics, identified in table 2, based on their underlying support in legislative or executive guidance and the frequency with which they were cited in other sources. We believe a national strategy should ideally contain all of these characteristics. Although the authors of national strategies might organize these

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characteristics in a variety of ways and/or use different terms, we present them in this order because they flow logically from conception to implementation. Specifically, the strategy's purpose leads to the definition of the problems and risks it intends to address, which in turn leads to specific actions for tackling those problems and risks, allocating and managing the appropriate resources, identifying different organizations' roles and responsibilities, and finally to integrating action among all relevant parties and implementing the strategy.

Table 2: Summary of Desirable Characteristics for an Effective National Strategy

Desirable characteristic	Description	Examples of elements
Purpose, scope, and methodology	Addresses why the strategy was produced, the scope of its coverage, and the process by which it was developed.	• Principles guiding development. • Impetus: e.g., legislation. • Definition of key terms and mission areas. • Process and methodology to produce strategy (via interagency task force, private input, etc.).
Detailed discussion of problems, risks, and threats	Addresses the particular national problems and threats at which the strategy is directed.	• Discussion and definition of problems, causes, and operating environment. • Risk assessment, including analysis of threat and vulnerabilities. • Quality of data: constraints, deficiencies, unknowns.
Desired goals, objectives, activities, and output-related and outcome-related performance measures	Addresses what the strategy is trying to achieve, steps to achieve those results, as well as the priorities, milestones, and performance measures to gauge results.	• Overall results desired. • Hierarchy of goals and subordinate objectives. • Priorities, milestones, and performance measures to gauge results. • Specific performance or activity measures. • Limitations on progress indicators.
Description of future costs and resources needed	Addresses what the strategy will cost, the sources and types of resources and investments needed, and where resources and investments should be targeted by balancing risk reductions and costs.	• Resources and investments associated with strategy. • Types of resources required. • Sources of resources. • Economic principles, e.g., balancing benefits and costs. • Resource allocation mechanisms. • Mandates/incentives to spur action. • Importance of fiscal discipline. • Linkage to other resource documents. • Risk management principles.
Delineation of U.S. government roles and responsibilities and coordination mechanism	Addresses who will be implementing the strategy, what their roles will be compared to others, and mechanisms for them to coordinate their efforts.	• Lead, support, and partner roles and responsibilities. • Accountability and oversight framework. • Potential changes to structure. • Specific coordination processes. • Conflict resolution mechanism.

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Desirable characteristic	Description	Examples of elements
Description of strategy's integration with implementing agencies	Addresses how a national strategy relates to the strategies' goals, objectives, and activities of implementing agencies.	• Integration with other national strategies (horizontal). • Integration with relevant documents from other implementing organizations (vertical). • Implementation guidance. • Details on subordinate strategies and plans for implementation (e.g., human capital, enterprise architecture).

Source: GAO.

We recognize that strategies themselves are not end points, but rather, are starting points. In our view, the strengths of some strategies are useful in suggesting ways to enhance the value of other strategies, fill in gaps, speed implementation, guide resource allocations, and provide oversight opportunities. As with any strategic planning effort, implementation is the key. The ultimate measure of these strategies' value will be the extent they are useful as guidance for policy and decision makers in allocating resources and balancing stated priorities with other important objectives. It will be important over time to obtain and incorporate feedback from the "user" community as to how the strategies can better provide guidance and how Congress and the administration can identify and remedy impediments to implementation, such as legal, international, jurisdictional, or resource constraints.

STOP Partially Addresses Five Characteristics and Does Not Address One

Our analysis showed that the strategy partially addresses five of the six desirable characteristics of an effective national strategy and fails to address one characteristic. As indicated in figure 3, shown earlier, the Strategy for Targeting Organized Piracy (STOP) is missing key elements within each characteristic related to planning and accountability such as performance measures, resources and investments, and designation of oversight responsibility. The following section discusses the STOP strategy as it relates to each of the desirable characteristics of an effective national strategy.

STOP Discusses Purpose and Scope but Lacks Detailed Discussion of Methodology

This characteristic addresses why the strategy was produced, the scope of its coverage, and the process by which it was developed. For example, a strategy should discuss the specific impetus that led to its being written (or updated), such as statutory requirements, executive mandates, or other events. Furthermore, a strategy would enhance clarity by including definitions of key, relevant terms. In addition to describing what it is meant to do and the major functions, mission areas, or activities it covers, a national strategy would ideally address its methodology. For example, a

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strategy should discuss the principles or theories that guided its development, the organizations or offices that drafted the document, or working groups that were consulted in its development. A complete description of purpose, scope, and methodology make the document more useful to organizations responsible for implementing the strategies, as well as to oversight organizations such as Congress.

STOP clearly identifies the purpose of the strategy as protecting and enforcing IP through targeting organized piracy, which encourages American innovation and keeps American businesses competitive throughout the world. However, STOP does not provide a complete discussion of the purpose because it does not clearly discuss the specific impetus that led to the creation of this particular strategy at the time it was written. Such an impetus might include a discussion of increasing demand by the victims of IP violations, relevant legislation or executive mandates, or key events related to piracy that may have functioned as a catalyst in developing the strategy. STOP fully addresses the element regarding the scope of the strategy. The five general goals serve to clearly identify the major functions and mission areas the strategy covers and provides supporting activities for each goal. STOP, however, does not include a discussion of its methodology such as the process that produced the strategy, what organizations or offices were involved in drafting the document or whether it was the result of a working group.

STOP Identifies the Problem but Lacks Detailed Discussion of Risk Assessment

This characteristic addresses the particular national problems and threats at which the strategy is directed. Specifically, this means a detailed discussion or definition of the problems the strategy intends to address, their causes, and operating environment. In addition, this characteristic entails a risk assessment, including an analysis of the threats to and vulnerabilities involved with the problem and implementing the strategy. Specific information concerning a risk assessment helps responsible parties better implement the strategy by ensuring that priorities are clear and focused on the greatest needs. A discussion of the quality of data available regarding this characteristic, such as known constraints or deficiencies, would also be useful.

Global piracy and counterfeiting are identified as the problem in the strategy addresses. While these terms are not defined in detail, the strategy contains additional information on the types of piracy and counterfeiting that affect U.S. businesses such as references to software piracy, counterfeit labels, and counterfeit Viagra.

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STOP only partially addresses the causes of the problem and the operating environment. The strategy implies, but does not clearly discuss, some causes of global piracy and counterfeiting when describing its activities. For instance, STOP discusses efforts to assist companies with supply chain management and U.S. government case referral mechanisms to address instances where foreign governments fail to provide adequate IP protection to U.S. businesses. In addition, STOP refers to, but does not clearly discuss, a variety of operating environments relevant to counterfeiting, such as references to IP violations on the internet and seizures of counterfeit products at the U.S. border, as well as in warehouses in China.

Further, STOP does not provide a detailed risk assessment of the threats involved in counterfeiting and piracy. While the strategy states that "American businesses lose $200 to $250 billion a year to pirated and counterfeit goods," it neither provides a detailed discussion of the economic threat to U.S. business nor does it discuss other risks such as the potential threats to consumer safety from counterfeited products. STOP also states that profits related to piracy are "one way for criminal networks to support their heinous activities" but does not discuss the issue any further. In addition, STOP does not include any discussion regarding the quality of data it cites in the strategy or on counterfeiting and piracy in general.

STOP Addresses Goals and Activities but Lacks Important Elements for Measuring Performance

This characteristic addresses what the national strategy strives to achieve and the steps needed to garner those results, as well as the priorities, milestones, and performance measures to gauge results. At the highest level, this could be a description of the overall results desired, followed by a logical hierarchy of major goals, subordinate objectives, and specific activities to achieve results. In addition, it would be helpful if the strategy discussed the importance of implementing parties' efforts to establish priorities, milestones, and performance measures, which help ensure accountability. Ideally, a national strategy would set clear desired results and priorities, specific milestones, and outcome-related performance measures while giving implementing parties flexibility to pursue and achieve those results within a reasonable time frame. If significant limitations on performance measures exist, other parts of the strategy should address plans to obtain better data or measurements, such as national standards or indicators of preparedness. Identifying goals, objectives, and performance measures aids implementing parties in achieving results and enables more effective oversight and accountability. Identifying priorities and milestones would provide decision makers with information to better assess progress and manage time and resources. In

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addition, identifying and measuring outcome-related performance, rather than output measures alone, would allow for more accurate measurement of program results and assessment of program effectiveness.[1] STOP fully addresses goals and activities in its strategy document, while partially addressing subordinate objectives and performance measures.

STOP clearly identifies its goals and further identifies overall results desired with references to a level playing field for American businesses throughout the world. STOP goals are to

- empower American innovators to better protect their rights at home and abroad,
- increase efforts to seize counterfeit goods at our borders,
- pursue criminal enterprises involved in piracy and counterfeiting,
- work closely and creatively with U.S. industry, and
- aggressively engage our trading partners to join U.S. efforts.

STOP also presents numerous activities clearly associated with each goal. In general, STOP only partially addresses subordinate objectives because they are clearly stated under some goals, but implied or otherwise, unclear in other goals. Under the third goal for example, to pursue criminal enterprises involved in piracy and counterfeiting, STOP clearly identifies increasing criminal prosecutions, improving international enforcement and strengthening laws as the subordinate objectives. In contrast, the subordinate objectives are not clearly identified under the fourth goal— to work closely and creatively with U.S. industry— although they can be inferred based on the activities, such as helping businesses to ensure their supply and distribution chains are free of counterfeiters and correcting faulty business practices.

STOP is missing a number of elements within this characteristic that are important for effective monitoring and oversight, including a clear discussion of priorities, milestones, and processes for monitoring and reporting on progress. For example, STOP mentions implementing a new

[1]An "output measure" records the actual level of activity or whether the effort was realized and can assess how well a program is being carried out. An "outcome measure" assesses the actual results, effects, or impact of an activity compared with its intended purpose.

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risk model to target high-risk cargo but does not specify time frames for its completion.

STOP only partially addresses output-related and outcome-related performance measures, lacking information relevant to assessing how well programs are implemented and their impacts as compared with the intended purpose. For example, STOP cites output-related performance measures such as the number of calls received on the U.S. Patent and Trade Mark Office (USPTO) STOP hotline, the number of small businesses that attended four intellectual property Road Show events in 2005, the number of prosecutors in the Computer Hacking and Intellectual Property (CHIP) units within the Department of Justice and the percentage increase in copyright and trademark cases filed. However, these figures are presented without any baselines or targets needed to assess progress. In addition, STOP cites outcome-related performance measures for a few activities, such as shutting down a sophisticated international peer-to-peer network used by over 133,000 members. It should be noted that performance measures should be carefully chosen to be meaningful for each goal, acknowledging limitations, and avoiding perverse incentives where possible.

STOP provides no discussion of any processes for monitoring and reporting on progress or the limitations of its output-related and outcome-related performance measures. Without effective performance measures in place, STOP's goals, objectives and activities cannot be effectively measured. In the absence of these elements policymakers cannot effectively monitor STOP's progress toward its stated goals.

STOP Does Not Address Elements Relevant to Resources, Investments, or Risk Management

This characteristic addresses the costs and resources involved in implementing the strategy and how the strategy balances those costs with the benefits and risks. This characteristic discusses the current and future costs of the strategy, the sources of resources and investments associated with the strategy (e.g., federal agencies, private sector), and the types of investment needed (e.g., human capital, information technology, research and development, budgetary). Ideally, a strategy would also identify where those resources and investments should be targeted and appropriate mechanisms to allocate resources. A national strategy should also address the difficult, but critical, issues about who pays and how such efforts will be funded and sustained in the future.

A national strategy should also discuss linkages to other resource documents, such as federal agency budgets or human capital, information technology, research and development, and acquisition strategies. Finally,

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a national strategy should also discuss in greater detail how risk management will aid implementing parties in prioritizing and allocating resources, including how this approach will create society-wide benefits and balance these with the cost to society. Guidance on costs and resources needed using a risk management approach helps implementing parties allocate resources according to priorities; track costs and performance; and shift resources, as appropriate. Such guidance also would assist Congress and the administration in developing a more effective strategy to achieve the stated goals.

STOP does not address elements related to resources and investments or risk management. STOP does not identify current or future costs of implementing the strategy. Costs related to implementing STOP would include, among other things, costs related to investigating and prosecuting of IP related crime, conducting IP training and technical assistance, and developing new risk assessment technologies. STOP also does not identify the sources, or types, of resources required by the strategy. While the strategy document lists numerous activities, some involving multiple agencies, it neither indicates which agencies have employed what types of resources to carry out the activity, nor does it identify the level and type of resources needed in order to effectively implement the activity. Furthermore, with no established priorities or discussion of risk management, the strategy does not address how to allocate resources in order to best manage the threats of counterfeit products with the resources available to target organized piracy. As a result, the resources necessary to implement STOP cannot be reliably determined and policymakers are limited in their ability to manage resources and shift them as appropriate with changing conditions.

STOP Partially Addresses Organizational Roles and Coordination but Lacks Framework for Oversight

This characteristic addresses which organizations will implement the strategy, their roles and responsibilities, and mechanisms for coordinating their efforts. This characteristic entails identifying the specific federal departments, agencies, or offices involved, as well as the roles and responsibilities of private and international sectors, if appropriate. A strategy would ideally clarify implementing organizations' relationships in terms of leading, supporting, and partnering. In addition, a strategy should describe the organizations that will provide the overall framework for accountability and oversight, such as the National Security Council, Office of Management and Budget, Congress, or other organizations. Furthermore, a strategy should also identify specific processes for coordination and collaboration between sectors and organizations—and address how any conflicts would be resolved. Addressing this

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characteristic fosters coordination and enhances both implementation and accountability.

STOP provides some information on organizational roles and responsibilities, such as identifying lead, support, and partner roles for specific activities. For example, it identifies the White House as leading STOP and indicates partnering roles among agencies, such as between the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's Federal Bureau of Investigation (FBI), which jointly run the National Intellectual Property (IPR) Center. However, STOP neither discusses the need, nor designates any agency with responsibility for providing framework for oversight and accountability within the strategy.

STOP also partially addresses mechanisms for coordination. For example, the strategy discusses some coordination among member agencies in its description of STOP activities but lacks a clear and detailed discussion of how overall coordination occurs among agencies. For instance, there is no mention of STOP meetings, their frequency, objectives, or agendas. In addition, there is no discussion of how agencies coordinate on IP issues that may involve law enforcement sensitive material among agencies and other entities with which they collaborate. Furthermore, STOP does not address how conflicts among member agencies should be resolved.

STOP Partially Addresses Integration with Member Agencies but Lacks Linkage to Individual Agency Goals and Objectives

This characteristic addresses both how a national strategy relates to other strategies' goals, objectives, and activities (horizontal integration)—and to subordinate levels of government and other organizations and their plans to implement the strategy (vertical integration). For example, the strategy could indicate how it relates to implementing agencies' shared goals, subordinate objectives, and activities. Similarly, related strategies should highlight their common or shared goals, subordinate objectives, and activities. In addition, the strategy could address its relationship with relevant documents from implementing organizations, such as the strategic plans, annual performance plans, or annual performance reports required of federal agencies by the Government Performance and Results Act. A strategy should also discuss, as appropriate, various strategies and plans produced by the state, local, private, or international sectors. A strategy also should provide guidance such as the development of national standards to link together more effectively the roles, responsibilities, and capabilities of the implementing parties. A clear relationship between the strategy and other critical implementing documents helps agencies and other entities understand their roles and responsibilities, foster effective implementation, and promote accountability.

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STOP partially addresses this characteristic. STOP associates its goals with specific member agencies. For example, pursuing criminal enterprises is associated with the Department of Justice, and increasing efforts to stop counterfeits goods at the border is associated with the U.S. Customs and Border Protection. However, STOP does not consistently articulate how it relates to agencies' strategies, goals, and objectives. While STOP is missing many elements related to the desirable characteristics, we found that agency planning documents contained some of the missing information. For example, we identified federal agency planning documents that provide additional detail on missing elements important to planning and accountability that STOP did not adequately address. However, the need to consult multiple agency documents underscores the strategy's lack of integration and limits the value of STOP as a management tool for effective oversight and accountability. Clearly linking STOP to the agencies' own strategies is important to ensure that the strategy not only reflects individual agencies' priorities and objectives but also integrates them in a comprehensive manner, enhancing collaboration among the agencies and providing a more complete picture to policymakers with oversight responsibilities.

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Appendix III: Bush Administration: Strategy for Targeting Organized Piracy Accomplishments and Initiatives

Bush Administration

Strategy for Targeting Organized Piracy

Accomplishments and Initiatives

June 2006

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BUSH ADMINISTRATION STRATEGY FOR TARGETING ORGANIZED PIRACY

June 2006

"In order to keep this economy innovative and entrepreneurial, it's important for us to enforce law, and if the laws are weak, pass new laws, to make sure that the problem of counterfeiting, which has been growing rapidly... is held in check."

- President George W. Bush (March 16, 2006)

Our competitive advantage is only as good as our ability to protect our ideas. And to protect our ideas we need to ensure that there is a level playing field for American businesses throughout the world.

In October of 2004, the Bush Administration announced an initiative that reinforced this objective – the Strategy Targeting Organized Piracy (STOP). STOP! is led by the White House and brings together USTR, the Department of Commerce, the Department of Justice, the Department of Homeland Security, the Food and Drug Administration and the State Department. STOP! is the most comprehensive initiative ever advanced to fight global piracy where it starts, block bogus goods at America's borders and help American businesses secure and enforce their rights around the world.

The problem of global piracy and counterfeiting confronts many industries, exists in many countries and demands continuous attention. That's why this Administration is committed to stopping trade in pirated and counterfeit goods. And through President Bush's leadership, we created a five-point plan under STOP!:

1. Empower American innovators to better protect their rights at home and abroad.
2. Increase efforts to seize counterfeit goods at our borders.
3. Pursue criminal enterprises involved in piracy and counterfeiting.
4. Work closely and creatively with U.S. industry.
5. Aggressively engage our trading partners to join our efforts.

Through effective coordination we have effectively implemented this plan U.S. government agencies are working more closely together and we have made significant progress. We are achieving results, maintaining the commitment of senior Administration officials, institutionalizing an unprecedented level of coordination within the federal government and receiving attention around the world. The message that we are delivering is – the United States takes the issue of intellectual property enforcement very seriously, we are leveraging all of our resources to address it and we have high expectations of all of our global trading partners.

The following pages describe the approaches that we are taking and the results we have achieved.

Office of the U.S. IPR Coordinator

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EMPOWER AMERICAN INNOVATORS TO BETTER PROTECT THEIR RIGHTS AT HOME AND ABROAD

"This administration is committed to helping U.S. businesses remain competitive by protecting intellectual property so that American ingenuity remains a driving force in the United States and the world's economy."

- Secretary of Commerce Carlos Gutierrez (March 16, 2006)

"The development of intellectual property is one of the driving forces of U.S. economic competitiveness, and we will utilize all tools at our disposal to ensure that U.S. intellectual property rights are protected."

- U.S. Trade Representative Rob Portman (October 26, 2005)

To help American innovators secure and enforce their rights across the globe, we have new federal services and assistance:

We created a hotline (1-866-999-HALT), which is staffed by specialized attorneys who counsel businesses on how to protect their intellectual property rights (IPR) and work with callers on how to best resolve problems. In cases where the individual or company has properly registered its rights, its issue can then be referred to a trade compliance team that will monitor their case and work to see what next steps can be taken.

We also developed a website (www.stopfakes.gov) and brochure to provide information and guidance to rights holders on how to register and protect their IPR in markets around the world.

We created downloadable "IP toolkits" to guide businesses through securing and enforcing their rights in key markets across the globe. These toolkits are available at the Stopfakes.gov website, and cover key trading partners such as China, Russia, India, Mexico, Korea and Taiwan.

In November 2005, Commerce Secretary Gutierrez announced the China Intellectual Property Rights (IPR) Advisory Program. This program is done in conjunction with the American Bar Association, the National Association of Manufacturers and the American Chamber of Commerce in China. It offers small and medium-sized U.S. businesses free IPR consultation with an attorney.

We are continuing to expand our IP attaché program in China and positioning new attachés in Brazil, Russia, India, Thailand and the Middle East. Having IP attachés stationed in these countries will enhance our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR.

Also, we are providing training for U.S. embassy personnel to be effective first responders to IPR issues in order to identify problems abroad and assist rights holders before fakes enter the market and the supply chain.

- The Stopfakes.gov website has received over 1.8 million visits.
- In FY 2005, the STOP! Hotline received over 950 calls and during the first quarter of FY 2006 we have received over 550 calls.
- During our four 2005 IP Road Show events, in Salt Lake City, Phoenix, Austin and Miami we had a total of 740 small business attendees.

Office of the U.S. IPR Coordinator
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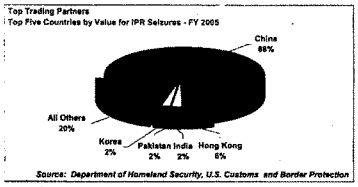
INCREASE EFFORTS TO SEIZE COUNTERFEIT GOODS AT OUR BORDERS

"Illicit profits from counterfeit or pirated goods are one way for criminal networks to finance their heinous activities. We are confronting counterfeiters with the full force of the law and we're moving aggressively to seize their assets and put them out of business."

- Secretary of Homeland Security Michael Chertoff (April 6, 2006)

We need to increase our efforts to stop fake and counterfeit goods at America's borders: The Department of Homeland Security (DHS), through the enforcement efforts of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), is a key player in the STOP! Initiative, working to stop counterfeiters and pirates from bringing fake products into the United States. In fiscal year 2005, DHS seized 8,022 shipments of counterfeit and pirated goods valued at more than $93 million. Since 2001 CBP has made over 31,000 seizures of fake and counterfeit goods.

The following chart provides a break down of the major countries from which CBP IP-related seizures originated:



We have begun implementing a new risk assessment model and technologies to cast a wider, tighter net on counterfeit and pirated goods and to stop these goods at our borders. CBP's new risk assessment model uses several sources of data, including historical seizure information, to target high-risk cargo while facilitating the flow of legitimate goods. With post-entry verification (IPR audits), CBP added a new IPR enforcement tool to complement traditional physical examination of goods at the border. We are issuing penalties on imports of fakes uncovered during IPR audits, and working with businesses to develop internal control systems to prevent imports of counterfeit and pirated goods.

Additionally, we have developed an online recordation tool for rights holders to record their trademarks and copyrights with CBP. Recordation provides a higher level of protection for trademarks and copyrights and makes it easier for CBP to identify fake goods at our borders. CBP's online recordation tool is linked to the U.S. Patent and Trademark Office's website, and will soon be linked to the Copyright Office's website as well. This resource helps businesses protect their rights.

We are working with our trading partners to share information and improve our capabilities to assess and anticipate risks. We are already seeing early results of this effort with the European Union. We have followed up on the U.S./EU Economic Ministerial held last year, where leaders of both governments committed to expand information sharing of customs data and information. The United States and the

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European Union, as part of a bilateral IP working group, are implementing an action plan to strengthen IPR enforcement, including through greater customs cooperation.

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's Federal Bureau of Investigation (FBI), two of the lead investigative agencies in the fight against both domestic and international IPR crime, jointly run the National IPR Center. The Center identifies and addresses developing IPR issues and trends and advances that information through outreach and training with foreign governments. Additionally, the FBI serves as the co-chair for Interpol's IPR international training sub-committee, and in that role provides regular training to officials overseas on IPR enforcement.

The tools and relationships developed under STOP! have produced real results. For example, ICE special agents working in conjunction with the Chinese government and U.S. industry conducted the first ever joint US-Chinese enforcement action on the Chinese mainland and disrupted a network that distributed counterfeit motion pictures worldwide. More than 210,000 counterfeit DVDs were seized. Chinese authorities also destroyed three warehouses that were being used to store the counterfeit DVDs that would have been distributed worldwide.

PURSUE CRIMINAL ENTERPRISES INVOLVED IN PIRACY AND COUNTERFEITING

"In the United States, we have made the protection of intellectual property rights a law enforcement priority, and we are waging an aggressive and successful campaign against intellectual property crime on multiple fronts."

- Attorney General Alberto Gonzales (November 18, 2005)

Law enforcement continues to play a leading role in dismantling criminal enterprises that steal intellectual property:
U.S. law enforcement agencies are also working closely with industry to gather information, develop cases and bring convictions against the criminals who steal their IP. We need to be as sophisticated and creative as the criminals. It is important that government and industry work together with coordinated efforts.

The Department of Justice (DoJ) plays a key role in dismantling criminal enterprises that steal intellectual property, improving international enforcement efforts, and ensuring that there is a strong legal regime for the protection of intellectual property throughout the world. To that end, as part of the STOP! Initiative, the Attorney General formed an Intellectual Property Task Force to examine how it could maximize its efforts to protect intellectual property rights. In October of 2004, the first Task Force Report was released and it included a comprehensive set of recommendations on steps that the Department of Justice could take to better protect IPR. U.S. law enforcement agencies, the Justice Department in particular, have achieved significant results as discussed below.

Increasing Criminal Prosecutions

- Increased the number of copyright and trademark cases filed from FY 2004 to FY 2005 by 45%.
- Increased the number of defendants prosecuted for intellectual property offenses by 97% from FY 2004 through the end of FY 2005.
- Created five new Computer Hacking and Intellectual Property (CHIP) Units in the U.S. Attorney's Offices in Nashville, Orlando, Pittsburgh, Sacramento, and Washington D.C., bringing the total number of specialized units to 18.
- Increased the total number of CHIP prosecutors nationwide to 230.
- Continued to dismantle and prosecute multi-district and international criminal organizations that commit intellectual property crimes, including:

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- Leading the international takedown against members of over 22 major online software piracy groups in Operation Site Down in June 2005, involving 12 countries, the simultaneous execution of over 90 searches worldwide, the eradication of at least eight major online distribution sites, and confiscation of an estimated $50 million in pirated software, games, movies, and music. Prosecutors have indicted 44 defendants and obtained 17 felony convictions in connection with this operation to date;
- Shutting down a sophisticated international peer-to-peer network known as Elite Torrents, used by over 133,000 members, in the first-ever criminal action against a Bit Torrent file-sharing network;
- Obtaining felony conspiracy and copyright convictions against 26 software, game, movie, and music pirates as part of the ongoing Operation FastLink, the largest law enforcement action ever taken against online intellectual property offenders;
- Obtaining convictions against two Los Angeles-area men for conspiracy and trafficking in over 700,000 counterfeit Viagra tablets manufactured in China and worth over $5.6 million.
- Indicting the four leaders of one of the largest counterfeit goods operations ever uncovered in New England – breaking up a scheme to sell more than 30,000 luxury goods worth more than $1.4 million.

Improving International Enforcement

The Justice Department recently deployed an IP law enforcement coordinator for Asia, who is stationed in Bangkok, Thailand. This individual will work closely with prosecutors in the Department's Computer Crime and Intellectual Property Section and Office of International Affairs to oversee IP law enforcement training and assist U.S.-based enforcement efforts in the region.

In addition, DoJ has executed agreements to implement obligations of the US/EU Mutual Legal Assistance and Extradition Agreements. These agreements ensure cooperation regarding intellectual property crimes with Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom; and we have completed negotiations with the nine remaining E.U. countries – Cyprus, Czech Republic, Estonia, Germany, Greece, Italy, Malta, Poland and Slovakia.

We trained and provided technical assistance to more than 2,000 prosecutors, investigators, judges and IP experts from 94 countries regarding the protection and enforcement of IPR.

We have initiated bilateral discussions with China on criminal IP enforcement and are working toward establishing a bilateral law enforcement experts group to improve operational cooperation and coordination in joint and cross-border investigations. We are also working closely with other member countries in a G8 IP Experts working group, and will soon be proposing and pursuing specific IP enforcement projects in the G8 Lyon-Roma Group on Crime and Terrorism.

Strengthening Laws

The Bush Administration is working with Congress to strengthen laws and penalties related to intellectual property rights enforcement, including the:

- *Stop Counterfeiting in Manufactured Goods Act, H.R. 32 (March 2006)*
  - Prohibits the trafficking of counterfeit labels, emblems, containers or similar labeling components that may be used to facilitate counterfeiting; provides for forfeiture of articles bearing or consisting of a counterfeit mark and proceeds of any property derived from proceeds of, or used in the commission of, a violation; expands the definition of "trafficking"

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for certain counterfeiting crimes and clarifying that trafficking in counterfeit goods or labels includes possession with intent to traffic in such items.

- *Family Entertainment and Copyright Act. S. 167 (April 2005)*
  - Outlaws camcording in movie theaters and provides a new 3-year felony for the distribution of a pre-release work by making it available on a publicly-accessible computer network. Recognizes the premium value of copyrighted works before they are released to the public.
- *Anti-Counterfeiting Amendments of 2004, H.R. 3632 (December 2005)*
  - Allows law enforcement officials to seize material and equipment used to make counterfeit products and labels.
- *Intellectual Property Protection Act of 2005*
  - The Department of Justice transmitted to Congress the Administration's proposed legislation entitled the "Intellectual Property Protection Act of 2005," a comprehensive reform package that would toughen penalties for intellectual property crimes, expand criminal intellectual property protections, and add investigative tools for criminal and civil intellectual property rights enforcement.

WORK CLOSELY AND CREATIVELY WITH U.S. INDUSTRY

"***We believe that successful 21st century economies will be those that unleash the power of private enterprise and innovation. Innovation is the most important resource in our increasingly knowledge-based economy. Global trade in pirated and counterfeit goods threatens innovation.***"

- Secretary of Commerce Carlos Gutierrez (February 26, 2006)

We are conducting extensive outreach with U.S. industry and trade associations, and want to hear their stories. Companies need to be aggressive advocates of their own IP. We are working actively with the business community as we go forward. They are our eyes and ears on the ground and know better than anyone how inadequate IPR enforcement affects their businesses. We will continue to work together to find solutions and lead enforcement efforts.

We are working with U.S. and international trade associations such as the American Bar Association, American Chamber of Commerce in China, Business Software Alliance, Entertainment Software Association, International Chamber of Commerce, International Intellectual Property Alliance, International Federation of Phonographic Industries, Motion Picture Association, National Association of Manufacturers, The Pharmaceutical Research and Manufacturers of America, Quality Brands Protection Committee, Recording Industry Association of American, U.S. Chamber of Commerce and the U.S.-China Business Council, to name just a few.

Additionally, we are working with the Coalition Against Counterfeiting and Piracy, a U.S. Chamber of Commerce and National Association of Manufacturers led association on the "No Trade in Fakes" program to develop voluntary guidelines companies can use to ensure their supply and distribution chains are free of counterfeits.

We are also conducting post-entry verifications (IPR audits) on companies vulnerable to IP violations and working with them to correct their faulty business practices. U.S. Customs and Border Protection (CBP) uses post-entry verifications of importing companies to detect discrepancies and systemic weaknesses in the area of IPR protection. We then work with audited companies to devise solutions and remedies for deficient and vulnerable areas.

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We have education campaigns that take place across America to teach small and medium-sized enterprises how to secure and protect their rights and where to turn for federal resources and assistance. It is important to note that only 15% of small businesses that do business overseas know that a U.S. patent or trademark provides protection only in the United States. Companies need to make sure that they register for intellectual property protection overseas. We recently had education programs in Northern Virginia, San Diego and Atlanta, and we have upcoming programs in Nashville and Columbus. These events help educate businesses on what intellectual property rights are, why they are important, and how to protect and enforce these rights domestically and internationally.

With China, an important tool that we use to help our industry is the IPR Case Referral Mechanism (CRM) which was created by the U.S. government to facilitate the submission of individual U.S. company IPR cases through China's Ministry of Commerce (MOFCOM) to relevant Chinese agencies. Our inter-agency team reviews cases where the Chinese government fails to provide adequate protection of IPR to U.S. businesses, and after an internal vetting process, sends approved cases to the Chinese government to facilitate their resolution. Five cases have already been submitted to the Chinese through the Case Referral Mechanism.

AGGRESSIVELY ENGAGE OUR TRADING PARTNERS TO JOIN OUR EFFORTS

"But while innovation will push our economies forward, a lack of fairness will hold us back. American businesses lose $200 to $250 billion a year to pirated and counterfeit goods. Innovation stimulates economic growth, but innovation will suffer without proper protection for intellectual property rights."
- Secretary of State Condoleezza Rice (March 19, 2005)

"Trade can raise living standards for millions. But a vibrant trade system must be based on fairness and trust. All countries benefit from honest commerce. All countries suffer from dishonest commerce. Today's pirates are more clever and steal more than the bandits of the high seas from an earlier time. It is tougher to track them down and shut them down but we must succeed."
- U.S. Trade Representative Rob Portman (March 15, 2006)

We are reaching out to our trading partners and building international support. U.S. leadership is critical and we are active on a number of fronts:
When U.S. government officials meet with our global trading partners for bilateral and multilateral discussions, IPR protection and enforcement are always top priorities.

Promoting International Engagement:
G-8: At the 2005 G8 meeting, President Bush secured an agreement from fellow leaders to focus on IP enforcement, and we are working with our G8 counterparts to develop a strong IP enforcement program in 2006.

APEC: Within the Asia Pacific Economic Cooperation (APEC) forum last year, we secured an endorsement of a U.S.-Japan sponsored 'APEC Anti-Counterfeiting and Piracy Initiative' to reduce trade in counterfeit goods and to combat online piracy, while increasing cooperation and capacity building. Last November this initiative resulted in agreement by the leaders of APEC's 21 member economies to a set of model guidelines to reduce trade in counterfeit and pirated goods, to protect against unauthorized copies, and to prevent the sale of counterfeit goods over the Internet. We are currently working to implement and expand these model guidelines.

FTAs: Constant, high-level engagement to improve enforcement of intellectual property rights has been a vital part of U.S. trade policy for many years. The importance of intellectual property enforcement is

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reflected, for example, in the provisions of U.S. trade agreements and in the Administration's utilization of the "Special 301" provisions of U.S. trade law. The Bush Administration makes intellectual property rights a priority when negotiating new free trade agreements. Our free trade agreements provide cutting-edge protection for intellectual property with strong rules to combat counterfeiting and piracy. This was seen in the recent Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), as well as the recently concluded free trade agreements with Colombia and Peru. Over the past year, we worked closely with our CAFTA-DR partners and the governments of Australia, Morocco, Singapore and Bahrain to bring their intellectual property enforcement regimes up to the high standards required by our free trade agreements.

OECD: Additionally, we have commissioned a study by the Organization for Economic Cooperation and Development (OECD) to examine the impact of global counterfeiting and piracy. Our inter-agency team has held several meetings with OECD officials to follow-up and assist with this study. We are looking for sound, reliable and accurate information to be produced with this study, so that we may have accurate metrics that can be used effectively by senior policymakers and by industry as we continue building international support to stem the flow of fake and counterfeit goods and keep them out of global supply chains.

SPP: The Administration has also launched a cooperative effort under the Security and Prosperity Partnership (SPP) with Canada and Mexico to develop a strategy for combating piracy and counterfeiting in North America. Work is underway through a trilateral task force and efforts will focus on enhancing detection and deterrence of counterfeiting and piracy and expanding public awareness of the need to protect and enforce intellectual property rights.

Bilateral: Under the STOP Initiative, we have conducted outreach to Canada, the European Commission, France, Germany, Hong Kong, Japan, Korea, Mexico, Singapore and the United Kingdom laying the basis for increasing cooperation on IP enforcement.

European Union: In January, we met with European Union officials at the White House for a series of meetings to address global piracy. Follow up meetings were held in Brussels in March. We are breaking new ground and have begun to expand our cooperation with the EU – focused initially on border enforcement, a strategy to address specific problems in third countries and other international cooperation and working with the private sector.

Japan: Japan is one of our key international partners in the fight against counterfeiting and piracy. We continue to work with Japan under STOP!, especially on the APEC initiatives discussed above. Our cooperation under STOP! is just one part of our broader bilateral IPR cooperation. For example, last October, Japan and Switzerland joined with the U.S. in requesting that China disclose key IPR enforcement data under WTO transparency rules.

On March 30, 2006, Secretary Gutierrez and Japan's Minister of Economy, Trade, and Industry announced expanded bilateral cooperation on IPR protection and enforcement. This cooperation will allow the two countries to confront the growing problem of global piracy and counterfeiting together. Highlights of the new agreement include increasing assistance and education for SMEs; sharing information on IPR enforcement activities; strengthening technical assistance to third countries, and streamlining the patent process.

India: In March 2006 during President Bush's visit to India, a joint statement was released stating that the U.S. and India would work together to promote innovation, creativity and technological advancement by

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providing a vibrant intellectual property rights regime, and to cooperate in the field of intellectual property rights to include capacity building activities, human resource development and public awareness programs.

Building on President Bush's visit to India in March, U.S. IPR Coordinator Chris Israel recently led an inter-agency delegation to India to discuss issues of IP policy, enforcement and trade. The delegation met with Indian government officials – at both the Central and State Government level; and engaged both U.S. and Indian private-sector stakeholders, academics and legal practitioners to continue our efforts to promote increased trade and economic development through effective IP protection. While in India, Coordinator Israel announced the Bush Administration's framework for engaging India on intellectual property and trade promotion. This plan revolves around three key areas, which include: Bilateral Cooperation, Education and Engaging both U.S. and Indian Industry. Bilaterally, we are working with India on IP through our Trade Policy Forum, High Technology Cooperation Group and the Commercial Dialogue. With the placement of a Bush Administration IP Attaché in New Delhi, we plan on continuing our capacity building and educational outreach efforts with the Indian Government and Industry.

On the IP front, India has made some progress and we are committed to continuing to work with India as they fine-tune their IPR legal framework and develop an effective system to enforce intellectual property rights.

Training and Capacity Building: The U.S. has conducted several hundred IP training and capacity building programs around the world to improve criminal and civil IPR protection. To that end, the Administration has established a Global Intellectual Property Academy to consolidate and expand our training programs for foreign judges, enforcement officials and administrators.

Highlights of our Training and Capacity Building Programs:

- Brazil - Since 2001, the U.S. government has sponsored 15 IP-related programs involving Brazilian government officials, nearly half of which took place in Brazil.
- Russia - Since 2001, the U.S. government has conducted well over 15 training and capacity building programs involving Russian government officials.
- India - The U.S. government has conducted over a dozen IP training and capacity building programs with Indian officials and we continue to conduct conferences to train Indian academics and officials on IP enforcement and WTO TRIPS obligations. In addition, U.S. intellectual property experts will participate in a four-city IP enforcement training program in India in May 2006.
- China - Since 2001, the U.S. government has conducted well over 50 training programs involving Chinese government officials.

Addressing Global IP Enforcement Concerns:

China: The U.S. government is working on many fronts to engage China on IPR concerns, and under President Bush's leadership, we have developed an effective China IP strategy. The Bush Administration's China IP strategy is built on four pillars: bilateral engagement; effective use of our trade tools; expanding law enforcement cooperation; and working with the private sector. We are utilizing all of our resources to effectively implement our approach.

In February 2006, Ambassador Portman announced the results of a top-to-bottom review of U.S. trade policy with China. It identified weak protection of intellectual property as one reason why the U.S.-China trade relationship lacks balance in opportunity, as well as equity and durability.

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Ambassador Clark Randt at our Embassy in Beijing holds an annual IPR Roundtable which brings together senior U.S. and Chinese officials and U.S. business representatives. The Roundtable gives U.S. rights holders the opportunity to discuss the problems they are facing and find the solutions that they need. Also, our Embassy and Consulate officers on the ground are a valuable asset for U.S. companies. They play a critical role as IPR "first responders" helping U.S. businesses resolve cases when their rights are violated.

Russia: The U.S. is working with Russia to strengthen IP protection and enforcement. Ambassador Portman recently raised the issue of intellectual property protection with Russian Minister of Economic Development and Trade German Gref stating that IPR protection and enforcement is a shared responsibility within the Russian government. Recent positive statements made by President Putin recognize that IPR protection is both an economic issue for the Russian government and a public health concern for the Russian people. The Russian government needs to take steps to curb the high rates of piracy that exist in Russia and demonstrate that their enforcement efforts are providing deterrence and producing results.

Also, the work of the U.S.-Russia IP Working Group remains a high priority, as the United States, through USTR, and Russia work to address a number of IPR-related issues and steps that need to be taken.

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Appendix IV: Comments from the Department of Commerce

UNITED STATES DEPARTMENT OF COMMERCE
Office of the U.S. Coordinator for
International Intellectual Property Enforcement
Washington, D.C. 20230

October 25, 2006

Loren Yager
Director, International Affairs and Trade
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Yager:

Thank you for the opportunity to review GAO's report on overall federal efforts to promote strong intellectual property protection and the specific efforts of the Bush Administration's Strategy Targeting Organized Piracy (STOP!). Our office very much appreciates the dedicated and comprehensive effort which went into drafting this report.

As you stated in the report, "...the challenges of IP piracy are enormous, and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry representatives to be successful." Per our direction from the President and Congress, we have pursued such a coordinated approach since the creation of the Office of International Intellectual Property Coordination in July 2005. We will continue to seek ways to improve coordination and welcome the guidance and suggestions of all parties to ensure the prospect of sustained success for the future.

As your report also indicates, "STOP! is a good first step toward a comprehensive, integrated strategy to protect and enforce U.S. intellectual property and it has energized agency efforts." Despite any perceived weaknesses in its initial structure, we are strongly encouraged that GAO has concluded that the "STOP! strategy has brought attention and energy to IP efforts within the U.S. government [and that] [a]gency participants and industry observers have generally supported the new effort."

We look forward to reviewing further GAO's two primary recommendations to more fully address the six characteristics of a national strategy and to clarify how our office will address oversight and accountability aspects involved with the further development and implementation of the STOP! initiative. In turn, we plan to identify opportunities for improvement, based on those recommendations, where appropriate.

Thank you again for the opportunity to participate in this process and lay the groundwork for incorporating the benefits of your research and insight.

Best regards,

Chris Israel
U.S. Coordinator for International Intellectual Property Enforcement

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Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Loren Yager, (202) 512-4128, or yagerl@gao.gov

Staff Acknowledgments

In addition to the individual named above, Christine Broderick, Assistant Director; Nina Pfeiffer; Jasminee Persaud; and Wendy Ho made significant contributions to this report. Martin De Alteriis, Kelly Baumgartner, Karen Deans, Etana Finkler, Ernie Jackson, Patrick Hickey, and Terry Richardson also provided assistance.

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TESTIMONY OF

CHRIS ISRAEL
U.S. COORDINATOR FOR INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT

BEFORE THE

SENATE COMMITTEE ON THE JUDICIARY

"EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS"

NOVEMBER 7, 2007

Chairman Leahy, Ranking Member Specter and members of the Committee, I am pleased to join you today to discuss the U.S. Government's intellectual property enforcement coordination efforts.

I want to thank this Committee for its continued support and leadership on issues concerning the protection intellectual property. I look forward to the opportunity to work together to ensure that the heart of America's innovation economy, its intellectual property, is effectively protected around the world.

Combating piracy and counterfeiting is a top priority for the Bush Administration. This prioritization is evident in the leadership shown by President Bush. He has consistently raised IP enforcement with foreign leaders, placed the issue on the agenda of the G8, the US-EU Summit and the Security and Prosperity Partnership with Canada and Mexico. He has also discussed our ongoing concerns with leaders of critical markets such as China, Russia and India. He has directed his Administration to address this issue actively, aggressively and with a results-oriented approach.

We are leveraging the capabilities and resources of the United States to promote effective, global enforcement of intellectual property rights. Under the leadership of the White House, my office works to coordinate the international IP enforcement efforts of the Office of the U.S. Trade Representative, the Department of Commerce – which includes the U.S. Patent and Trademark Office and the International Trade Administration; the Department of Homeland Security – which includes Customs and Border Protection and Immigration and Customs Enforcement; the Department of Justice – including the FBI; and the State Department, among others. Our combined efforts are extensive, and this allows us to bring even greater focus, energy and prioritization to our IPR efforts.

I appreciate the opportunity to discuss this leadership, to address the growing problem of counterfeiting and piracy around the world, and provide information regarding the Federal Government's efforts to help protect American intellectual property and our industries.

* * *

Leadership and Prioritization:

The reasons for the Administration's leadership on IP enforcement and for its prioritization are clear.

First, few issues are as important to the current and future economic strength of the United States as our ability to create and protect intellectual property. U.S. IP industries account for over half of all U.S. exports. They represent 40% of our economic growth and employ 18 million Americans, who earn 40%

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more than the average U.S. wage.[1] The 2006 Economic Report to the President states that IP accounts for over 1/3 of the market value of all publicly-traded U.S. corporations, an amount equal to almost half of our GDP.[2]

Even more, intellectual property is central to our competitiveness in today's global economy. Last week, the World Economic Forum released its annual Global Competitiveness Report, and this report has the U.S. in the top ranking. Two of the main reasons cited for this jump were our high level of intellectual property protection and strong innovation policy. Any theft of American intellectual property strikes at the heart of one of our greatest comparative advantages – our innovative capacity, so our ability to ensure a secure and reliable environment for intellectual property around the world is critical to the streng th and continued expansion of the U.S. economy.

Finally, the enforcement of intellectual property rights also carries great implications for the health and safety of consumers around the world. In recent months, we have experienced a rash of substandard imports, many of which were counterfeit goods. Also, the World Health Organization estimates that 10% of all pharmaceuticals available worldwide are counterfeit. The U.S. Federal Aviation Administration estimates that 2% of airline parts installed each year are counterfeit – or about 520,000 parts. We have seen counterfeit circuit breakers that overheat and explode, brake linings made of wood chips and cardboard, and counterfeit power cords. In the world of today's sophisticated criminal IP operations, if a product can be easily counterfeited, has an immediate demand and provides a good profit margin, it will be copied. Consumer safety and product quality are concerns obviously not on the minds of global IP thieves.

It is apparent that counterfeiting and piracy threaten our safety and our economic growth. And, our prosperity is secured by an economy which promotes and protects its innovative spirit. It is innovation—the innovation of independent inventors, universities, creative artists, or small, medium and large corporations—that leads to new opportunities and greater prosperity.

I truly believe the world is a much better place due to these efforts. We have delivered life-saving drugs and products that make people more productive. We have developed entirely new industries and set loose the imaginative power of entrepreneurs everywhere. We set trends and market best-of-class products to nearly every country in the world.

A thriving, diversified and competitive economy must protect its intellectual property rights. Commerce Secretary Gutierrez has said that, "IP is what we do for a living in the U.S." This Administration has been committed to creating a business and legal environment that encourages entrepreneurship and protection of intellectual property.

We value our heritage of innovation and exploration – it is not only part of our history; it is the key to our future. This future—a future of innovation, exploration and growth that benefits the entire world—rests on a basic, inherent respect for intellectual property rights and a system that protects them.

* * *

[1] Stephen E. Siwek, "Engines of Growth: Economic Contributions of the US Intellectual Property Industries," Economists Inc. commissioned by NBC Universal, 2005

[2] Council of Economic Advisers' calculation based on "The Economic Value of Intellectual Property" by Shapiro and Hassett (USA for Innovation) and "Measuring Capital and Technology: An Expanded Framework,"

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Strategy, Organization and Focus:

As this Committee clearly understands, the problem of global piracy and counterfeiting confronts many industries, exists in many countries and demands continuous attention. With finite resources and seemingly infinite concerns, how we focus our efforts is crucial. We took on this challenge of defining priorities and focusing our resources in 2004 with the establishment of the Strategy for Targeting Organized Piracy (STOP!) initiative. STOP! rests on clear leadership that includes the White House and Cabinet officials. It has set out 5 primary goals that continue to define our efforts and provide a basis for broad internal coordination.

The primary goals of the Strategy for Targeting Organized Piracy are:

1. Empower American innovators to better protect their rights at home and abroad.
2. Increase efforts to seize counterfeit goods at our borders.
3. Pursue criminal enterprises involved in piracy and counterfeiting.
4. Work closely and creatively with U.S. Industry.
5. Aggressively engage our trading partners to join our efforts.

STOP! is the most comprehensive initiative ever advanced to fight global piracy where it starts, block bogus goods at America's borders and help American businesses secure and enforce their rights around the world. STOP! has made significant progress, and we continue to build on this success. STOP! is an attempt to play offense in the global fight against piracy and counterfeiting.

The message that we are delivering is: the United States takes the issue of IP enforcement very seriously, we are leveraging all of our resources to address it and we have high expectations of all of our global trading partners.

I am happy to have the opportunity to provide an update on our progress under each of STOP!'s key goals.

1. To help American innovators secure and enforce their rights across the globe, we have new federal services and assistance:
We created a hotline (1-866-999-HALT), which is staffed by specialized USPTO attorneys who counsel businesses on how to protect their intellectual property rights (IPR) and work with callers on how to best resolve problems. In cases where the individual or company has properly registered its rights, its issue can then be referred to a trade compliance team that will monitor their case and work to see what next steps can be taken. In FY 2007, the STOP! Hotline received over 1,700 calls.

Our comprehensive website, Stopfakes.gov, provides information and guidance to rights holders on how to register and protect their IP in markets around the world and serves as a reference point for all U.S. Government IP enforcement activities. Stopfakes.gov has been recently updated to include even more information for U.S. rights-holders and has seen a dramatic surge in traffic – the number of visitors jumped from 44,000 in 2006 to 76,000 in 2007, a 75% increase.

Stopfakes.gov provides downloadable "IP toolkits" to guide businesses through securing and enforcing their rights across the globe. These toolkits cover key trading partners such as China, Russia, India, Mexico, South Korea, Malaysia and Taiwan. Additionally, the Department of Commerce conducts a series of well-received "webinars" on protecting and enforcing intellectual property rights in China.

We are continuing to expand our successful IP attaché program in China and have positioned attachés in Brazil, Russia, India, Thailand and the Middle East. Having IP attachés stationed in these countries has

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enhanced our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IP in those markets.

In 2006 the USPTO established the Global Intellectual Property Academy (GIPA) at their headquarters in Alexandria, VA to educate leaders from around the world on intellectual property issues. GIPA has brought foreign leaders to the U.S. to learn about IP issues from patent examination procedures to enforcement best practices. Since inception, GIPA has instructed more than 1,200 foreign officials.

The USPTO has also been aggressive in reaching out to American businesses and innovators through a series of programs held in cities throughout the U.S. These "USPTO Road Shows" and "USPTO China Road Shows" meet an important need in reaching American companies, particularly small and medium-sized enterprises (SMEs). The Road Shows provide practical advice on IP which can help these companies protect themselves in a global marketplace which often does not respect their intellectual property. USPTO has conducted 26 road shows in the two and a half years, reaching approximately 3,500 individuals.

2. Next, we have increased our efforts to stop fake and counterfeit goods at America's borders: The Department of Homeland Security (DHS), through the enforcement efforts of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), is a key player in the STOP! Initiative, working to stop counterfeiting and pirating criminals from smuggling prohibited or IPR violative merchandise into the United States. At the mid-year point in fiscal year 2007, DHS had seized 7,245 shipments of counterfeit and pirated goods valued at more than $110.2 million, increases of 22% and 141% respectively over the mid-year point in FY2006. Since 2002 CBP has made over 50,000 seizures of piratical and counterfeit goods.

China was the top source of IPR seizures at mid-year FY 2007 with a domestic value of $89.2 million, accounting for 81% of the total value seized. Footwear was the top commodity seized at mid-year FY 2007 with a domestic value of $39.7M, which accounted for 36% of the entire value of infringing goods. Watches and parts, pharmaceuticals, footwear, and consumer electronics all had significant increases in domestic value at mid-year FY 2007 over mid-year FY 2006 values.

CBP has implemented a new risk assessment model and technologies to cast a wider, tighter net on counterfeit and pirated goods and to stop these goods at our borders. CBP's new risk assessment model uses several sources of data, including historical seizure information, to target high-risk cargo while facilitating the flow of legitimate goods. With post-entry verification (IPR audits), CBP added a new IPR enforcement tool to complement traditional physical examination of goods at the border. We are issuing penalties on imports of fakes uncovered during IPR audits and working with businesses to develop internal control systems to prevent imports of counterfeit and pirated goods. As a result of an audit of a technology company, CBP issued a penalty in excess of $4.3 million. CBP has issued more than $6 million in total penalties for audit-related investigations.

Additionally, CBP has developed an online recordation tool for rights holders to record their trademarks and copyrights with CBP. Recordation provides a higher level of protection for trademarks and copyrights and makes it easier for CBP to identify fake goods at our borders. CBP's online recordation tool is linked to the U.S. Patent and Trademark Office's website, as well as the Copyright Office's website. To date, CBP has received 3,500 e-recordations from industry.

We are working with our trading partners to share information and improve our capabilities to assess and anticipate risks. We are already seeing early results of this effort with the European Union. In 2005 President Bush and then EU President Barroso committed to expand information sharing of customs data

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and information. As we have shared data since this agreement, we have begun to see opportunities for potential joint seizures.

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's Federal Bureau of Investigation (FBI), two of the lead investigative agencies in the fight against both domestic and international IP crime, work together through the ICE-led National IPR Center. The Center identifies and addresses developing IPR issues and trends and advances that information through outreach and training with foreign governments. Additionally, the FBI serves as the co-chair for Interpol's IPR international training subcommittee, and in that role provides regular training to officials overseas on IP enforcement.

The IPR Center's responsibilities include: (1) coordinating the US Government domestic and international law enforcement activities involving IPR issues; (2) serving as a collection point for intelligence provided by private industry, as well as a channel for law enforcement to obtain cooperation from private industry (in specific law enforcement situations); (3) integrating domestic and international law enforcement intelligence with private industry information relating to IPR crime; (4) disseminating IPR intelligence for use in the appropriate investigative and tactical use; (5) developing enhanced investigative, intelligence and interdiction capabilities; (6) serving as a point of contact for all U.S. Government Agencies, the Administration, Congress and media outlets regarding IPR related issues.

Between fiscal years 2002 and 2006, ICE agents arrested more than 700 individuals for IPR violations and dismantled several large scale criminal organizations that distributed counterfeit merchandise to nations around the globe. At the same time, ICE investigations into these networks has resulted in 449 criminal indictments and 425 convictions. Together, ICE and CBP seized more than $750 million worth of counterfeit goods from fiscal year 1998 through fiscal year 2006. In fiscal year 2006 alone, ICE investigations resulted in 219 arrests, 134 indictments and 170 convictions in IP violations.

The tools and relationships developed under STOP! have produced real results. For example, ICE special agents working in conjunction with the Chinese government and U.S. industry conducted the first ever joint US-Chinese enforcement action on the Chinese mainland and disrupted a network that distributed counterfeit motion pictures worldwide. More than 210,000 counterfeit DVDs were seized. Chinese authorities also destroyed three warehouses that were being used to store the counterfeit DVDs that would have been distributed worldwide.

3. **Law enforcement must play a leading role in dismantling criminal enterprises that steal intellectual property**:
U.S. law enforcement agencies are also working closely with industry to gather information, develop cases and bring convictions against the criminals who steal their IP. We need to be as sophisticated and creative as the criminals. It is important that government and industry work together with coordinated efforts.

The Department of Justice (DOJ) plays a key role in dismantling criminal enterprises that steal intellectual property, improving international enforcement efforts, and ensuring that there is a strong legal regime for the protection of IP throughout the world. To that end, as part of the STOP! Initiative, the Attorney General formed an Intellectual Property Task Force to examine how it could maximize its efforts to protect intellectual property rights. In October of 2004 the first Task Force Report was released, and it included a comprehensive set of recommendations on steps that the Department of Justice could take to better protect IP. U.S. law enforcement agencies, the Justice Department in particular, have achieved significant results as discussed below. A subsequent report, released in June of 2006, announced implementation or ongoing implementation of 31 separate recommendations to improve the Department's IP enforcement efforts. In addition, the Department is currently at the halfway point in a

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two-year plan to increase the enforcement of IP laws in the United States and around the world. The plan consists of strategic objectives derived from goals set by the Intellectual Property Task Force.

DOJ's efforts have already yielded substantial increases in Federal investigations and prosecutions of IP violations. Through the dedicated efforts of U.S. Attorney's Offices, the Criminal Division, and law enforcement across the country, the Department filed 217 intellectual property cases in FY 2007, representing a 7% increase over the number of cases charged in FY2006 (204), and a 33% increase over cases charged in FY2005 (169). Also in FY2007, 287 defendants were convicted and sentenced on IP charges, representing a 35% increase over FY2006 (213) and a 92% increase over FY 2005 (149).

The FY 2007 increase in prosecutions reflects a continuing upward trend at the Department of Justice. For example, in FY 2006, federal prosecutors convicted 187 defendants of criminal copyright and trademark offenses alone – an increase of 57% over the previous year. And in the year before that (FY 2005), the Department of Justice prosecuted twice the number of defendants for intellectual property violations than it had in 2004.

ICE also plays a key role in investigative law enforcement activities. ICE is not only active in seizing and forfeiting violative merchandise, both at the border and within the interior of the country. ICE also actively identifies, investigates and dismantles large scale international IPR violative manufacturing, smuggling, and trafficking organizations. ICE's efforts substantially reduce the amount of violative merchandise being smuggled into the U.S. For instance, ICE utilizes its unique tools and authorities to coordinate with private industry and domestic and international law enforcement partners to investigate violators; seize and forfeit violative merchandise; pursue civil and criminal monetary penalties; and, most significantly, pursue criminal prosecution. ICE has also created specialized groups of agents who investigate IPR crimes on a full time basis. ICE has a substantial network of attachés around the world who facilitate transnational IPR smuggling investigations and cooperation with foreign governments.

Improving International Law Enforcement

The Justice Department recently deployed an IP law enforcement coordinator (IPLEC) for Asia, who is stationed in Bangkok, Thailand. This individual is working closely with prosecutors in the Department's Computer Crimes and Intellectual Property Section (CCIPS) and Office of International Affairs to oversee IP law enforcement training and assist U.S.-based enforcement efforts in the region.

In October 2007 DOJ hosted—along with the Association of Southeast Asian Nations (ASEAN), USPTO, and the State Department—a regional conference in Bangkok of approximately 60 key law enforcement officials from over a dozen nations in Asia, with the aim of developing an international network targeting large-scale intellectual property crimes. High-level police and customs officials and prosecutors from the United States, China, Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Philippines, Singapore, South Korea, Thailand and Vietnam took part in the conference, taking first steps toward increasing cross-border cooperation in the fight against intellectual property theft through the establishment of an IP Crimes Enforcement Network (IPCEN).

Based upon the input and positive response of the participants, the IPCEN will serve two primary functions in the future. First, it will operate as a forum to exchange successful investigation and prosecution strategies in combating piracy and counterfeiting crimes. In closed sessions during the conference, panels of law enforcement experts shared best practices and lessons learned in addressing retail counterfeiting and piracy, the mass production and distribution of counterfeit goods, Internet-based intellectual property theft, and border enforcement. Second, the IPCEN will strengthen communication channels to promote coordinated, multinational prosecutions of the most serious offenders.

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In addition, DOJ has executed agreements to implement obligations of the US/EU Mutual Legal Assistance and Extradition Agreements. Once they enter into force, these agreements will ensure cooperation regarding intellectual property crimes with Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Bilateral discussions with China on criminal IP enforcement launched in 2006 have led to the establishment of a bilateral law enforcement experts group on IP – the IP Criminal Enforcement Working Group ("IPCEWG") – under the auspices of the U.S.-China Joint Liaison Group, which is co-chaired by the Department of Justice and China's Ministry of Public Service ("MPS"). Dedicated to improving the operational cooperation and coordination in joint cross-border investigations, the IPCEWG has already yielded encouraging results: this past summer, the U.S. and China announced 'Operation Summer Solstice,' a joint investigation by the FBI and MPS in which both sides worked closely by sharing information to jointly investigate multinational conspiracies by criminal syndicates that manufacture and distribute counterfeit software products around the world. This unprecedented cooperative effort led to the arrest of 25 individuals in China, the search of multiple residential and business locations, the seizure of more than 290,000 counterfeit software CDs and COAs (Certificates of Authenticity) valued at more than $500 million.

We are also working closely with other member countries in a G8 IP Experts working group, and will soon be proposing and pursuing specific IP enforcement projects in the G8 Lyon-Roma Group on Crime and Terrorism.

Strengthening Laws

The Bush Administration is working with Congress to strengthen laws and penalties related to intellectual property rights enforcement, including the:

- *Stop Counterfeiting in Manufactured Goods Act, H.R. 32 (March 2006)*
  - Prohibits the trafficking of counterfeit labels, emblems, containers or similar labeling components that may be used to facilitate counterfeiting; provides for forfeiture of articles bearing or consisting of a counterfeit mark and proceeds of any property derived from proceeds of, or used in the commission of, a violation; expands the definition of "trafficking" for certain counterfeiting crimes and clarifying that trafficking in counterfeit goods or labels includes possession with intent to traffic in such items.
- *Family Entertainment and Copyright Act, S. 167 (April 2005)*
  - Outlaws cam-cording in movie theaters and provides a new 3-year felony for the distribution of a pre-release work by making it available on a publicly-accessible computer network. Recognizes the premium value of copyrighted works before they are released to the public.
- *Anti-Counterfeiting Amendments of 2004, H.R. 3632 (December 2005)*
  - Allows law enforcement officials to seize material and equipment used to make counterfeit products and labels.
- *Intellectual Property Protection Act of 2007*
  - The Department of Justice transmitted to Congress the Administration's proposed legislation entitled the "Intellectual Property Protection Act of 2007," a comprehensive reform package that would toughen penalties for intellectual property crimes, expand criminal intellectual property protections, and add investigative tools for criminal and civil intellectual property rights enforcement.

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4. Working closely and creatively with U.S. industry:
We are conducting extensive outreach with U.S. industry and trade associations and want to hear their stories. Companies need to be aggressive advocates of their own IP. They are our eyes and ears on the ground and know better than anyone how inadequate IP enforcement affects their bottom lines. We will continue to work together to find solutions and lead enforcement efforts.

We continue to work with domestic and international trade associations such as the American Bar Association, American Chamber of Commerce in China, Business Software Alliance, Entertainment Software Association, International Chamber of Commerce, International Intellectual Property Alliance, International Federation of Phonographic Industries, Motion Picture Association, National Association of Manufacturers, The Pharmaceutical Research and Manufacturers of America, Quality Brands Protection Committee, The Recording Industry Association of America, U.S. Chamber of Commerce and the U.S.-China Business Council, to name just a few.

Working with companies vulnerable to IP violations, we help them improve their business practices by conducting post-entry verifications (IPR audits). U.S. Customs and Border Protection (CBP) uses the post-entry verifications of importing companies to detect discrepancies and systemic weaknesses in the area of IPR protection. We then work with audited companies to devise solutions and remedies for deficient and vulnerable areas.

Immigration and Customs Enforcement (ICE) also actively engages industry to improve their law enforcement efforts. ICE has developed IP rightsholders' investigative teams who work solely on IP cases. ICE routinely shares information and works together on a variety of law enforcement activities with industry.

Additionally, we work closely with the Coalition Against Counterfeiting and Piracy (CACP), a U.S. Chamber of Commerce and National Association of Manufacturers led association with over 380 member companies and associations.

Through our work with the CACP and its members, as well as other industry IP experts, companies, and associations, we have included their insight and expertise into initiatives and working groups which we convene with our partnering nations. Our partnership with the private sector has enabled us to develop important goals to combat IP crimes, and helped to launch successful initiatives such as specialized training programs, legal advisory assistance for small and medium-sized enterprises (SMEs), and public awareness campaigns.

We have also partnered with the CACP to host our "IP Roadshows" around the country. This year we partnered with CACP on seven roadshows to teach SMEs how to secure and protect their rights and where to turn for federal resources and assistance, and are currently working to continue these programs next year.

5. Promoting International Engagement:
The last element of the STOP! Initiative is the work we are doing to engage our trading partners in the fight against counterfeiting and piracy. The U.S. has an established position of clear global leadership on IP enforcement. We work with nearly every country and within multiple international organizations to develop strong laws, policies and enforcement practices. We continue to face daunting challenges around the world, but our efforts have provided notable progress and led to some innovative approaches:

ACTA: On October 23, 2007 U.S. Trade Representative Ambassador Susan Schwab launched efforts to begin negotiations on an Anti-Counterfeiting Trade Agreement (ACTA). ACTA will be a landmark agreement for nations who take theft of IP seriously. The agreement will bring together a group of

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countries who recognize the importance of IP and are dedicated to protecting the works of innovators and entrepreneurs. Our initial partners in this Agreement are the European Union, Japan, Korea, Mexico, Canada, New Zealand and Switzerland.

G8: At the 2005 G8 Summit, President Bush secured an agreement from his fellow leaders to focus on IP enforcement. In 2007 the G8 reached consensus on working together to improve customs and border enforcement cooperation, cooperation on combating serious and organized IPR crime, and better coordination on technical assistance to developing countries. The U.S. Government, led by the State Department, is working to focus work within the G8 on technical assistance pilot plans for developing countries, new results-oriented (business to business) collaborative approaches to promote and protect innovation and better border enforcement, especially against hazardous counterfeit goods.

In addition, the Department of Justice led an initiative within the G8 Lyon-Roma Anti-Crime and Terrorism Group to develop a framework for cooperation on intellectual property crime investigations, "Principles and Recommendations for Cooperative Investigation and Prosecution of Serious and Organized Intellectual Property Rights Crime," which set forth a foundation for future cooperation on criminal IP enforcement among the G8 members. In June 2007 the G8 Leaders endorsed the Principles and Recommendations at their annual Summit in Munich, Germany.

US-EU IP Enforcement Action Strategy: In January 2006 we met with European Union officials at the White House to design a new joint effort to address global piracy and counterfeiting. In June 2006 President Bush, along with his E.U. counterparts, announced the U.S.-EU IP Enforcement Action Strategy. We are breaking new ground and have begun to expand our cooperation with the EU: key areas for work include third-country and multilateral cooperation, technical customs cooperation, and partnerships with industry on public awareness, training and enforcement.

In the most recent meeting of the IP Working Group in September, CBP and EU customs officials shared IPR best practices and enforcement information. The Department of Commerce is working with the Commission's Enterprise Directorate to develop programs to promote the protection of IPR through public awareness efforts, trade fair cooperation, and small business education. The first half of 2008 will see joint efforts at trade fairs in Europe and China. The Office of the U.S. Trade Representative successfully continues to build on and expand its cooperation with the European Commission, through coordinated messaging and information exchange, to improve IPR enforcement in third countries.

SPP: The Administration has also launched a cooperative effort under the Security and Prosperity Partnership (SPP) with Canada and Mexico to develop a strategy for combating piracy and counterfeiting throughout North America. Work is underway through a trilateral task force and efforts are focusing on enhancing detection and deterrence of counterfeiting and piracy and expanding public awareness of the need to protect and enforce intellectual property rights. We have developed an Intellectual Property Rights Action Plan, which leaders announced at the SPP Summit in Montebello, Canada in August 2007. The Action Plan constitutes a strategy for governments and the private sector to combat piracy and counterfeiting in North America. Canada, Mexico, and the United States have agreed to take action in three areas: detect and deter trade in counterfeit and pirated goods, increasing consumer awareness of the adverse effects of counterfeiting and piracy, and measuring the depth and scope of counterfeiting and piracy. The group's efforts involve not only cooperation among the governments, but between the governments and our private sectors as well. Projects in progress include joint public awareness efforts, sharing of border enforcement best practices, and joint law enforcement training programs.

APEC: Through U.S. efforts, the Asian Pacific Economic Cooperation (APEC) endorsed the Anti-Counterfeiting and Piracy Initiative which paved the way for the adoption of a number of U.S. led proposals. These initiatives include five Model Guidelines on reducing trade in counterfeit and pirated

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goods, protecting against unauthorized copies, preventing the sale of counterfeit goods over the Internet, raising public awareness on IPR protection and enforcement and securing supply chains; drafting a paper on innovative techniques for IPR border enforcement; and making statements by leaders and ministers on the need for APEC economies to do more in addressing markets that sell counterfeit and pirated goods and in combating signal theft. The Department of Commerce is working to foster growth and development of Small and Medium Enterprises throughout APEC by providing education and capacity building on IP and by identifying best practices on IPR for SMEs among the APEC members by creating, distributing, and collecting an IPR Checklist from 18 of the 21 APEC economies. Each IPR checklist contains information on IPR measures in each economy that specifically affect SMEs. The checklists are designed to increase SME's market access in other APEC members' markets. The checklists have been compiled and are available at the APEC website

FTAs: Constant, high-level engagement to improve enforcement of IPR has been a vital part of U.S. trade policy for many years. The importance of intellectual property enforcement is reflected, for example, in the provisions of U.S. trade agreements and in the Administration's utilization of the "Special 301" provisions of U.S. trade law. The Bush Administration makes IP enforcement a priority when negotiating new free trade agreements. Our free trade agreements provide cutting-edge protection for IP with strong rules to combat counterfeiting and piracy.

For example, as a result of the United States-Australia FTA, Australia strengthened its laws to combat internet piracy and signal piracy. As a result of the United States-Singapore FTA, Singapore amended its Copyright Act to criminalize the installation and use of pirated software and then used that law to criminally prosecute an end-user for the first time. If the United States-South Korea FTA is approved and goes into effect, South Korea will be obligated to change its laws to provide greater authority to its police and customs authorities, to outlaw the recording of movies playing in theaters ("movie cam-cording"), and to increase its focus on fighting book piracy.

Training and Capacity Building: The U.S. has conducted several hundred IP training and capacity building programs around the world to improve criminal and civil IPR protection. As previously mentioned, the growth of USPTO's Global Intellectual Property Academy has dramatically increased the effectiveness of the U.S. Government's training and capacity building programs. Also, agencies throughout the federal government—from USPTO and the State Department to CBP and ICE—regularly send senior officials around the world to collaboratively train government officials in foreign countries.

Additionally, the U.S. Government and the World Intellectual Property Organization (WIPO) are developing a technical assistance pilot plan to combat trade in counterfeit and pirated goods and to strengthen IP enforcement in Indonesia and will be reaching out to other G8 members to support it with joint or complementary actions. Other G8 members volunteered to coordinate pilot plans in South Africa and the Tri-Border Region of South America. We are also working through the G8, as well as other bilateral and multilateral mechanisms, to help developing countries establish effective institutions to protect and promote innovation, including strengthening customs and law enforcement; ensuring legal production of safe and effective medicines, foods, and consumer products; and improving critical government IP functions.

Highlights of our Training and Capacity Building Programs:

- Brazil - Since 2001, the U.S. government has sponsored 15 IP-related programs involving Brazilian government officials, nearly half of which took place in Brazil.
- Russia - Since 2001, the U.S. government has conducted well over 15 training and capacity building programs involving Russian government officials.

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- India - The U.S. government has conducted over 20 IP training and capacity building programs with Indian officials and we continue to conduct conferences to train Indian academics and officials on IP enforcement and WTO TRIPS obligations.
- China - Since 2001, the U.S. government has conducted well over 50 training programs involving Chinese government officials.

Addressing Bilateral IP Enforcement Issues:
We clearly face IP enforcement challenges in a number of critical markets around the world. These challenges demand that we fully utilize the trade tools at our disposal, engage in high-level dialogue, develop targeted enforcement activities and collaborate extensively with industry:

China: The U.S. government is working on many fronts to engage China on IPR concerns.

First, and most prominently, we are making effective use of all of our trade tools. In April of 2007, U.S. Trade Representative Schwab announced the Administration had made two requests before the WTO for dispute settlement consultations with China: one over deficiencies in the Chinese legal regime for enforcing copyrights and trademarks on a wide range of products. The request focuses on provisions of Chinese law that create a substantial "safe harbor" for distributors or sellers of pirated and counterfeit products in China. The U.S. IP enforcement consultation request also focuses on the rules for disposal of infringing goods seized by Chinese customs. The third IP enforcement issue concerns Chinese copyright law's apparent denial of copyright protection for works poised to enter the market but awaiting Chinese censorship approval. In the same vein, we have discussed with China in detail the harm to U.S. industries, authors and artists who produce books, journals, movies, videos, and music caused by limiting the importation of these products to Chinese state-owned entities, and the problems caused by Chinese laws that hobble the distribution of foreign home entertainment products and publications within China. These products are favorite targets for IP criminals, and the legal obstacles standing between these legitimate products and the consumers in China give IP criminals the upper hand in the Chinese market.

A WTO panel has been established for the IPR Case, and USTR is requesting a WTO dispute resolution panel for the Market Access Case. Both WTO disputes will be moving forward toward resolution in the coming months.

Second, we seek to work collaboratively with the Chinese through the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the Strategic Economic Dialogue (SED) to secure bilateral IP commitments. In the last two years within JCCT, we negotiated a comprehensive set of commitments from the Chinese government to reduce counterfeiting and piracy. These include: increasing criminal IP prosecutions and customs enforcement; using only legal software in government offices and enterprises; shutting down illegal consumer markets in China; and joining the World Intellectual Property Organization Internet Treaties. As a result of a JCCT commitment, the Chinese government has mandated that all imported personal computers have legal operating software pre-installed.

At the May 2007 meeting of the SED, CBP worked with the Chinese and signed a Memorandum of Cooperation (MOC) with China Customs to strengthen enforcement against exports in China that may contain IPR infringing goods. This landmark agreement provides for the exchange of nominal information relating to IPR seizures in both countries with the requirement that specific actions be taken against entities involved in IPR violations in each country. The MOC also calls for the sharing of both seizure information and best practices related to IPR enforcement between CBP and China.

Since the MOC was signed with China, CBP has accomplished two of its goals already: (1) they have already conducted two training trips to China this year and a third is planned for the near future; and (2)

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CBP has also provided information they collected to from seizures in U.S. ports to their Chinese counterparts for action and should be receiving an update from them.

In the months following our announcement of the WTO cases, the Chinese have backed away from previous commitments to engage in discussions regarding IP enforcement within the context of the JCCT and SED. In addition, we have seen less day-to-day collaboration with the Chinese Government on IP matters that is led by U.S. officials based in China.

We find this development to be disappointing and challenging, however we continue to seek effective ways to address our specific IP concerns with China and do recognize that they have made progress in certain areas.

One encouraging area of progress to note are the efforts between U.S. law enforcement and their Chinese counterparts to establish greater cooperation and coordination on joint criminal investigations and prosecutions.

In March 2007, the Justice Department's Criminal Division hosted and chaired the inaugural meeting of the Intellectual Property Criminal Enforcement Working Group ("IPCEWG") of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation ("JLG"), which included 15 Chinese law enforcement officials and the Ministry of Public Security's ("MPS") Vice Director General of the Economic Crimes Investigation Department, as well as officials from the FBI and U.S. Immigration and Customs Enforcement. The IPCEWG focuses on the development of more U.S.-China joint operations to combat transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety. The Department's leadership on the IPCEWG is already yielding unprecedented results, as mentioned previously with Operation Summer Solstice

And finally, we work actively with the private sector to address their concerns and learn from their experience. We are expanding the tools and remedies that we offer industry – from recording their trademarks with U.S. Customs and Border Protection, to educating small businesses and referring specific infringement cases to Chinese officials. In addition, they are critical advocates for progress in China as active participants in that market.

Ambassador Clark T. Randt, Jr. at our Embassy in Beijing holds an annual IPR Roundtable which brings together senior U.S. and Chinese officials and U.S. business representatives. The Roundtable gives U.S. rights holders the opportunity to discuss the problems they are facing and find the solutions that they need. At the most recent Roundtable, hosted by Ambassador Randt on October 23-24, a number of U.S. industries provided specific recommendations for action the U.S. Embassy's IPR team can take to address ongoing IPR concerns in China.

Our Embassy and Consulate officers on the ground are a valuable asset for U.S. companies. They play a critical role as IPR "first responders" helping U.S. businesses resolve cases when their rights are violated.

Russia: The U.S. is working with Russia to strengthen IP protection and enforcement. Russia is experiencing high rates of piracy. According to USTR's Special 301 Report, poor enforcement of IPR in Russia is a pervasive problem. The report notes that prosecution and adjudication of IP cases remains sporadic and inadequate in Russia; there is a lack of transparency and a failure to impose deterrent penalties. Russia's customs administration also needs to significantly strengthen its enforcement efforts. However, Russian authorities have initiated some enforcement actions in 2006, which included raids on some optical disc production facilities and investigation of Internet sites.

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Our Bilateral Market Access Agreement with Russia, concluded in November 2006, includes a letter setting out important commitments that will strengthen IPR protection and enforcement in Russia. Under the terms of the agreement, Russia will take action to address piracy and counterfeiting and further improve its laws on IPR protection and enforcement. The agreement sets the stage for further progress on IP issues in ongoing multilateral negotiations concerning Russia's bid to enter the WTO. This year's Special 301 Report also continues heightened scrutiny of Russia by maintaining Russia on the Priority Watch List and announcing plans for an Out-of-Cycle Review.

Also, the work of the U.S.-Russia IP Working Group remains a high priority, as the United States—through USTR—and Russia work to address a number of IPR-related issues and steps that need to be taken.

India: In March 2006, during President Bush's visit to India, a joint statement was released stating that the U.S. and India would work together to promote innovation, creativity and technological advancement by providing a vibrant IP regime, and to cooperate in the field of intellectual property rights to include capacity building activities, human resource development and public awareness programs.

I have led two inter-agency delegations to India to discuss issues of IP policy, enforcement and trade. Our delegations met with Indian government officials – at both the Central and State Government level; and engaged both American and Indian private-sector stakeholders, academics and legal practitioners to continue our efforts to promote increased trade and economic development through effective IP protection. While in India, we discussed a broad framework for engaging India on intellectual property and trade promotion. This plan revolves around three key areas, which include: bilateral cooperation, education and engaging both U.S. and Indian industry. Bilaterally, we are working with India on IP through our Trade Policy Forum, High Technology Cooperation Group and the Commercial Dialogue. With the placement of a U.S. Government IP Attaché in New Delhi in 2006, we are continuing our capacity building and educational outreach efforts with the Indian Government and Industry.

We remain concerned about inadequate IP protection and enforcement in India. We have urged India to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents, as well as protection against unfair commercial use for data generated to obtain marketing approval. We have encouraged India to implement the WIPO Internet Treaties, strengthen its copyright laws, and improve its IPR enforcement system, including by enacting and implementing an effective optical disc licensing scheme to combat optical disc piracy. Piracy of copyrighted works remains rampant in India. India's criminal IPR enforcement regime remains weak, with improvements needed in the areas of expeditious judicial dispositions for copyright and trademark infringement, border enforcement against counterfeit and pirated goods, police action against pirates and counterfeiters, and imposition of deterrent sentences for IPR infringers. The United States has urged India to strengthen its IPR regime, and stands ready to work with India on these issues during the coming year.

India has made some progress, and we are committed to continuing to work with India as they fine-tune their IP legal framework and develop an effective system to enforce intellectual property rights.

The Importance of Coordination

To better execute the key objectives laid out in the Administration's STOP! initiative, we have revitalized an existing interagency body that Congress established in 1999 to coordinate IP enforcement, the National Intellectual Property Law Enforcement Coordination Council (NIPLECC).

The Council is comprised of the Department of Justice (Assistant Attorney General of the Criminal Division), the Commerce Department (Under Secretary for Intellectual Property and Director of the

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Patent and Trademark Office and Under Secretary for International Trade), the Office of the U.S. Trade Representative (Deputy USTR), the Department of Homeland Security (Commissioner of Customs and Border Protection and Assistant Secretary for Immigration and Customs Enforcement) and the State Department (Under Secretary for Economic, Business and Agricultural Affairs).

The Council has made a number of valuable contributions since its creation in 1999, including the development of a comprehensive database that includes all recent IP law enforcement training provided by the U.S. government to developing and least developed nations as well as delivering legislative suggestions to improve national IP laws related to enforcement.

We have also developed a new, internal performance survey to measure the U.S. Government's progress on IP enforcement. My office leads in collecting data each quarter for the U.S. Government's Quarterly Report on IP Enforcement, which we publish so that all stakeholders can be up to date on the work we are doing to protect IP.

Our office also leads NIPLECC's annual reporting process. In January of 2008, we will provide our Annual Report to the President and Congress on Intellectual Property Enforcement. Last year, we retooled NIPLECC's annual report to include a broader view of the coordination that the Administration has brought to the U.S. Government's IP enforcement efforts, and this year's report will continue in this model, while showing many of the results of now two years of coordination under my office's leadership.

Since the creation of the Coordinator's office in 2005, the Council has developed an Administration-wide communications strategy for U.S. government officials, especially Cabinet members. Working with the White House, we are leveraging opportunities for senior Administration officials to address IP enforcement and communicate similar themes. As part of this communications strategy, we have prepared background papers and developed the Bush Administration's strategies for countries like China and India.

As Coordinator, I have led inter-agency delegations to China, Russia, Mexico, India, and the European Union to discuss critical IP issues with my government counterparts overseas and with industry.

With each initiative and project that the Council puts into motion, we are able to move the ball that much further for U.S. Industry, and we send a clear message to our trading partners and others that the Bush Administration considers the protection of intellectual property to be a top economic and international trade issue.

As the Bush Administration continues its efforts, and in my role as the head of the Council, I look forward to working with this Committee to ensure that we maximize our current capabilities and expand our efforts, where necessary, to promote strong intellectual property rights protection for American businesses and entrepreneurs around the world.

* * * *

Members of the Committee, the Bush Administration is committed to stopping intellectual property theft and providing businesses the tools they need to flourish in the global economy. As I work to coordinate the U.S. government's intellectual property enforcement, trade and education efforts and with your continued support and the partnership of this Committee, we will be able to do even more to provide American businesses and innovators with the protection they need. America's intellectual property is important not just for her national security, but it is also a critical component in ensuring continued U.S. economic growth and technological leadership. We must take advantage of the opportunity to work together to better protect the knowledge industries of today so that we may continue to see the innovations of tomorrow. Thank you very much.

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Statement
United States Senate Committee on the Judiciary
Examining U.S. Government Enforcement of Intellectual Property Rights
November 7, 2007

The Honorable Patrick Leahy
United States Senator , Vermont

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing on "Examining U.S. Government Enforcement of
Intellectual Property Rights"
November 7, 2007

Intellectual property – copyrighted works, trademarked goods, and patented inventions – fuels the engine that drives the U.S. economy. Intellectual property reportedly accounts for 40% of our nation's exports. Just as importantly, we consume IP voraciously here at home. IP is the medicine that cures us, the movies that thrill us, the music that inspires us, the software that empowers us, the technology that aids us. It is everywhere in our lives, and it is evermore important in our economy.

Unfortunately, the piracy and counterfeiting of intellectual property has reached unprecedented levels. Copyright infringement alone costs the U.S. economy at least $200 billion and approximately 750,000 jobs each year. Such theft is unacceptable, but counterfeiting goods not only infringe IP rights, they can endanger our health and safety. Fake drugs that look just like the real thing, tainted infant formula sold to unsuspecting parents, electrical appliances with shoddy insulation, automobile parts that fail under stress – such counterfeit goods are proliferating, and are often difficult to distinguish from their real, and safe, counterparts.

I have worked for years both to strengthen our existing laws and to give our law enforcement agents the necessary tools to combat infringement. In the last Congress, we passed the Stop Counterfeiting in Manufactured Goods Act, which expanded the prohibition on trafficking in counterfeit goods to include trafficking in labels or similar packaging with knowledge that a counterfeit mark had been applied to those goods. I have regularly authored amendments to the State Department's appropriations bill to provide millions to the Department in order to send staff overseas to specifically combat piracy in countries that are not members of the Organization for Economic Co-Operation and Development, or OECD. Just this morning, I reintroduced, with my Judiciary Committee colleague Senator Cornyn, the PIRATE Act. This legislation is a simple bill that would give the Department of Justice the authority to prosecute copyright violations as civil wrongs. The PIRATE Act has passed the Senate on three separate occasions; this should be the Congress in which it becomes law.

In the current Congress, there are a number of other bills designed to combat intellectual property infringement. Senator Bayh, who has joined us here today, introduced a bill focused on interagency coordination on intellectual property. Senator Biden recently introduced omnibus crime legislation that includes many provisions suggested by the Department of Justice. No doubt others will join the effort, as we get the legislative conversation started on the critical issue of law enforcement in the realm of intellectual property.

This issue is too important to be addressed piecemeal. In order to effect the greatest change, we must examine enforcement efforts from the top down. Helping us do so is our second panel today. I look forward to hearing from these distinguished government officials about the current state of enforcement, and what needs to be improved to protect our creators and innovators, as well as our economy.

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Testimony of

Chris Moore
Deputy Assistant Secretary for Trade Policy and Programs
Bureau of Economic, Energy and Business Affairs
U.S. Department of State

before the
Senate Committee on the Judiciary

"EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS"

November 7, 2007

Chairman Leahy, Ranking Member Specter and Members of the Committee, thank you for this opportunity to discuss the State Department's work to combat counterfeiting and piracy and enforce intellectual property rights (IPR) around the world. I value the leadership you and many others in Congress have demonstrated on this critical issue for American businesses and workers.

Meeting the Global Enforcement Challenge

A strong intellectual property rights regime – one where copyrights, trademarks, patents, and other forms of intellectual property are protected by law, effectively managed and vigorously enforced – has proven essential to driving economic progress in the United States and to making our nation one of the most innovative and competitive on earth. Intellectual property rights provide vital incentives to invest in breakthroughs in science, engineering, and the arts. They ensure knowledge-based firms and their workers are rewarded for their unique creativity and achievements.

The United States has been instrumental in building a robust worldwide legal infrastructure for innovation and creativity – bringing the strong intellectual property protections we enjoy at home to more than 150 economies around the world through the WTO Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS). That Agreement harnessed and harvested rules negotiated in a number of intellectual property treaties – clarifying and improving them where necessary and making them subject to binding dispute settlement.

This Administration has built on the strong legal protections in the WTO by including groundbreaking IPR provisions that improve on the TRIPS foundation in a dozen free trade agreements reached with 17 countries since 2001. Through negotiation of a new Anti-Counterfeiting Trade Agreement (ACTA), announced by U.S. Trade Representative Susan Schwab last month, we will bring improvements on TRIPS to a group of our trading partners with the goal of setting a higher benchmark for intellectual property enforcement, strengthening international cooperation, and improving enforcement practices.

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America's trade agreements provide vital tools in our efforts to combat counterfeiting and piracy, and the Administration has made the full implementation and effective enforcement of the intellectual property protections in these agreements a top priority. For example, as a result of the United States-Australia FTA, Australia has strengthened its laws to combat internet piracy and signal piracy. As a result of the United States-Singapore FTA, Singapore passed a law to criminalize end user piracy of software and then used that law to criminally prosecute software pirates for the first time.

We have also achieved results through bilateral engagement with key countries. For example, through the United States-China Joint Commission on Commerce and Trade (JCCT), the Chinese government has agreed to mandate all imported personal computers have pre-installed legal operating software. We have been successful in committing Canada to introduce new copyright protection legislation, and to improve enforcement of its law criminalizing camcording in theatres. Early indications are that the new June 2007 camcording law has been successful in curbing camcording on a commercial level.

Recognizing the significant systemic challenge posed by the large and growing global trade in counterfeit and pirated goods – especially those faced by America's small and medium-sized businesses – this Administration has also further strengthened coordination among the full range of federal agencies engaged in intellectual property enforcement and brought new tools and partnerships to our work in this critical area. Through the Strategy Targeting Organized Piracy (STOP!) Initiative, announced in October 2004, federal agencies have helped small businesses secure and enforce their intellectual property rights at home and abroad, increased seizures of fake goods at our borders, worked closely with Congress to update and modernize U.S. intellectual property statutes, engaged the U.S. private sector on guidelines to keep supply chains free of fake goods, and built enforcement partnerships with countries around the world.

Leveraging State Department Tools and Resources

The State Department plays a vital role in supporting STOP! and in complementing the international intellectual property enforcement activities of federal agencies with lead responsibilities in this area. Secretary Rice is a strong champion of intellectual property protection and other top Department officials regularly press their overseas counterparts to improve intellectual property enforcement.

In 2005, at the request of Congress, the State Department established its first ever Office of International Intellectual Property Enforcement within the Bureau of Economic, Energy and Business Affairs. Led by Office Director Dan Jacobs and staffed by a strong team of subject matter and regional experts, this office serves as a focal point for the Department's contributions to protecting and enforcing the rights of American innovators and creative artists overseas – marshalling and leveraging the full range of often unique tools and resources at our disposal to achieve real results.

Advocating Abroad for American Right Holders

The most important of those tools and resources is the State Department's global network of 267 embassies, consulates, and missions around the world. America's Ambassadors and

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Consul Generals from China, Korea and Vietnam, to Argentina, Senegal and beyond are regularly and publicly highlighting the economic damage and public health risks of counterfeiting and piracy and promoting robust intellectual property enforcement by local officials – including through high-profile conferences, roundtables and meetings that bring together U.S. and local government officials and private sector representatives to discuss challenges and solutions.

Just two weeks ago, the U.S. Ambassador to China, Clark Randt, hosted the Sixth Annual Roundtable Discussion on Intellectual Property Rights in Beijing. Attendees had the opportunity to hear first-hand from industry and trade association representatives with in-depth knowledge and experience on enforcement in China. In addition to improving coordination within industry and between industry and law enforcement to combat counterfeiting and piracy, past Roundtable Discussions have showcased effective new approaches to protecting IPR in China, such as by using technological measures (e.g., limiting access to industrial electrical current) or imposing liability on landlords.

These conferences, roundtables and meetings are more than forums for discussion. In Senegal last year, following a roundtable discussion hosted by our Embassy and subsequent events including a regional conference on combating counterfeiting and piracy, local artisans, musicians, fabric designers and others took the initiative and demanded significant changes in the way their government enforces intellectual property rights, which ultimately resulted in unprecedented arrests and seizures – including the arrest of as many as 100 street vendors, retailers and producers and the seizure of roughly 18,000 pirated DVDs, CDs, cassettes and videos, as well as recording equipment. Following a local roundtable in June 2005, the American Consulate in Guangzhou, China led delegations of U.S. right holders to meet local and provincial law enforcement authorities to press for tougher action against rampant counterfeiting and piracy, resulting in raids and crackdowns.

Through its Office of International Intellectual Property Enforcement, the State Department works to ensure Embassy and Consulate economic officers have the skills and resources they need to serve as effective advocates and first responders for U.S. intellectual property right holders facing complex counterfeiting and piracy challenges abroad. Since 2004, for example, we have organized regional intellectual property training seminars for economic officers in Europe, the Western Hemisphere, East Asia and the Pacific; developed special intellectual property training programs available to economic officers and others at the State Department's Foreign Service Institute and on-line; and created and made available to Embassy and Consulate officials up to date fact sheets, talking points, and model op-eds that address key IPR issues by region and topic.

Programs and resources like these ensure our economic officers can continue to play a powerful role in advancing and implementing the Administration's global intellectual property enforcement policies and activities – engaging regularly with private sector right holders and foreign government officials to encourage tougher enforcement, monitoring and promoting the full implementation of trade agreement commitments, and assisting in the development and execution of intellectual property training programs.

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Building Global Intellectual Property Enforcement Coalitions

Capitalizing on its role in negotiations leading to annual G8 Summits, the State Department is also leading work among key industrialized nations of the world to prioritize and build a common agenda for enhancing global intellectual property enforcement. Beginning under the UK Presidency in 2005 and at each Summit thereafter, G8 Leaders have issued robust statements on combating counterfeiting and piracy and promoting and protecting innovation. These statements have underscored the pivotal role that strong intellectual property enforcement plays in economic growth and job creation, and have set high standards for the international community to substantially reduce global trade in counterfeit and pirated goods and deliver real enforcement results.

Work through the G8 has advanced partnerships between the Department of Justice, the Department of Homeland Security's Bureau of Customs and Border Protection, and their counterparts in Europe, Canada and Japan designed to improve border enforcement and combat serious and organized crime. Moreover, this work has served as a focal point for the development of joint intellectual property enforcement training programs in developing countries and for the exchange of information and effective practices among governments and with the private sector. And critically, it has helped to forge a global strategic partnership and common platform for cooperation among these like-minded countries dedicated to achieving results in the fight against intellectual property theft.

We look forward to building on this platform and working closely with the Japanese government as it assumes the G8 Presidency in 2008.

Training Foreign Law Enforcement Partners

Thanks to your leadership, Mr. Chairman, and to the leadership of others in Congress, the State Department is also increasingly leveraging another unique resource – its global intellectual property law enforcement training programs. Funding available for the IPR foreign criminal enforcement training and technical assistance programs has increased from less than $1 million in FY2003 to $3 million in FY2007.

Focused on strengthening the capacity of police, prosecutors, judges and customs and border officials to protect and enforce intellectual property criminal laws, these programs help to build the institutions necessary to achieve results now and in the future and to ensure raids and crackdowns are followed by prosecutions, convictions, and penalties. The focus on criminal enforcement also helps address the growing involvement of sophisticated transnational crime organizations in intellectual property theft.

The State Department Bureaus of International Narcotics and Law Enforcement and Economic, Energy and Business Affairs collaborate to target these funds for intellectual property criminal law enforcement training and technical assistance and to ensure these funds are deployed to maximum impact around the world. Specifically, we are:

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- Directing training resources to programs in countries that are principal priorities of Congress and U.S. right holders. In FY2007, for example, we are funding bilateral training programs for law enforcement in Brazil, India, Russia, Turkey and the Ukraine, among others, as well as regional training for the law enforcement of ASEAN and APEC member economies.

- Building, wherever possible, on training provided in previous years – helping to anchor and advance progress over time and to strengthen institutional as well as individual capacity – with a goal of having foreign partners develop a self-sustaining growth in capacity.

- Supporting implementation of international commitments, such as the Asia-Pacific Economic Cooperation (APEC) guidelines designed to prevent optical disc piracy and keep supply chains free of fake products and the CAFTA-DR provisions on IPR.

- Coordinating fund allocation with other resource agencies, including the U.S. Patent and Trademark Office, through quarterly meetings of the State Department-led interagency Training Coordination Group and the State Department-maintained International IPR Training database (www.training.ipr.gov).

- Seeking to use our resources to leverage and increase the impact of funds committed by others – including partnering with other G8 countries on joint training programs and contributing to programs covered largely by recipient governments of key developing countries.

The intellectual property programs supported by the State Department's law enforcement training funds are delivering real results. In Indonesia, for example, we support two full-time U.S. advisors who have helped the Indonesian government launch a string of large-scale intellectual property enforcement actions. In July 2007, Indonesian police closed down two optical disk factories suspected of illegal production and seized equipment and pirated products with an estimated value of between $7.5 and $9 million. That same month, they also conducted the largest counterfeit pharmaceutical raid ever worldwide, seizing 16 million medicine tablets valued at up to $7 million. In Paraguay, our training has resulted in the government establishing a new data statistics center and a new special enforcement unit, which has been instrumental in increasing enforcement through conducting raids and seizures. Within a month after receiving training sponsored by our Embassy, local authorities conducted a successful raid of pirated software using methods they had just learned.

Building Public Support Overseas for Tougher Enforcement

Finally, the State Department is utilizing its extensive global public diplomacy tools to help build public understanding of the value of intellectual property and public support for stronger enforcement in countries around the world.

On April 26, 2007 – World Intellectual Property Day – the Department launched the first phase of a global public awareness campaign designed to highlight the importance of intellectual

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property protection for economic development and the public health and safety dangers of pirated and counterfeit goods. During this initial phase, editorials signed by U.S. Ambassadors were placed in leading newspapers in more than 20 developing countries. The campaign continued through release of public fact sheets addressing topics important to specific regions, through digital video conferences with foreign government and private sector officials and through foreign press trips to the United States.

We are in the process of developing the next phase of the IPR public diplomacy campaign, which will continue to leverage the State Department's tools and resources to build and strengthen public support abroad for strong intellectual property enforcement. Through our IPR public diplomacy work, and our work through international organizations such as the World Intellectual Property Organization, we continue to encourage developing countries to integrate intellectual property into their economic development planning.

* * * * *

Mr. Chairman, Ranking Member Specter and Members of the Committee, this Administration is acting aggressively to combat counterfeiting and piracy and to strengthen intellectual property enforcement at home and abroad. The State Department is supporting and complementing that work – leveraging its unique tools and resources to build strong global coalitions, advocate abroad for American right holders, train overseas law enforcement officials, and build public awareness and support.

As we move forward, we welcome the continued guidance and leadership of this Committee and others in Congress.

Thank you.

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STATEMENT OF

KEVIN J. O'CONNOR

UNITED STATES ATTORNEY

FOR THE DISTRICT OF CONNECTICUT

CHAIRMAN, TASK FORCE ON INTELLECTUAL PROPERTY

DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

PRESENTED ON

November 7, 2007

Introduction

Chairman Leahy, Ranking Member Specter, and Members of the Committee, thank you for the opportunity to discuss the Department of Justice's efforts to protect intellectual property rights through criminal enforcement.

As America continues its transformation into an information- and innovation-based economy, the protection of America's creative assets is a top priority of the Department of Justice. Intellectual property embodies America's cultural heritage, consumer confidence and trust in brands for products ranging from prescription medicines to spark plugs, and most of the assets of our vibrant information industries. As the Committee knows, the majority of the enforcement regime for protecting these intellectual property assets is now and has traditionally been civil. However, with the advent of new technologies, a global supply chain economy, and the increased involvement of transnational criminal organizations, criminal enforcement is now more important than ever in protecting intellectual property rights.

Today, the Department is dedicating more energy and resources than ever before to the protection of U.S. intellectual property rights, with a particular emphasis on health and safety

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crimes and organized criminal syndicates. The Department has been an integral part of President Bush's Strategy Targeting Organized Piracy, or "STOP", initiative. This initiative involves government officials, local and national law enforcement, small businesses, and international partners in a coordinated and aggressive strategy to fight global intellectual property crime.

Under the umbrella of the STOP initiative and the Department of Justice's Task Force on Intellectual Property, we have significantly increased our domestic enforcement efforts with special emphasis on organized criminal operations and counterfeiting crimes that threaten the health and safety of Americans. Recognizing that an increasing number of IP crimes are global in nature, the Department is diligently reaching out to foreign law enforcement both to train them in spotting intellectual property crime and to seek their involvement and assistance in joint operations. And finally, in the legislative package that the Attorney General transmitted to Congress on May 14, 2007, the Department is seeking additional tools to help prosecute and deter intellectual property thieves.

My remarks today are intended to describe in more detail the Department's role in the coordinated U.S. Government effort to protect intellectual property rights: strengthening domestic criminal enforcement programs, improving international enforcement and training efforts, and developing legislative proposals – all of which are designed to ensure the continued protection of intellectual property rights from the increasing theft and exploitation of those rights.

The Department's Domestic Criminal Enforcement Efforts

As part of the President's STOP initiative, in 2004 the Department created a Task Force on Intellectual Property to conduct an exhaustive review of its efforts to protect intellectual property and to strengthen its enforcement resources. Following the review, the Task Force made 31 specific recommendations, including a directive that the Department hire, train and retain more intellectual property prosecutors in order to keep pace with the growing number and complexity of criminal piracy and counterfeiting operations. The Department satisfied or continues to implement all 31 recommendations of the Task Force, and today has more prosecutors focusing on intellectual property crime than at any time in its history.

In June of 2006, the Department designated seven new Computer Hacking and Intellectual Property (CHIP) units in U.S. Attorneys Offices nationwide, bringing the total number of such specialized units to 25. We are already seeing significant increases in prosecutions: in FY 2007, CHIP Units successfully convicted and sentenced 199 defendants nationwide for IP offenses, representing an 80% increase over the 110 defendants convicted and sentenced by CHIP Units in 2006.

In addition to the CHIP network of approximately 230 specialized prosecutors in U.S. Attorney's Offices nationwide, including the CHIP Unit districts, the Criminal Division has fourteen prosecutors in the Computer Crime and Intellectual Property Section (CCIPS) who focus exclusively on prosecuting intellectual property crime. These attorneys prosecute single- and multi-district cases across the country. Additionally, CCIPS conducts extensive training of foreign law enforcement on intellectual property crime and enforcement. In fact, in 2006 alone,

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CCIPS provided training and technical assistance to more than 3,300 foreign prosecutors, judges, and investigators from 107 countries. And in September 2006, CCIPS published a comprehensive 436- page resource manual on prosecuting intellectual property crimes. The manual is a valuable training and legal resource for prosecutors and agents nationwide, as well as for other federal agencies that have responsibilities under the STOP initiative – including the Federal Bureau of Investigation, Office of the U.S. Trade Representative, and the Departments of Commerce, State, and Homeland Security.

i. Interagency Coordination

The Department plays an active role in the President's STOP initiative, working with other federal agencies to ensure an effective government-wide approach to protecting intellectual property rights. The Department also works closely with industry and IP rights holders to strengthen the public-private partnership so essential to strong IP protection. For instance, as part of a focused outreach to the private sector, the Department hosted a series of training conferences for IP rights holders on topics including, 1) the investigation and prosecution of federal IP cases, 2) the parameters for permissible cooperation and assistance in federal investigations by private rights holders, and 3) procedures and tips for how best to report criminal violations of the copyright, trademark, and trade secret laws. The latest such victims' rights conference was sponsored jointly with the Business Software Alliance on May 22, 2007, in San Jose, California. More than 80 members of industry from Silicon Valley attended the one-day training conference that covered, among other things, criminal case studies and a detailed presentation on the permissible and appropriate parameters for industry's assistance to federal law enforcement. A similar conference, planned for Miami on November 28, 2007, will be co-hosted by the Department of Justice and the U.S. Chamber of Commerce.

Thanks in no small part to the efforts of Chris Israel, the Coordinator for International IP, the Department has been able to work effectively with other STOP agencies to support important Department initiatives. For example, just last month, the Department held the first-ever IP Crimes Enforcement Network Conference, in Bangkok, Thailand. I will say more about the conference later in my remarks, but I mention it here because this unprecedented gathering of senior law enforcement officials would not have been possible without a State Department grant and the assistance of the US Patent and Trademark Office, which co-hosted the event with the Department and the Association of Southeast Asian Nations (ASEAN). Additionally, the Department supports the IP enforcement missions of other Departments and agencies, including the Special 301 process and Free Trade Agreement negotiations run by the U.S. Trade Representative; the State Department's IP Training Coordination Group; and public outreach events for small businesses developed by the Department of Commerce. Despite the widely divergent roles played by many of the agencies involved in the STOP initiative, coordination and support among agencies has never been greater in the effort to enforce IP rights.

ii. Criminal Prosecutions

Of course, at the core of the Department's IP enforcement program are criminal prosecutions, and we have worked hard to increase both the quality and the number of intellectual property prosecutions nationwide. Through the dedicated efforts of U.S. Attorney's

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Offices, our Criminal Division, and law enforcement across the country, the Department filed 217 intellectual property cases in FY 2007, representing a 7% increase over cases reported in FY2006 (204), and a 33% increase over cases reported in FY2005 (169). Also in FY2007, 287 defendants were convicted and sentenced on intellectual property charges, representing a 35% increase over FY2006 (213) and a 92% increase over FY 2005 (149).

The increase in prosecutions in FY 2007 was not an aberration, but rather reflects a continuing upward trend. For example, in FY 2006, federal prosecutors convicted 187 defendants of criminal copyright and trademark offenses alone – an increase of 57% over the prior year. Thirty-nine (39) of those defendants received terms of imprisonment of 25 months or more, a 130% increase from the 17 sentenced to such terms in 2005. Indeed, in the previous year (FY 2005), the Department prosecuted twice the number of defendants for intellectual property violations than it had in 2004.

The Department's prioritization of the most serious intellectual property crimes is paying off in terms of more convictions and higher sentences. That, in turn, leads to increased deterrence for both the individual defendant and the general public. Deterrence is a key component of any effective enforcement strategy, and it is one reason that we try to publicize IP prosecutions through the print media as well as through online distribution channels, such as CCIPS' website, www.cybercrime.gov. Among other things, the website seeks to publicize the federal IP prosecutions of the CHIP Network, Assistant U.S. Attorneys, and CCIPS prosecutors, which in the past year alone have included:

Counterfeit Trafficker Gets 57 Month Prison Term, $7 Million Forfeited

On October 12, 2007, in the Eastern District of Virginia, Abbas Chouman, 43, of Astoria, N.Y., was sentenced to serve 57 months in prison on one count of conspiracy to commit criminal copyright infringement by U.S. District Judge Henry E. Hudson of the Eastern District of Virginia. Chouman was also ordered to forfeit $7 million. Chouman pleaded guilty to conspiracy on July 3, 2007, for operating a store that sold more than $7 million worth of counterfeit clothing. He was the fifth of seven defendants to be sentenced as a result of Operation Throwback, a multi-agency, multi-state federal enforcement operation targeting traffickers in counterfeit and pirated goods that resulted in arrests in 4 states during March of this year.

Two Bay Area Men Indicted on Charges of Economic Espionage

On September 26, 2007, in the Northern District of California, two Bay Area men were indicted on charges of economic espionage and theft of trade secrets, and a related conspiracy charge. Defendants Lan Lee and Yuefi Ge allegedly conspired to steal trade secrets involving computer chip design and development from their employer and another company, and sought to obtain venture capital funding from the government of China, in particular the 863 Program and the General Armaments Department. The 863 Program is a funding plan created and operated by the government of the People's Republic of China, also known as the national High Technology Research Development Program.

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Remaining Two Defendants Sentenced In Largest CD & DVD Manufacturing Piracy and Counterfeiting Scheme Prosecuted in the United States to Date

On August 6, 2007, in the Northern District of California, two co-defendants were each sentenced to 37 months in prison for conspiracy to commit copyright infringement and trafficking in counterfeit goods and labels. The defendants led piracy and counterfeiting schemes by using sophisticated replication machinery for the mass reproduction of copyrighted works. The sentences were the result of Operation Remaster, an extensive undercover investigation by the FBI in which agents seized approximately 494,000 pirated music, software, and movie CDs, and DVDs, and more than 6,135 stampers (devices used to produce high-quality counterfeit copies on optical disks), from 13 different locations. This case is believed to be the largest ever manufacturing case involving commercially duplicated, high-quality counterfeits that closely resemble authentic CDs in US history.

Former Chinese National Convicted for Committing Economic Espionage To Benefit China Navy Research Center in Beijing and For Violating the Arms Export Control Act

On August 2, 2007, in the Central District of California, defendant Xiaodong Sheldon Meng was convicted of violating the Economic Espionage Act, the Arms Export Control Act, and the International Traffic in Arms Regulations. Meng willingly violated the Economic Espionage Act by possessing a trade secret belonging to Quantum3D. Meng, knowing it would benefit the China Navy Research Center, exported source code for a visual simulation software program used for training military fighter pilots. This is the first conviction for the illegal export of military source code in US history.

Eighteen Charged with Racketeering in Internet Drug Distribution Network

On August 2, 2007, in the Southern District of California, a 313-count indictment charged 18 individuals with operating an online pharmaceutical distribution network known as Affpower. The Affpower organization received over 1 million Internet orders for controlled and non-controlled prescription pharmaceuticals from customers in all 50 states, and it generated more than $126 million in gross revenue. Affpower allegedly paid licensed doctors to issue prescriptions based only on answers to health questionnaires filled out over the Internet and requiring no mental or physical exams. The defendants have been charged with various crimes, including racketeering and conspiracy to commit racketeering, distribution and dispensing of controlled substances, mail and wire fraud, and conspiracy to dispense and dispensing of misbranded drugs with the intent to defraud and mislead. Twelve individuals have already pleaded guilty in connection with the Affpower conspiracy.

29 Defendants in Three States Charged with Conspiracy to Smuggle Counterfeits

On June 6, 2007, in Brooklyn, New York, 29 defendants were charged in three separate complaints with conspiracy to smuggle over 950 shipments of merchandise into the United States through ports of entry at Newark, N.J., Houston Texas, Long Beach, California, New York Container Terminal in Staten Island, N.Y., and John F. Kennedy International Airport. The counterfeit merchandise was principally from China. Four of the defendants were also charged with money laundering. The charges resulted from a 19- month coordinated initiative by ICE and Customs and Border Protection.

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Nine Convictions for Selling $30 Million of Counterfeit Software on eBay

On June 22, 2007, in the District of Wisconsin, Department prosecutors obtained the eighth and ninth felony convictions involving the eBay auction sales of counterfeit Rockwell Automation software. All nine defendants pled guilty in separate proceedings to felony copyright infringement for selling counterfeit Rockwell Automation software on eBay. The software had a combined retail value of approximately $30 million. These convictions are part of a larger Department initiative combating online auction piracy nationwide.

Ex-Employee of Coca Cola and Co-defendant Sentenced for Stealing Trade Secrets

On May 23, 2007, in the District of Georgia, two defendants were sentenced after being charged with conspiring to steal and sell trade secrets of the Coca Cola Company. Joya Williams, a former employee of Coca-Cola, was sentenced to 8 years in prison and Ibrahim Dimson was sentenced to 5 years in prison. The convictions resulted from an FBI investigation, which was initiated after PepsiCo provided the FBI with a copy of a letter from someone claiming to be a Coca-Cola employee and offering PepsiCo classified information about the Coca-Cola Company.

50th Conviction in Largest Online Software Piracy Enforcement Action

On May 14, 2007, in the Eastern District of Virginia, Department prosecutors obtained the 50th conviction in Operation FastLink, the largest and most successful global online piracy enforcement initiative ever conducted. This Operation culminated in the execution of more than 120 searches and arrests in 12 countries, the seizure of more than 200 computers, the complete dismantlement of 30 Internet distribution sites, and the confiscation of hundreds of thousands of counterfeit software titles valued at more than $50 million. This 50th conviction represents a milestone never before achieved in an online piracy prosecution.

Eleven Indicted for Scheme to Import Adulterated Counterfeit Drugs for Sale on Internet

09/20/06 (Atlanta, GA): Eleven individuals and an Atlanta-based company were indicted on charges related to a scheme to sell counterfeit drugs over the internet. According to the indictment, the defendants marketed approximately 24 different drugs, including versions of Ambien, Valium, Lipitor, and Vioxx, through spam advertisements. Instead of buying safe and authentic generic versions of these vital drugs from Canada, customers were unwittingly buying adulterated fakes manufactured in an unsanitary house in Belize.

Texas Pharmacist Sentenced to Two Years in Prison for Selling Counterfeit Drugs

On September 25, 2006, in Houston, Texas, a licensed pharmacist was sentenced to two years imprisonment for selling counterfeit and misbranded Cialis and Viagra from China. He was convicted by a jury's verdict in May 2006 after a two-day trial during which the United States proved he had ordered counterfeit and misbranded pharmaceuticals from China via the internet and arranged for the drugs to be shipped to him at his home in Sugarland, Texas.

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Internet Distributor of Pirated Software Sentenced to 6 Years' Imprisonment and Ordered to Pay $4.1 Million in Restitution

On August 25, 2006, in the Eastern District of Virginia, a Florida man was sentenced to six years in prison and ordered to pay $4.1 million in restitution for operating a for-profit piracy website known as BUYSUSA.com. The ordered forfeiture included a wide array of assets, including two Cessna airplanes, a helicopter, a Lamborghini, a 2005 Hummer, a 28 foot boat, and an ambulance.

Florida Men Sentenced to Terms of 7 and 8 Years' Imprisonment, respectively, for Massive Conspiracy to Sell Counterfeit Goods, Including Electrical Cords and Batteries

On August 25, 2006, in the Southern District of Florida, two men were sentenced to 97- and 87-month prison terms, respectively, for a massive conspiracy to sell counterfeit goods, including but not limited to electrical cords, batteries, and handbags bearing the counterfeit marks of Underwriters Laboratories, Duracell, and Louis Vuitton and Gucci, respectively.

In addition to the above cases, the Department has continued to prosecute defendants from the two largest international enforcement actions ever undertaken against online piracy, known as Operations FastLink and SiteDown. The takedowns of these international FBI undercover operations in 2004 and 2005, respectively, resulted in a total of more than 200 search warrants executed in 15 countries; the confiscation of hundreds of computers and illegal online distribution hubs; and the removal of more than 100 million dollars worth of illegally-copied copyrighted software, games, movies, and music from illicit distribution channels. Countries participating in these U.S.-led operations included: France, Canada, Sweden, Denmark, the Netherlands, the United Kingdom, Portugal, Hungary, Israel, Spain, Australia, Singapore, Belgium, and Germany. Together, these operations have resulted in over 100 felony convictions to date.

These and earlier Department-led operations targeting online piracy, are examples of an unprecedented level of international cooperation in the investigation and prosecution of intellectual property crimes. However, when international cooperation alone is insufficient or unsuccessful in bringing these criminals to justice, the Department will use all tools at its disposal to ensure that these crimes do not go unpunished. A recent example is that of **Hew Raymond Griffiths**, a resident of Australia and the leader of a notorious online piracy group responsible for the distribution of more than $50 million in pirated works. Last February, he became the first individual ever extradited for online piracy offenses as he was brought to the Eastern District of Virginia to face criminal copyright charges. Griffiths had spent more than three years incarcerated in Australia while contesting his extradition. On June 22, 2007, Griffiths was sentenced to 51 months' imprisonment for conspiracy to commit criminal copyright infringement.

The Department's International Programs

As Operations FastLink and SiteDown show, prosecuting criminal organizations engaged in large-scale piracy and counterfeiting operations requires the ability to reach beyond America's borders. As global trade and communications networks continue to grow, America's intellectual

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property assets become increasingly susceptible to exploitation by criminal organizations that operate overseas. The Department has found in several investigations that criminals are using industrial-scale overseas manufacturing facilities to produce counterfeit products and pirated optical discs on a commercial scale. Criminals are also using servers located overseas to host massive repositories of pirated software, movies, and music – some of which has not yet been released on commercial markets – with the belief that they will be beyond the reach of U.S. law enforcement and outside the interest of foreign law enforcement.

The Department is attacking this significant problem with a multi-faceted strategy that includes increased dedication of personnel to foreign enforcement coordination; broader international outreach and education efforts; more joint investigations and enforcement operations with foreign law enforcement; and new and stronger mechanisms for cooperation with counterfeit source countries. For instance, in 2006, the Department established the first ever IP Law Enforcement Coordinator for Asia in Bangkok, Thailand; and this week, the first IPLEC Coordinator for Eastern Europe began work in Sofia, Bulgaria. Both IPLEC positions are dedicated to advancing the Department's regional IP goals through training, outreach, and the coordination of investigations and operations against IP crime.

***A significant recent accomplishment of the Asian IPLEC occurred on October 23-26, 2007, when the U.S. Department of Justice hosted a regional conference of approximately 60 key law enforcement officials from over a dozen nations in Asia, with the aim of developing an international network targeting large-scale intellectual property crimes. The Asian IPLEC and CCIPS secured funding and organized this week-long gathering in Bangkok, Thailand, with the assistance of the Association of Southeast Asian Nations (ASEAN), the U.S. Patent and Trademark Office, and the U.S. Department of State.

High-level police and customs officials and prosecutors from the United States, China, Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Philippines, Singapore, South Korea, Thailand and Vietnam took part in the conference, with the aim of increasing cross-border cooperation in the fight against intellectual property theft through the establishment of an IP Crimes Enforcement Network (IPCEN).

Based upon the input and positive response of the participants, the IPCEN will serve two primary functions in the future. First, it will operate as a forum to exchange successful investigation and prosecution strategies in combating piracy and counterfeiting crimes. In closed sessions during the conference, panels of law enforcement experts shared best practices and lessons learned in addressing retail counterfeiting and piracy, the mass production and distribution of counterfeit goods, Internet-based intellectual property theft, and border enforcement. Second, the IPCEN will strengthen communication channels to promote coordinated, multinational prosecutions of the most serious offenders.

Recognizing that effective prosecution of intellectual property crime depends heavily on cooperation between victims and law enforcement authorities, industry representatives also addressed the IPCEN conference regarding the scope and severity of counterfeiting crimes in Asia, and discussed ways to collectively enhance enforcement efforts.

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The Department's outreach is not limited by regions or countries. For instance, in 2006 alone, the Department's Criminal Division prosecutors provided training and technical assistance on IP enforcement to over 3,300 foreign prosecutors, investigators, and judges from 107 nations. However, some countries pose greater problems than others for U.S. intellectual property protection efforts. China, for instance, has been of particular concern to U.S. intellectual property rights holders and law enforcement, due in large part to its role as a major U.S. trading partner and its well-developed manufacturing capabilities across a broad range of industries, including, unfortunately, the production of large quantities of pirated and counterfeit goods. The Department is confronting this issue, in part, by trying to build new and stronger international mechanisms to foster cooperation and joint investigations with China.

Experience has shown that much of the trade in fake goods originating in China involves organized crime. Any solution to this massive enforcement problem must begin with greater cooperation and coordination on joint criminal investigations and prosecutions. To that end, in March 2007, the Department's Criminal Division hosted and chaired the inaugural meeting of the Intellectual Property Criminal Enforcement Working Group ("IPCEWG") of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation ("JLG"), which included 15 Chinese law enforcement officials and the Ministry of Public Security's Vice Director General of the Economic Crimes Investigation Department, as well as officials from the FBI and ICE. The IPCEWG met again alongside the annual JLG Plenary meeting in Beijing, China in June 2007. The working group's principal focus is on the development of more U.S.-China joint operations to combat transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety.

The Department of Justice's leadership of the IPCEWG is already yielding unprecedented results. On July 23, 2007, 25 Chinese nationals were arrested and more than half a billion dollars worth of counterfeit software was seized as a result of the largest ever joint investigation conducted by the FBI and the People's Republic of China. This operation, code-named "Operation Summer Solstice," was one of several cases nominated to the IPCEWG for joint investigation and prosecution. China's Ministry of Public Security ("MPS") searched multiple businesses and residential locations, seized more than $7 million in assets, and confiscated over 290,000 counterfeit software CDs and Certificates of Authenticity. Microsoft publicly stated that the MPS and FBI dismantled a criminal syndicate "believed to be the largest of its kind in the world," responsible for distributing more than $2 billion in counterfeit Microsoft software.

The Department also led an initiative with members of the G8 industrialized nations to develop a framework for cooperation on intellectual property crime investigations. In November 2006, all members of the G8's Lyon-Roma anti-crime group approved the "Principles and Recommendations for Cooperative Investigation and Prosecution of Serious and Organized Intellectual Property Rights Crime," which set forth a foundation for future cooperation on criminal IP enforcement among the G8 members. In June 2007, the G8 Leaders endorsed the Principles and Recommendations at their annual Summit in Munich, Germany.

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The Department's Civil Enforcement Efforts

The Department's Civil Division has supported the enforcement of IP rights by owners of those rights principally through participation in private law suits as *amicus*. Since October 2004, the Department has filed 18 *amicus* briefs in 14 Supreme Court cases, and numerous other cases in the lower courts. Recently, in three important patent cases -- *Microsoft v. AT&T Corp*, *KSR International v. Teleflex*, and *MedImmune v. Genentech* -- the Supreme Court adopted the arguments of the Department recognizing the important balance between intellectual property rights and the overarching aim of spurring innovation. In addition, the Civil Division's Office of Consumer Litigation ("OCL") handles criminal and civil cases involving intellectual property laws that protect public health and safety, particularly in the regulation of drugs by the Food and Drug Administration. To maintain the high quality of drugs sold in the United States, allegations regarding counterfeit or adulterated drugs are taken very seriously, as problems associated with these drugs threaten human health. For example, in *United States v. Albers*, OCL attorneys assisted in the prosecution and conviction of top officials in a company charged with distributing counterfeit Lipitor. To date, twenty-four individuals have been charged, and sixteen convicted in connection with that investigation.

Since the 2006 Progress Report of the Department of Justice's Task Force on Intellectual Property, the Antitrust Division has continued to promote respect for intellectual property rights. In April 2007, the Division, together with the Federal Trade Commission, issued a report entitled ANTITRUST ENFORCEMENT & INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION, which set forth key areas of debate and consensus regarding the antitrust analysis of six categories of intellectual property licensing practices. The Division issued two favorable business review letters, analyzing the competitive impact of patent licensing polices proposed by technology standard-setting organizations, and it assisted the Solicitor General in drafting briefs on IP-related cases including *Quanta Computer, Inc. v. LG Electronics, Inc.*, for which the Supreme Court has granted *certiorari*.

The Need for New Enforcement Tools

While the Department is working aggressively to fight intellectual property crime both here and abroad, criminals are often a step ahead of law enforcement. Our criminal laws must be kept updated in order to meet the global challenges of intellectual property crime.

To offset the lucrative nature of piracy and counterfeiting, criminal penalties must provide real deterrence. Criminals must be divested of their illicit profits; and victims deserve strong restitution laws to help make them whole. In addition, prosecutors need the necessary tools to fight increasingly sophisticated and organized criminal networks, many of which are turning to advanced communications technologies to hide their tracks from law enforcement.

The Attorney General recently forwarded to Congress a comprehensive intellectual property protection package, the Intellectual Property Protection Act of 2007, to better equip U.S. law enforcement with the tools necessary to protect intellectual property rights and provide real deterrence against criminals who are looking for unjust enrichment on the backs of hard-working Americans. Among other things, this bill would:

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- Increase the maximum penalty for counterfeiting offenses from 10 years to 20 years imprisonment where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury, and increase the maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death;
- Provide stronger penalties for repeat-offenders of the copyright laws;
- Implement broad forfeiture reforms to ensure the ability to forfeit property derived from or used in the commission of criminal intellectual property offenses;
- Strengthen restitution provisions for certain intellectual property crimes (*e.g.*, criminal copyright and DMCA offenses); and
- Ensure that the exportation and transshipment of pirated goods through the United States is subject to criminal penalties, just as the exportation of counterfeit goods is now subject to criminal penalties.
- Criminalize the attempt to commit copyright infringement, such as in a situation where a warehouse of pirated optical discs is seized before any sales are made;
- Clarify that registration of copyright is not a prerequisite to criminal prosecution.

In light of the sophisticated communications technologies criminal piracy and counterfeiting organizations are using to communicate about and plan their crimes, the IPPA would also amend the wiretap statute to include criminal copyright infringement and trafficking in counterfeit goods or services as predicate offenses for which a wire or oral intercept may be obtained. This amendment does not lower the substantial legal requirements for obtaining authorization to conduct a Title III wiretap. Rather, it recognizes that wiretaps may be the only way to obtain the evidence needed to prosecute the sophisticated criminal organizations engaged in the most serious piracy and counterfeiting operations, and it gives prosecutors a tool that has proven essential in combating other serious forms of crime, including those committed by criminal enterprises and multi-national criminal networks.

Conclusion

In conclusion, I would like to express the Department's appreciation and my personal gratitude to Chairman Leahy and other Members of the Committee for the opportunity to discuss the Department's efforts to protect intellectual property rights, both in the United States and abroad. The Department is aware of the importance of robust intellectual property laws and enforcement to our nation's economy and the health and safety of our citizens and is working aggressively to fulfill its mission.

At this time, I would be happy to answer any questions the Committee may have.

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Opening Statement of Senator Specter
Hearing before the Senate Judiciary Committee
"Examining U.S. Government Enforcement of Intellectual Property Rights"
November 7, 2007

America has always placed a high value on creativity and innovation. Our founders created a framework for its protection in Article I, Section 8, of the Constitution, providing Congress with the authority "[t]o promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." This guaranteed Constitutional right to their works provided creators and innovators with an incentive to perfect and share their works with the public. The foresight of this framework cannot be underestimated and has served as the bedrock to our economy, with economists valuing intellectual property at between $5 and $5.5 trillion annually. However, we cannot profit from our intellectual property if we do not fiercely protect it.

There is no denying that counterfeiting and piracy of intellectual property is on the rise. The nature of these crimes has begun continue to grow in magnitude and complexity. These are not victimless crimes. These are not victimless crimes by any stretch of the imagination. Every counterfeit product that enters the market threatens the health and safety of American consumers. The recent death of a young British boy in Thailand resulting from a fatal shock from defective counterfeit power cord for his Nintendo demonstrates just the sort of danger counterfeit products pose. Each counterfeit item that is manufactured overseas and distributed in the United States costs American workers tens of thousands of jobs. The Motion Picture industry estimates that movie piracy currently costs the U.S. up to 141,030 new jobs each year. The ultimate victim of

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these crimes, though, is the U.S. economy, which loses approximately $250 billion a year because of counterfeiting and piracy.

Although intellectual property owners are more vigilant than ever in pursuing infringers civilly, the U.S. government must do its part to protect one of the most valuable of our nation's assets. On this point, I have many questions which I hope can be answered today. Specifically, what has the government done to ensure American intellectual property is protected? What stumbling blocks or hurdles have the agencies in charge of enforcing our intellectual property laws encountered? And, finally, what additional tools are needed for them to do their jobs effectively?

I would like to thank the witnesses for taking the time to come before the committee today and look forward to their testimony.

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Trade Facts

Office of the United States Trade Representative *www.ustr.gov*
November 2007

USTR's Mission to Protect U.S. Intellectual Property Rights

USTR promotes intellectual property and innovation around the world. Key parts of this mission include:

- **Free Trade Agreements:** USTR works with countries to strengthen their IPR laws. One way is through negotiation, implementation, and monitoring and enforcement of free trade agreements (FTAs). The FTAs pending Congressional approval with Colombia, Korea, Panama, and Peru all contain world-class IPR provisions.

- **Anti-Counterfeiting Trade Agreement:** The Anti-Counterfeiting Trade Agreement (ACTA) is a leadership initiative, announced in October 2007, to negotiate a new IPR enforcement agreement with a number of key trading partners who share our ambition and commitment to stepping up the fight against global counterfeiting and piracy.

- **World Trade Organization:** The multilateral structure of WTO agreements provides opportunities for USTR to lead engagement with trading partners on IPR issues, in several contexts including accession processes for prospective members like Russia; the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS); and dispute settlement.

- **Special 301 and Generalized System of Preferences (GSP) reviews:** USTR uses the "Special 301" process to encourage specific trading partners to address key IP problems. Each April, USTR issues a Special 301 Report setting out specific IPR concerns in countries worldwide. In addition, one of the criteria the President must consider before designating a country as eligible to receive GSP benefits is whether that country provides adequate and effective IPR enforcement; USTR leads that process.

- **Bilateral and Regional Dialogues and Cooperation:** USTR leads or is a significant participant in the IPR component of a wide range of other trade and economic policy dialogues with trading partners. A few of the many examples include the Asia-Pacific Economic Cooperation forum; the U.S.-China Strategic Economic Dialogue; the U.S.-China Joint Commission on Commerce and Trade; the U.S.-EU Summit; the U.S.-Russia IPR Working Group; and the Security and Prosperity Partnership.

- **Trade and Investment Framework Agreements:** IPR issues feature prominently in many of our Trade and Investment Framework Agreement discussions.

- **Supporting Pharmaceutical Innovation:** USTR seeks to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries, and to promote affordable health care today, while supporting the innovation that assures improved health care tomorrow.

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- **Coordination of U.S. IPR and Innovation Trade Policy:** USTR leads the interagency IPR trade policy coordination process through mechanisms created by Congress. We consult with stakeholders, including through numerous advisory committees. USTR provides trade policy leadership and expertise across the full range of interagency initiatives on IPR and innovation policy, including executing the Administration's Strategy Targeting Organized Piracy (STOP) initiative to combat piracy and counterfeiting.

Improving Protection and Enforcement of IPR in China

The Administration strongly believes that China needs to do a much better job of protecting and enforcing IPR, and we continue to engage the Government of China to do more. For example:

- In April, USTR requested dispute settlement consultations with China at the WTO in an effort to address certain key barriers to the effective enforcement of IPR and market access for products and services of IPR industries. We have requested dispute settlement consultations with China five times – the most of any of China's trading partners.

- We have used the Joint Commission on Commerce and Trade (JCCT), co-led by USTR, to press for IPR improvements. For example, JCCT commitments to curb software piracy have contributed to a 10 percent reduction in piracy, saving industry $864 million in losses over the past three years, according to an industry report.

- We also use the Special 301 report to identify the specific shortcomings that China needs to address. For example, this year we conducted the first-ever provincial review to spotlight strengths and weaknesses in China's local IPR enforcement systems.

- We continue to raise IPR issues in the U.S.-China Strategic Economic Dialogue (SED). This has already resulted, for example, in a memorandum of cooperation to enhance U.S.-China cooperation in enforcing IPR at our respective borders.

U.S. Government Resources for Right Holders

The U.S. Government has developed resources and programs to help U.S. intellectual property owners deal with overseas infringement. These resources, listed at stopfakes.gov, include:

- Online toolkits giving basic information on IPR enforcement in key markets.

- An International IPR Advisory Program and an SME China Advisory Program established by the Department of Commerce, in cooperation with the American Bar Association, which let American small and medium-sized enterprises request a free, one-hour consultation with a volunteer attorney experienced in overseas IPR issues.

- An IPR Ombudsman at the Chinese Embassy in Washington, Mr. Yang Guohua, posted at the request of the U.S. Government, to serve as a point of contact for U.S. businesses seeking to secure and enforce their IPR in China or experiencing IPR problems there.

- IPR specialists at the Department of Commerce who are trained to work with companies to develop a strategy for confronting IPR problems around the world. Members of the public can learn more by visiting www.stopfakes.gov, or by calling 1-866-999-HALT.

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Statement of Senator George V. Voinovich to the
Senate Judiciary Committee
"Examining U.S. Government Enforcement of Intellectual Property Rights"
November 7, 2007

Chairman Leahy, Ranking Member Specter, and Judiciary Committee Members, good afternoon, and thank you for the opportunity to provide testimony to you at this important hearing. I welcome this hearing, and I am encouraged that you are examining the efforts our government is undertaking with regard to intellectual property (IP) enforcement.

I am deeply concerned with the problem of IP theft, particularly because such theft has a significant impact on manufacturers, and manufacturing plays a vital role in Ohio's economy. During my tenure as governor, I worked with Ohio companies to conduct nine Business, Trade and Investment Missions, which were designed to open global markets for Ohio's products. These trips spanned the globe and led to over 275 meetings between businesses and foreign government officials. These trade missions resulted in tremendous success for Ohio businesses. Between 1991 and 1996, Ohio increased its exports of manufactured goods by an unprecedented 48 percent. During that time, I am proud to say that big or small – Ohio businesses were participating in the global economy.

Unfortunately, too many of these Ohio manufacturers have found that participation in the global economy has a dark underside. After I arrived in the Senate, I started to hear stories from Ohio manufacturers about how these companies were being victimized by what I call the pirates of the 21st century. These companies were facing a serious and growing threat – the counterfeiting and piracy of their products.

As a result of these complaints, I held a number of oversight hearings in the Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia ("OGM") about our government's efforts related to trade and intellectual property enforcement. Too often during these hearings, I heard the same story: U.S. companies would sell their products overseas, often working with a local partner, and soon after, the partner or some other thief would counterfeit the U.S. company's product and start to compete against the very goods that the U.S. companies had worked so hard to sell. Most disturbing to me was the fact that when I first started to conduct hearings into this problem, the effort from our own government to assist these companies and combat this problem was almost non-existent.

During this time, I continued to express my concerns about this issue to the Administration, first to Secretary of Commerce Evans and USTR Zoellick. My message was simple: Our government was not doing enough to address this growing problem, and it was failing to assist the companies that were subject to this theft.

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I was not content just to voice my complaints. I voted against two free trade agreements with Australia and Morocco because I was trying to get the Administration to focus on the problem of IP theft. Finally, in October 2004, the President announced the establishment of the Strategy Targeting Organized Piracy ("STOP!") initiative. While I thought this was a good first step, I also believed these efforts required leadership to coordinate among the various departments and agencies charged with IP enforcement. I was pleased that in July 2005 the President appointed Chris Israel to serve as the first U.S. Coordinator for International Intellectual Property Enforcement.

While I believe these efforts have started to pay dividends, and I commend the President for taking the initiative to improve the government's response to this problem, frankly, given the importance of IP to our economy and competitiveness, much more needs to be done. I believe the next step is for Congress to enact legislation to improve upon the work started under the STOP! initiative, as well as earlier IP coordination efforts such as the National Intellectual Property Law Enforcement Coordination Council ("NIPLECC").

This is why I partnered with Senator Bayh to introduce the Intellectual Property Rights Enforcement Act ("IPREA") (S. 522). When crafting S. 522, we did so with four principles in mind. First, our government must improve domestic enforcement coordination to make sure that all of the departments and agencies are included in the relevant enforcement efforts and that these departments and agencies are communicating with one another. Second, our country should begin to develop international coordination efforts by reaching out to like-minded countries that share our commitment to strong IP enforcement. Third, any coordination effort must include meaningful congressional oversight, which includes the development of a government-wide IP strategic plan and annual reports to Congress on how the goals set out in such a strategic plan are being met. Fourth, the departments and agencies should work with IP stakeholders to develop resources and programs to address stakeholder needs and concerns. Finally, as the current Administration winds down, we wanted to have legislation in place that keeps the next administration from reinventing the wheel in January 2009. The STOP! initiative is this Administration's effort to address this problem, however, when the next administration takes over, it would likely take many months, if not years for that administration to develop its own plan. This is time that our businesses cannot afford.

Since Senator Bayh and I introduced S. 522, over thirty organizations have endorsed it, including the U.S. Chamber of Commerce, the AFL-CIO, the National Association of Manufacturers, and the UAW. I believe that these organizations, which often disagree on other policy issues, recognize that in the global economy, where the competition is as great as I have ever seen in my lifetime, our government must do a better job in combating these pirates of the 21st century.

In my years as a mayor and governor, I recognize that effective problem solving requires different government departments and agencies to work together for a common goal. Sometimes, gaining such cooperation can be difficult, and it may require conflict resolution among agencies to avoid the stove-piping or turf battles that might otherwise occur.

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Furthermore, my experience has taught me that effective management requires the development and execution of a strategic plan. In the absence of such a plan, it is difficult to measure, in any meaningful way, whether or not progress is being made.

IP enforcement should be led at the highest levels and S. 522 requires that the IP coordinating network be chaired by a person from the Office of Management and Budget ("OMB"). S. 522 also requires the development of a strategic plan, which would help improve our ability to measure how we are doing in terms of our efforts to combat IP theft.

As any government executive will tell you, when agency disputes and turf battles occur, they must be resolved quickly. While OMB may not be an expert agency on specific IP issues, it has the requisite experience with managing government-wide federal processes and resolving interagency disputes. S. 522 will give OMB the opportunity to bring its management expertise into the process of developing a much-needed strategic plan for IP coordination.

I also think it is worth pointing out that the United States Trade Representative's recently announced "Anti-Counterfeiting Trade Agreement" significantly reflects what Senator Bayh and I included in S. 522 – international cooperation among like-minded countries with strong legal regimes and a record of IP enforcement.

Our government must do more to combat this growing threat. I know that the members of this committee are aware of the various cost estimates relating to IP theft, so I will not repeat them, but I think it is important to make clear that this problem goes well beyond the common perception that IP theft is an issue related to counterfeit luxury goods or pirated DVDs. Given some of the estimates about the number of these products being introduced into the global supply chain, this problem is now a significant consumer safety issue. For example, the World Health Organization estimates that counterfeits account for up to 10 percent of global pharmaceutical sales, and Ford Motor Company estimates that counterfeiting and piracy of its auto parts cost the company roughly $1 billion annually.

While the economic costs of IP theft are significant, the health and safety ramifications are even more important. For example, during a hearing last July, the General Counsel from Bendix Commercial Vehicle Systems LLC ("Bendix"), which is headquartered in Elyria, Ohio, testified that counterfeit air brakes used in tractor-trailers are so authentic looking that some of these counterfeit products are returned to Bendix via its warranty claims process. Bendix is so concerned about the safety implications of this problem that it is spending $1 million annually on IP protection and enforcement activities – that is $1 million that this one company is not able to spend each year on other things such as research and development or worker training. Moreover, given the proliferation of counterfeit goods into areas such as pharmaceuticals and auto parts, it is only a matter of time before we start to see the health and safety consequences arising from this problem.

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In closing, I believe that it is critical to note that in the global economy, one of the only ways America can continue to compete is through our own ingenuity – it is one of our last competitive advantages. American manufacturing is already at a disadvantage in the foreign marketplace. Many of our competitors have lower wages, and they are not plagued by the same stringent regulations and rising health care and energy costs. If we allow the pirates of the 21st century to steal our ideas we are finished!

Thank you for allowing me to testify today. I, along with Senator Bayh, look forward to working with Members of the Judiciary Committee on S. 522, and I appreciate the willingness of the Committee to examine this important issue.

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