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STOP!: A PROGRESS REPORT ON PROTECTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS HERE AND ABROAD

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JULY 26, 2006

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WEDNESDAY, JULY 26, 2006

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE
DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:34 p.m., in room SD–342, Dirksen Senate Office Building, Hon. George V. Voinovich, Chairman of the Subcommittee, presiding.

Present: Senators Voinovich, Coleman, Coburn, and Akaka.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. The Committee will come to order. Good afternoon. I thank all of you for coming.

Today, the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia will review the President's Strategy for Targeting Organized Piracy, also known as STOP!. The Subcommittee will also review how the STOP! Initiative is working in conjunction with the National Intellectual Property Law Enforcement Coordination Council, also known as NIPLECC, to protect intellectual property rights and to prosecute those who violate IP Plans.

In 2002, after hearing one too many stories about intellectual property (IP) theft from small and medium-sized companies, I initiated a series of hearings, of which this is the fifth hearing, on trade protection of IP, IP theft, and the negative impact of counterfeit and pirated goods on the economy. I also began my effort to persuade the Bush Administration and then-Secretary of Commerce Evans and then-U.S. Trade Representative Bob Zoellick to take action. In fact, I voted against two trade bills to send a message to the President that more needed to be done to protect intellectual property rights.

Therefore, I was very pleased when the STOP! Initiative was announced in October 2004. STOP! is designed to improve the Federal Government's effort to protect and enforce intellectual property rights through increased cooperation and coordination among the various Federal agencies charged with each oversight. STOP! and

interagency groups such as NIPLECC are leading the Administration's efforts at combating IP theft.

Last June, the Subcommittee held a hearing to review the initial progress of the STOP! Initiative after its first year. Though the STOP! Initiative was making progress, I was concerned that it lacked leadership and direction. Strong leadership is particularly important because there are so many Federal departments and agencies involved in protecting and enforcing U.S. intellectual property rights.

Shortly after that hearing, I was pleased the Administration appointed Chris Israel to the post of Coordinator for International Intellectual Property Enforcement. Mr. Israel is aided by Arif Alikhan, who is with the Department of Justice. These two gentlemen are with us today, and I look forward to their testimony.

Since the last hearing, Senator Bayh and I introduced S. 1984, the Intellectual Property Rights Enforcement Act, which would unify and improve upon the STOP! Initiative and NIPLECC. S. 1984 was referred to the Judiciary Committee, and I am continuing to work with that committee on this legislation.

I want to stress the importance of this hearing to manufacturing. In 2000, the United States employed roughly 17.2 million people in manufacturing. In May 2006, the number of manufacturing jobs had decreased to roughly 14.2 million, a loss of approximately 3 million jobs. In Ohio, there were more than 1 million manufacturing jobs in 2000. By April of this year, the number of manufacturing jobs had fallen to 810,700.

While counterfeiting is not the only factor in these job losses, it is part of the problem. The U.S. Chamber of Commerce estimates that roughly 750,000 jobs have been lost as a result of counterfeiting. Moreover, profits from counterfeit products fill the pockets of criminals at the expense of legitimate businesses and their employees whose jobs are put at risk, as well as the consumers who buy these fake, and often dangerous, products.

America's competitive advantage is derived from innovation and rising productivity, and the protection of intellectual property remains one of the best means for ensuring that American manufacturers enjoy the fruits of their investments and innovation. The very foundation of our economy is the American entrepreneur. Who will want to continue on this path if you know your work product is going to be stolen under your nose at every turn? Unfortunately, I can give you one example after another of how that has happened.

I am particularly interested in hearing about the strategies to address counterfeit goods from China, which remains the global leader in production and sale of counterfeit goods. Customs and Border Patrol seizure statistics indicate that almost 70 percent of all intellectual property-related seizures involve goods from China. However, China is not the only culprit. Brazil, Russia, Venezuela, India, and Argentina also have weak records on intellectual property rights enforcement.

This past May, I was a guest speaker at a U.S. Patent and Trademark Office conference entitled "IP Global Marketplace," which was held in Columbus, Ohio. PTO is one of the agencies working as part of the STOP! Initiative, and these programs are

part of the ongoing STOP! outreach to small and medium-sized businesses. I thought that this conference went very well. I was glad to be part of it, and I applaud such efforts. I look forward to hearing from Stephen Pinkos, Deputy Director of the U.S. Patent and Trademark Office, about this important aspect of the STOP! Initiative, as well as future plans for similar activity.

I believe that if the government's efforts to protect IP are to succeed, there must be close and seamless coordination between the numerous agencies involved in IP protection. In addition, the Federal Government must be able to recruit, train, and retain the necessary workforce needed to implement such programs. The human capital aspect of the IP enforcement effort is often overlooked, but critically important for their success.

I look forward to the witnesses' testimony and learning what progress has been made over the past year and what remains to be done to address the challenges. Manufacturers, including those in Ohio, have run out of patience as they see their jobs lost to intellectual property theft, and the flourishing black market of the 21st Century.

The Ranking Member of this Committee, Senator Akaka, is currently not here, but will be. And I would like to recognize Senator Coburn, who has presiding duty at 4 o'clock. Senator, I am glad you are here today.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Mr. Chairman. I want to tell you how much I appreciate your holding the hearing on this issue. The success and future of our country and our trading relations depend on the value of our intellectual property. It is as important as the defense to our country in terms of our military defense. It is as important as any other aspect of our economy.

Our education system and our motivation within our economy is tuned to the idea that if you have a better mousetrap, you can get copyright or patent and trademark protection on that. This government will, in fact, allow you the opportunity to gain the reward from that. That has not been so in terms of international trade, especially with China. My Subcommittee held a hearing in Los Angeles on intellectual property and also on counterfeiting of our currency. And the fact is the Administration has not been as aggressive as it needs to be in forcing the hands of those people that we deal with, who benefit greatly from having access to our markets to protect the real property, the intellectual property, of people of this country. I believe this hearing could not be more timely, nor more important, to our future, because if you unravel intellectual property ownership and you unravel patent ownership, what you do is you unravel our economy. Our future depends on our ability to have a robust and vibrant economy to secure the future, both in terms of military and defense, but also to secure the future for a standard of living that is above and beyond everyone else in the world. And we have done that through intellectual property advances and through the economy benefiting from innovation and invention in this country. It should be protected and it should be rewarded as a method to advance our Nation.

Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you very much.

We have an impressive line-up of witnesses. I look forward to our discussion. Given the late start for this hearing, we will have one panel of five witnesses:

Chris Israel is the Coordinator for International Intellectual Property Enforcement. Nice that you are here today. I have heard your name and used it for a long time, and now am going to have a chance to hear from you.

Stephen Pinkos is the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the U.S. Patent and Trademark Office. Steve and I have had a chance to meet each other, and he did a wonderful job for us in Columbus.

Arif Alikhan is the Vice Chairman and Executive Director of the Department of Justice Task Force on Intellectual Property.

Anthony LaPlaca is Vice President and General Counsel of Bendix Commercial Vehicle Systems LLC.

And Loren Yager is the Director of International Affairs and Trade at the Government Accountability Office.

Gentlemen, it is the custom of this Subcommittee that we swear in the witnesses. If you will stand and take the oath, I would appreciate it. Do you swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ISRAEL. I do.

Mr. PINKOS. I do.

Mr. ALIKHAN. I do.

Mr. LAPLACA. I do.

Mr. YAGER. I do.

Senator VOINOVICH. As is the custom with this Subcommittee, if the witnesses could limit their testimony to 5 minutes, your full written statements will be included in the record.

Ms. Israel, we would like to hear from you first.

TESTIMONY OF CHRIS ISRAEL,[1] COORDINATOR FOR INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT, U.S. DEPARTMENT OF COMMERCE

Mr. ISRAEL. Thank you Chairman Voinovich and Senator Coburn. I am pleased to be here with 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, the progress of the Administration's STOP! Initiative, and, finally, provide 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. As you both noted, there are, frankly, few issues that 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

[1] The prepared statement of Mr. Israel appears in the Appendix on page 32.

over half of U.S. exports. They represent 40 percent of our economic growth, and they employ 18 million Americans who earn 40 percent more than the average U.S. wage.

This growth and prosperity is put in jeopardy, though, by rampant theft of American IP worldwide. Quite simply our ability to ensure and secure a 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 critical trade and economic issue for the Bush Administration. We seek every opportunity at every level to engage our trading partners, strengthen our enforcement capabilities, and engage our industry.

As this Subcommittee understands, the problem of global piracy and counterfeiting confronts many industries, exists in many countries, and demands continuous attention. With finite resource and seemingly infinite concerns, how we focus our efforts is crucial. A critical element in our overall coordination is the Strategy Targeting Organized Piracy (STOP!), Initiative launched by the Bush Administration in October 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 efforts.

STOP! is a broad, interagency effort led by the White House that draws upon the capabilities of the Department of Commerce, 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, STOP! has shown measurable success. We have provided useful tools and information for rights holders. Criminal enforcement has increased dramatically. Customs seizures of counterfeit goods have doubled since 2001. And we are leading an aggressive effort around the world to promote IP enforcement.

On this front, we are especially pleased by strong IP enforcement programs, established recently at the U.S., EU, and G–8 summits. These, essentially, establish an international network of like-minded countries committed to addressing piracy and counterfeiting.

The flexibility of STOP! has been a key element to its effectiveness. It has provided leadership and direction, while allowing agencies to remain focused on their priorities and maximize their strengths. Through STOP!, we have accomplished a great deal; however, we certainly know that much remains to be done.

We know that the effort to fight IP theft is a long-term commitment that requires a coordinated strategic approach. Developing and maintaining this approach is the mission of my office. Our office has supported a number of Administration priorities, worked to maintain senior-level commitment, provided input on key policy matters, established a presence internationally, reached out to in-

dustry, attempted to sustain clear communication with Congress, and provided accountability.

Mr. Chairman, we are dedicated to stopping intellectual property theft and providing businesses with the tools they need to flourish in a global economy. As the Bush Administration continues its efforts, we look forward to working with this Subcommittee to promote strong intellectual property rights protection for American businesses and entrepreneurs around the world.

Thank you very much for the opportunity to be here today, and I look forward to your questions.

Senator VOINOVICH. Thank you very much for being here. Mr. Pinkos.

TESTIMONY OF STEPHEN M. PINKOS,[1] DEPUTY UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY, AND DEPUTY DIRECTOR, U.S. PATENT AND TRADEMARK OFFICE

Mr. PINKOS. Thank you, Chairman Voinovich. It is good to see you again, Ranking Member Akaka. Thank you both for your leadership on the issue of protecting intellectual property around the globe.

I appreciate this opportunity to be a part of this panel, and especially join my Administration colleagues, two gentlemen who are doing yeoman's work on the front line of protecting intellectual property. I am happy to be able to report on some of USPTO's progress as part of a very strong Bush Administration STOP! team in promoting effective IP protection and enforcement, both here in the United States and abroad.

Our goal, the Administration goal, as Chris alluded to, is quite simple. It is to decrease the amount of global IP theft and increase the bottom line for America's creators, inventors, entrepreneurs, and manufacturers. And also, as Chris mentioned, President Bush fully appreciates the importance of IP-based industries to the future of America's economic success.

At the USPTO, our STOP! efforts fall under three general categories. First, we work under the auspices of STOP! to ensure that we have an effective IP system here in the United States that is understood and accessible to everybody. Second, we work very hard to help other countries enact effective IP laws and operate efficient, high-quality, and customer-friendly patent and trademark offices. So when we advise, like we did in Ohio, folks to register their trademarks overseas that when they approach an office, it is very similar to ours and very easy to understand. And, third, we work as part of the STOP! team to help ensure that U.S. businesses and individuals can enforce their rights that they have so diligently secured.

Under number one, helping U.S. businesses and entrepreneurs and independent inventors to understand the system here, we are particularly concerned that they understand the importance of IP and take the steps that they may want to take to protect their IP. Thus, we have launched a small business awareness campaign. Mr.

[1] The prepared statement of Mr. Plinkos with attachments appears in the Appendix on page 45.

Chairman, you alluded to it. We are sponsoring IP conferences around the country where we bring IP experts to these various cities, and not just from the U.S. PTO, but from DOJ and Customs and Federal judges, as well. In addition to Columbus, we have been to Salt Lake City, Phoenix, Austin, Miami, San Diego, and recently in Nashville, all within the last 14 months.

We are doing some programs that are specific to China so that businesses can understand the IP environment there, which includes changes in the law, and that they may want to take defensive action by registering a trademark or seeking patent protection. Even if they are not intending to do business there, we have programs to help protect their products from being counterfeited. We have done these programs in Baltimore, Detroit, Atlanta, Chicago, Seattle, and here at our headquarters in Alexandria.

Mr. Chairman, as you also know, the U.S. PTO mans the government hotline, where real live IP experts answer the phone and help provide guidance and direction to U.S. citizens and businesses to help them navigate the government agencies that are involved in IP. We refer a lot of people to Justice, and the FBI, and other places. And we also maintain a specific website, stopfakes.gov/smallbusinesses, particularly aimed at informing small businesses of their IP rights.

But going forward on the small business initiative, there is a lot to still do. We would like to place IP experts at trade shows around the country, to bringing STOP! to thousands of people. We would like to do more Webinars—or start doing Webinars, and we are examining that now instead of having to go around the country, which we intend to continue to do, of course, next year with at least another half a dozen conferences.

We also want to promote these resources more effectively, with more private sector associations, coordinate a little bit better with USG agencies, like the Small Business Administration, and work more with State and local officials. We talked a little bit about that in Columbus, because sometimes the first place a businessperson will go will be the Secretary of State to register their business.

The U.S. Patent and Trademark Office also offers a lot of training and coordinates a lot of training globally, and under STOP! we are establishing an academy at the PTO where we are able to greatly increase the number of foreign officials that we are bringing here. We are going to do 16 programs this year, 21 next year. Again, our counterparts from across the government come to help. And we do a lot of training overseas as well, including technical training at the patent and trademark offices in foreign countries and bring them here too. For example, 2 weeks ago, we had the commissioner of trademarks for China and several of his officials in our office learning very technical things.

We are doing all of this because we want to make sure that we get to the right people from the right countries, targeting the right issues and measuring all the results so we can maximize benefits.

Mr. Chairman, I appreciate the opportunity to be here and to expand upon some of our efforts during the questioning. I just want to emphasize that the Patent and Trademark Office is very much dedicated to making sure all U.S. businesses, particularly small

and medium-size businesses, have the information they need to protect their rights here and abroad.

Thanks again for having the hearing.

Senator VOINOVICH. Thank you. Mr. Alikhan.

TESTIMONY OF ARIF ALIKHAN,[1] VICE CHAIRMAN, U.S. DEPARTMENT OF JUSTICE'S TASK FORCE ON INTELLECTUAL PROPERTY, AND DEPUTY DIRECTOR, NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL

Mr. ALIKHAN. Chairman Voinovich and Ranking Member Akaka, thank you very much for this opportunity to discuss the Department of Justice's contribution to the Administration's STOP! Initiative and the Department of Justice's efforts to protect and enforce intellectual property rights.

The Department's principal contribution to the STOP! Initiative is the work of the Department of Justice's Task Force on Intellectual Property. In October 2004, the IP Task Force issued a comprehensive report detailing 31 recommendations, which the Department then spent the next year and a half implementing. I am proud to say that as of this June, when the task force issued this progress report, the Department implemented all 31 of the recommendations contained in the 2004 report, by, among other things, increasing the number of intellectual property prosecutors by creating five additional Computer Hacking and Intellectual Property, or CHIP, Units in the District of Columbia, Nashville, Orlando, Pittsburgh, and Sacramento; by deploying an experienced Federal prosecutor as an Intellectual Property Law Enforcement Coordinator, or IPLEC, to Southeast Asia and obtaining funding for a coordinator in Eastern Europe; by increasing the number of extradition and mutual legal assistance treaties that include intellectual property offenses; by vigorously protecting the right of victims to bring cases in the civil courts; and by organizing victims' conferences on intellectual property awareness.

The Department of Justice, however, did not stop at simply implementing the recommendations of the task force. Instead, the Department went well beyond those recommendations by creating seven new CHIP Units, in addition to the five I previously mentioned, in Austin, Texas; Baltimore; Denver; Detroit; Newark; New Haven, Connecticut; and Philadelphia—bringing the total number of CHIP Units to 25; in addition, the Department increased the number of defendants prosecuted for intellectual property offenses by 98 percent; by providing training and technical assistance to over 2,000 foreign prosecutors, investigators, and judges regarding intellectual property investigations and prosecutions; by working closely with the U.S. Trade Representative to improve language regarding IP protections in free trade agreements and other international treaties; by publishing a nearly 400-page comprehensive resource manual on prosecuting IP crimes; and by filing 13 amicus, or "friend of the court," briefs in the Supreme Court in cases involving IP disputes.

[1] The prepared statement of Mr. Alikhan appears in the Appendix on page 52.

The Department of Justice has also prosecuted a wide array of intellectual property crimes, including novel prosecutions that are likely to have the greatest deterrent effect. In addition, the Department is focused on the prosecution of cases that endanger the public's health and safety, including cases involving counterfeit pharmaceuticals, such as cholesterol medication, counterfeit Viagra and Cialis, and also other items such as counterfeit batteries and electrical cords.

A large part of the Department's success stems from its efforts to marshal the right people to do the job the right way. In doing so, the Department has implemented a three-part approach.

First, the Department of Justice's anti-counterfeiting enforcement is anchored by the Criminal Division's Computer Crime and Intellectual Property Section, a team of highly specialized prosecutors focused on computer crime and IP offenses.

Second, the Department has designed Computer Hacking and Intellectual Property, or CHIP, Coordinators in every U.S. Attorney's Office in the country. CHIP Coordinators are Federal prosecutors who are given specialized training in intellectual property and certain types of computer crime. Each district has at least one CHIP Coordinator; many have two or more.

Third, the Department has created CHIP Units generally in districts where the incidence of intellectual property and high-tech crimes is higher and more likely to affect the national economy. Each unit consists of a concentrated number of trained CHIP prosecutors in the specific U.S. Attorney's Office.

Through this three-part approach, the Department has developed a highly motivated and effective nationwide network of 25 CHIP Units and more than 230 skilled intellectual property prosecutors. But in addition to these contributions, the Department has also contributed to the STOP! Initiative by supporting legislative efforts. The Department of Justice has developed legislation known as the Intellectual Property Protection Act of 2005. This proposed legislation is designed to strengthen penalties against copyright criminals, reform forfeiture provisions, strengthen a victim's ability to recover losses for IP crimes, and criminalize the attempt to commit copyright infringement.

The Department also recognizes that education is a key tool in the efforts to promote intellectual property protection. For example, in a joint venture with the U.S. Patent and Trademark Office, the Department of Justice and USPTO are funding a 3-year, $900,000 youth education program with national nonprofit educational organizations. In addition, the Department of Justice has also educated American business owners by participating in USPTO's Global Marketplace conferences, as Mr. Pinkos has mentioned.

Thank you again for this opportunity to address the Department of Justice's efforts to protect and enforce intellectual property rights. I will be happy to answer any questions you may have.

Senator VOINOVICH. Pretty impressive testimony.

Mr. ALIKHAN. Thank you, sir.

Senator VOINOVICH. Somebody caught fire over there. That is great. Mr. LaPlaca.

TESTIMONY OF ANTHONY C. LAPLACA,[1] VICE PRESIDENT AND GENERAL COUNSEL, BENDIX COMMERCIAL VEHICLE SYSTEMS LLC

Mr. LAPLACA. Good afternoon Chairman Voinovich and distinguished Members of the Subcommittee. My name is Anthony LaPlaca, and I am Vice President and General Counsel for Bendix Commercial Vehicle Systems LLC. I am testifying today on behalf of Bendix and will be sharing our views and experiences on dealing with intellectual property theft.

First, I would like to thank the Subcommittee for the invitation. We are honored to represent business here today and hope that our testimony will lead to a greater understanding of the issues.

Bendix Commercial Vehicle Systems is headquartered in Elyria, Ohio. We develop and supply active safety technologies, including air brake control systems, air disc brakes, and electronic stability systems used on medium- and heavy-duty commercial vehicles. Bendix employs over 2,200 people in North America.

Motor Equipment Manufacturers Association estimates that counterfeiting has a $12 billion impact on the transportation industry. We at Bendix are concerned about this issue's impact on our business, as well as the adverse effect on our brand equity, as well as potential impact on vehicle brake performance, and highway safety.

The financial impact to Bendix from the infringement of its intellectual property rights and from the recent influx from Asia of knock-off air brake parts is significant. For air brake valve products alone, we lose millions of dollars of revenues annually due to this issue. Other Bendix product lines, such as air dryers, are also currently becoming prime targets for this activity.

But the challenge is more than financial for us. Bendix's brand reputation is built on products that are highly engineered and validated through extensive testing to ensure quality and reliability to withstand the demanding operating conditions of commercial vehicle use. Customers rely on Bendix air brakes to stop commercial vehicles that can weigh up to 80,000 pounds, and these vehicles transport all types of cargo, from commercial goods to hazardous materials, as well as buses and coaches that transport people.

Bendix believes customer confusion is a major contributor to the proliferation of knock-off replacement parts. Many of these knock-offs look so similar to the genuine parts that they are often returned to Bendix as part of a warranty claim. Even Bendix personnel, at times, have trouble telling the difference until the parts are disassembled for examination.

Through warranty claims and ongoing reports from the field, we are aware of multiple instances where end users have been confused or misled at the time of purchase. Customers are under the impression that they are purchasing genuine Bendix replacement parts. They are influenced by the look of the part as well as by use of Bendix part numbers and part names.

I would like to give a recent example of where a knock-off component returned from the field demonstrated how a poorly built air brake valve could have potentially serious safety implications.

[1] The prepared statement of Mr. LaPlaca appears in the Appendix on page 66.

An air brake technician reported the difficulty he experienced in getting a new relay valve to work following the purchase and installation on a new truck. After numerous adjustments and rechecking of the air lines, the technician removed the valve and discovered the problem. The valve's control port was not drilled all the way through. If this valve were to be used on a vehicle, the partially blocked port would have prevented proper air flow. This type of air flow blockage could cause as much as a 70-percent degradation in the vehicle's braking capability. Fortunately, a catastrophic brake failure was avoided by this technician's diligence. However, this scenario illustrates how the situation can pose potentially significant risks to highway safety.

Bendix has instituted a three-pronged intellectual property protection and enforcement program which focuses on protection, enforcement, and education and awareness. Here are examples of the intellectual property protection and enforcement actions taken thus far:

We are instituting a patent and trademark infringement action in the U.S. District Court against a company selling and distributing knock-off parts that infringe Bendix patents and trademarks.

Trade show enforcement actions at major industry events where we have successfully worked with show sponsors to remove infringing products and product literature from the offending party's show booth.

Sending numerous cease-and-desist letters to successfully stop infringing sales by companies in the United States and in Canada.

While our efforts to enforce patent and trademarks against infringement have been successful, the problem of customer confusion with the proliferation of knock-offs still persists. Lookalike products sold with the same names and part numbers continue to exacerbate the situation for us.

We have launched a multi-faceted customer and industry awareness campaign aimed at trucking fleets, our distributors and dealers, and end users.

We have had continuing dialogues with senior management of our distributors to discuss the importance of IP compliance, and we continuously train our sales and customer service people about the issues.

To date, Bendix has conducted this program entirely with its own resources. We spend over $1 million annually on intellectual property protection and enforcement activities in addition to the significant expenditure of internal management time and attention. Although Bendix has not yet had occasion to utilize many of the government's resources, we have sent representatives to anti-counterfeiting conferences sponsored by the National Intellectual Property Rights Coordination Center, and we have learned about many of the available government resources through this activity.

Bendix recommends expanding and promoting these seminars, making them more widely accessible in the industry. We think distributors, dealers, and retailers would particularly benefit from this type of government-sponsored education and awareness program.

The sophistication of counterfeit operations has improved to the point of making it difficult for customers to discern real from fake. But, in terms of performance, quality, and actual costs, there are

obvious differences. And for Bendix, in particular, dealing with components and systems that affect braking ability of heavy vehicles, with their impact on highway safety, underscores the need to control this issue.

But in many instances, existing intellectual property laws do not adequately address Bendix's current problem. The buying and selling of lookalike products is a problem propagated by the knock-off reseller's use of the same part numbers and the same product names as the genuine Bendix products. Often these part numbers are not eligible for trademark protection. Since these air brake products and components have safety-critical applications, Bendix recommends that new legislation should be enacted extending intellectual property protection to industrial designs of these types of safety-critical components. In fact, the entire automotive industry, and certainly other key U.S. manufacturing sectors, would benefit from this type of legislation. I have included in my written testimony a brief statement about this type of proposal.

Bendix would like to thank the Members of the Subcommittee for the invitation to testify and for focusing much needed attention on this issue. We welcome the opportunity to answer questions that you may have. Thank you.

Senator VOINOVICH. Thank you very much, Mr. LaPlaca.

Mr. Yager, you have been watching things from the cat-bird seat. I remember your testimony in prior hearings on this issue. I am interested in hearing how you think things are going.

TESTIMONY OF LOREN YAGER, DIRECTOR,[1] INTERNATIONAL AFFAIRS AND TRADE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. YAGER. Thank you, Mr. Chairman. It is good to be back in front of this Subcommittee again. Thank you for the opportunity to appear again before the Subcommittee to discuss our work on U.S. efforts to protect U.S. intellectual property rights. We appreciate the opportunity to contribute to the record that this Subcommittee has established on IP protection. As you stated in the Subcommittee's 2005 hearing, and repeated again today, counterfeit and pirated goods create health and safety hazards for consumers, damage companies that are victims of this theft, and pose a threat to the U.S. economy.

Since my last testimony before this Subcommittee, the United States has continued to develop and implement its Strategy for Targeting Organized Piracy (STOP!), which outlines the priority IP efforts of six agencies. To understand more fully how this strategy might contribute to better protection of IP, I will address three topics: First, the range and effectiveness of multi-agency efforts on IP protection that preceded STOP!; second, initial observations on the organization and efforts of STOP!; and, finally, some initial observations on the efforts of U.S. agencies to combat pirated goods at U.S. borders, which is one of the STOP! priority efforts.

To address these issues, I have drawn on a number of completed GAO studies, and I also provide initial observations from ongoing projects, including one for this Subcommittee and one for the

[1] The prepared statement of Mr. Yager appears in the Appendix on page 81.

House Committee on Government Reform. Let me first talk about some of the prior multi-agency efforts to address IP.

As you know, STOP! is not the first effort to coordinate agency activities, and as I mentioned last year, these prior coordination efforts have achieved very different levels of success. For example, the Special 301 process, led by USTR, was generally cited as an effort that has been quite effective in collecting input from multiple agencies and improving IP-related laws in other nations. On the other hand, U.S. Government efforts to improve IP enforcement through NIPLECC were ineffective, having done little more than publish a number of annual reports compiling individual agency activities. STOP! was an effort to boost attention to IP enforcement. As most agency and industry observers indicated, the enforcement area is where the emphasis is now needed.

In terms of my second issue, STOP! has energized U.S. efforts to protect and enforce IP. As earlier witnesses have stated, STOP! has focused attention on outreach to foreign governments and on helping small and medium-sized enterprises, among a range of other activities. Private sector members generally had positive views about STOP!. However, let me make two comments. First, the relationship between STOP! and NIPLECC, its predecessor, is not entirely clear and may create confusion among agency and private sector officials. In addition, as a Presidential initiative, STOP! does not have the same accountability requirements and permanence as a legislatively created structure, which makes it difficult to track the progress of its efforts.

To the extent that the coordinator takes the best of the two structures using the energy and multi-agency input from STOP! to fulfill the reporting requirements of NIPLECC for a results-oriented strategy, this would be a very positive development.

On my final point, continuing weaknesses in U.S. agencies' IP enforcement efforts at the U.S. borders illustrate the challenges STOP! faces in carrying out some of its objectives. The overall task of assessing whether particular imports are authentic has become more and more difficult as trade volume and counterfeit quality increase. As I mentioned in my written statement, a number of the new tools that CBP has developed to better target suspect shipments and deal with problem importers are works in progress whose future impact is uncertain.

In response to your request, GAO will be reporting to this Subcommittee early next year on the level of resources and the tools to best utilize those resources at the U.S. border for the purpose of IP protection. I look forward to a dialogue with the Subcommittee on those topics.

In conclusion, the challenges of IP piracy are enormous and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry to be successful. We appreciate the Subcommittee's attention to this topic, as it appears that the hearing today has already led to some clarifications of the relationship between STOP! and NIPLECC. In addition, this Subcommittee has been a leader in developing and applying accountability measures to improve government performance, and we believe that the long-term success on this issue will be enhanced by this kind of oversight.

Mr. Chairman, other Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions that you may have.

Senator VOINOVICH. Thank you, Mr. Yager.

We have been joined by the Ranking Member of this Committee, Senator Akaka.

Senator Akaka, I understand that you have a statement that you would like to put in the record, and we welcome it.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I want to join you in welcoming the witnesses, and I want to commend our Chairman for his leadership in the area of enforcing intellectual property rights for American manufacturers and entrepreneurs. We have made technological advances due to the efforts and exceptional talents of individuals who are from our academic institutions, government, and private enterprise, and these advances have transformed the American economy and changed the way that our companies do business.

Mr. Chairman, I am pleased that you have led on this and that you recognize the importance of this issue and are reviewing the status of the STOP! Initiative. I thank you for holding today's hearing, and I will submit my remarks for the record.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Chairman Voinovich. I join you in welcoming our witnesses and commend you for your leadership in the area of enforcing intellectual property rights for American manufacturers and entrepreneurs.

We live in an increasingly changing world. Technology provides improvements and conveniences for everyday life that were almost unimaginable only a few decades ago. These technological advances are the product of efforts by exceptionally talented individuals who are supported by academic institutions, government, and private enterprise. We are justifiably proud of the achievements of our brightest minds and most innovative companies.

These technological advances have transformed the American economy and changed the way that our companies do business. Today's global economy is fostering new opportunities for U.S. businesses and opportunities to forge relationships around the world.

Unfortunately, U.S. manufacturers and businesses daily face the threat of theft of their most innovative products and ideas. Although estimates vary widely, we know that counterfeiting costs our companies billions of dollars and deprives our workforce of hundreds of thousands of jobs.

Counterfeit goods also threaten public health and safety by bringing unregulated and untested products into the U.S. marketplace. Consumers have no way of determining whether the goods that they are buying are legitimate or counterfeit.

The STOP! Initiative is an important step forward because the program demonstrates an understanding that solving the problem of counterfeit goods cannot be accomplished solely through the efforts of the Federal Government and law enforcement agencies. Counterfeit goods are a global problem. Protecting manufacturers and consumers from counterfeiters must be accomplished through international efforts and through cooperation with our trading partners.

I am pleased that Chairman Voinovich recognizes the importance of this issue and is reviewing the status of the STOP! Initiative. Thank you for holding today's hearing. I look forward to hearing from our witnesses about this important and timely subject.

Senator VOINOVICH. Senator Coleman, thank you for being here today. Do you have a statement you would like to give.

OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Thank you, Mr. Chairman. Let me start by thanking you for holding this important hearing, and I thank our witnesses for their commitment to solving this. It is a big challenge we face. I represent a State that has high-tech companies. Medtronic for cardiac pacemakers and 3M are targets. It is a big issue there. It is also a big issue with small business that sometimes do not have the knowledge of how to deal with it. Many of the small businesses are now doing international trade, and so this is an extremely important area.

I would like to have my full statement, Mr. Chairman, entered into the record, and I would just then appreciate the opportunity to ask some questions of the witnesses. So, again, thank you for your leadership on this issue.

[The prepared statement of Senator Coleman follows:]

PREPARED OPENING STATEMENT OF SENATOR COLEMAN

I want to start by thanking Chairman Voinovich for holding this important hearing, and also by thanking our witnesses for their commitment to solving one of the biggest challenges we face in an era of increased global competition.

There have been a lot of columns, reports, and studies published about the role of the United States in a changing global economy. Of all the recommendations I have read about how we can maintain our competitive edge, one that really struck me came from Minnesota native Tom Friedman in his book, *The World is Flat*. Friedman says that despite the many challenges we face, we will always be a global economic leader if we continue to be "the world's dream machine." By fostering, nurturing, and most importantly—protecting—the creativity of our Nation's greatest minds, I believe we will continue to win the global competition for many generations to come.

We are all at today's hearing because we know how important it is to protect our Nation's innovations, inventions, and ideas. According to the United States Trade Representative's office, theft of intellectual property costs American corporations a staggering $250 billion per year. IPR violations also hurt working moms and dads. The U.S. Customs and Border Protection service estimates that over 750,000 jobs have been lost due to counterfeiting intellectual property. We need to make numbers like these a thing of the past.

This hearing is of particular interest to me because this is a critical issue to my home State of Minnesota where companies like 3M, Target, and General Mills can't afford to have their products pirated and their trademarks counterfeited. I look forward to hearing the testimony of our witnesses to learn more about where we have been, how far we have come, and where we need to go to better protect our intellectual property.

Senator VOINOVICH. Mr. LaPlaca, have you looked at the legislation that is now pending here in Congress?

Mr. LAPLACA. No, Senator, I have not.

Senator VOINOVICH. Do you belong to a trade organization, the National Association of Manufacturers or——

Mr. LAPLACA. We are members of Motor Equipment Manufacturers Association and members of their Government Affairs Council, so we get a lot of our useful information on these topics through MEMA.

Senator VOINOVICH. Well, I would like to suggest to you that you ask those folks to look at the bill Senator Bayh and I have introduced. The purpose of this legislation is to formalize the kind of coordination that we are discussing here today. The STOP! Initiative is not in the law now, and it is being done at the request of the President. Senator Grassley has, I think, introduced a bill on dealing with China currency issues and I would really like for you and

your association to review them and give me an appraisal of what you think of them. If you or your association think more is needed, I would like to hear from you.

Mr. LAPLACA. Absolutely. Yes, sir.

Senator VOINOVICH. You stated that your company spends $1 million a year, plus a lot of management time, to address IP issues. Your people have been impressed with the hearings that have been held—not the Congressional hearings, but the IP Conferences the PTO sponsors. And you think that is a good idea.

Mr. LAPLACA. I do, Senator. I think raising awareness—we are very pleased with the level of awareness over the past several years. And, we encourage that type of activity to continue, particularly with certain segments. I think certain segments of industry, at least from our vantage point, can be targeted and can benefit. Those that are in the resale channels through whose hands some of these products pass could benefit from this awareness.

Senator VOINOVICH. Mr. Alikhan, as I said, I was impressed with your testimony. How many people, all together, have you added at the Justice Department in the areas of IP protection?

Mr. ALIKHAN. Mr. Chairman, we have, as I mentioned, the three different groups, and that would be a total of 230 prosecutors, plus or minus a few, who are dedicated to intellectual property and cyber crime prosecutions throughout the country.

Senator VOINOVICH. How many have been added in the last couple of years?

Mr. ALIKHAN. Well, we have added a series of 12 additional CHIP Units, and with that came additional funding for roughly two new prosecutors per unit.

In addition to that, there may have been other CHIP coordinators designated, so I do not have an exact number on how many precisely have been added, but we have had a substantial number of prosecutors added since the October 2004 report of the Intellectual Property Task Force was issued.

Senator VOINOVICH. I would like to know, for the record, how many you have added, where you have added them, so I can get an idea of the human capital that you have got involved in this.

Mr. ALIKHAN. Certainly.

Senator VOINOVICH. Where do these cases come from?

Mr. ALIKHAN. Most of the cases come from referrals from victims, if that is what you are referring to.

Senator VOINOVICH. Yes.

Mr. ALIKHAN. We rely on victims to refer those cases to Federal law enforcement agencies, and that is why industry outreach, as Mr. LaPlaca was indicating, is so critical in these areas. We have worked closely with various industry groups, including the Motor Equipment Manufacturers Association (MEMA), the Chamber of Commerce's Coalition Against Counterfeiting and Piracy, as well as other industry groups, to make sure we are getting those cases in a timely fashion.

Senator VOINOVICH. How successful have you been?

Mr. ALIKHAN. I think we have been fairly successful. We still have a long way to go, but I think if you were to talk to victim industry groups, they would say, not only the Department, but other agencies in the STOP! Initiative have gotten the word out that we

are interested in pursuing these cases, and it is certainly a priority. I know the Attorney General has made this a personal priority to pursue intellectual property cases and has publicly said so.

Senator VOINOVICH. Is the message getting out to the people that are involved in this, the criminals? Do we have any deterrence yet because of what you are doing?

Mr. ALIKHAN. Well, it is certainly hard to measure what the deterrent effect is, but certainly one of the priorities of the Department is to prosecute those cases that have the maximum deterrent effect, going after large-scale distributors, manufacturers of counterfeit goods, large-scale software pirates, those who are producing counterfeit pharmaceuticals. So we are hoping that through those very public prosecutions that we are establishing some deterrent effect.

Senator VOINOVICH. Mr. Pinkos or Mr. Israel, one of my concerns, and how I became involved with this subject matter in the first place, is when we had the first hearing and I was told by representatives from the departments that they had this great system in place. So, I called the number and no one seemed to know what I was talking about. I know that has improved, but how closely do you work with the Justice Department? I am somebody, I call, I feel that my company has been victimized by IP theft. Do you take that call and look at it and then try to evaluate it so that you could then refer it to the Justice Department? How does that work?

Mr. PINKOS. That is exactly what we do. One of our attorney advisers—an administrative person will take the call, determine the nature of the call, refer it to an appropriate attorney adviser in our office, and they specialize in patents, trademarks, or copyright. And they will often determine that it is a law enforcement issue, and what they have is a list of all the IP enforcement offices going down to all of the different U.S. Attorney's Offices, Customs offices, and FBI offices in the particular city. So, they have the list of contacts right at their fingertips to make the precise referral if it involves a law enforcement matter.

Senator VOINOVICH. Well, a few years ago, I called to test the systems in place, I was told to call the local Customs office. I entered the maze. Mr. Alikhan, have you ever talked to the folks that are prosecuting? Do they seem to feel that the system has been streamlined in terms of getting referals? Or are they complaining about it is still pretty cumbersome?

Mr. ALIKHAN. I can tell you as a former prosecutor in Los Angeles who did intellectual property cases that we have been streamlining the process to refer cases, and the best way for us to do that is actually sending prosecutors out into these industry groups and telling them how to refer cases and whom to refer them to. We encourage them to refer, sometimes directly, to the U.S. Attorney's Office and the CHIP Coordinators because they may know which agency is best suited to pursue the case.

In addition, in our progress report and the original report, in the back of it, we have a series of checklists for victims to know how to report a case to Federal law enforcement for prosecution.

Senator VOINOVICH. Mr. Israel, are you tracking the real bad guys out there? By that, I mean there are some companies or importers that are notorious for producing knockoffs and counterfeits.

Have you got the sophistication yet to identify who they are and any kind of communication to the Customs and Border Patrol that they have got to keep them out of here or you ought to look for them or any of that? Have you got the STOP! Initiative to that stage yet?

Mr. ISRAEL. It does exist. It does exist at a fairly sophisticated level, Mr. Chairman, and actually, Customs is one of the generators of a good deal of that information. One of the things Customs has really been trying to do over the last several years is really improve and strengthen their use of intelligence. They do post-entry audits. For example, if they do seize counterfeit goods, they essentially reverse engineer the supply chain that brought those goods to the United States to try to determine where it came from, what organization or entity might be behind the transmission of those goods to the United States, and try to develop fact patterns and trend analysis and really deploy that to their agents in the field in a very coordinated fashion to try to get as much ahead of this problem as they can.

It is a deluge at our borders, and what they are trying to do is use good information, use intelligence, assemble information the best they can, coordinate with the Department of Justice, FBI, other agencies as well, to utilize that information and pass that. It is certainly information that, through the STOP! Initiative and through our coordination efforts, is shared with other agencies. It is also shared with industry. I know particularly in the instance of the auto industry, there are trade specialists in the Strategic Trade Center in Los Angeles, who are focused specifically on the transportation industry, and they share detailed information about what they are seizing and where it is coming from with industry representatives to try to combine that with information that industry itself has.

As others have noted, the information that industry captures and has, and knows is as valuable as anything the government is aware of, and we need to couple that information to the best of our ability.

Senator VOINOVICH. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman. I am going to start with the international and kind of move it, focus it from there.

I will be in China in 2 weeks. I think in 2005 U.S. Customs reported China was the No. 1 source of counterfeit products seized at our borders. Whoever can respond, how do you assess the level of cooperation today with the Chinese in dealing with this issue?

Mr. ISRAEL. I will take a first reaction to that, Senator, and that is, certainly China, it needs no explanation from me for everyone to understand, is the primary focus of our international IP enforcement efforts. It is obvious for all the reasons you stated.

I think within the last few years we have seen a good level of cooperation from Chinese leadership. I think this is an issue that they understand they need to address, not just because the United States is raising it at a very high level with them and exploring the utilization of trade tools, such as a WTO dispute resolution case, as a possible step to take to address some of these concerns. They are increasingly seeing it as a threat to their own economic growth and stability over the long term.

Having said that—and this is something we certainly share with the Chinese—it is our view that the implementation and taking action on that cooperation is still a huge challenge in China. Commitment from leaders in Beijing is certainly a positive step forward. Putting that in action in the field and actually turning that into strong enforcement across the entire country of China, in areas like Guangzhou in southern China, which is the heart of so many problems that we see, particularly in the manufacturing area, is—there is a long way to go, quite frankly, and it is an area that we are now focused very significantly upon.

So, I think the level of cooperation from Chinese leaders is positive, and it has been helpful over the last few years. I think the implementation and acting upon that commitment is where we need to go in the future and the next step we need to take.

Senator COLEMAN. Let me just try others, Brazil and India. Anyone else want to respond? Are there similar problems? And, by the way, if anyone else—you are all impacted. I would be interested in other perspectives, whether you agree or disagree with——

Mr. ISRAEL. I will try to do it very quickly and then share some time with my counterparts. I had the chance to be in India about 2 or 3 months ago, Senator, to address IP enforcement issues with the Indian Government. We are in a place now where I think we see tremendous opportunity to work with India in a constructive way. I think the economic relationship and the trade relationship between the United States and India is in a positive place now. Some things were launched as a result of the President's trip to India several months ago.

On the issue of IP enforcement, again, the Indian Government is committed to trying to take some steps to improve enforcement. It is somewhat similar to China in that you see huge enforcement challenges across a very vast and complicated country. The individual states within India essentially run their own enforcement apparatus, so it is very hard to implement something nationwide in India.

We are doing some positive things with India. The Department of Justice hosted a 2-week session for Indian law enforcement officials in California earlier this summer. The State Department ran a four-city program in India to discuss this issue with industry leaders and representatives.

So I think we have a finite set of challenges and issues we need to address with India, but I think we are in a very constructive and positive place to address those with the Indian Government.

Senator COLEMAN. Mr. Pinkos.

Mr. PINKOS. Yes, if I could comment on Brazil, I recently accompanied Secretary Gutierrez on a trip there in early June. On the overall IP environment, I would say that it is improving. But we have been to countries like Brazil, and there is a long way to go. But they do have a national strategy to address IP theft, and according to industry statistics, the amount of counterfeit—or the amount of piracy of copyrighted works is decreasing. There are deeper problems with patented products, particularly pharmaceutical products there. One of the steps we are taking to help address that is part of the Secretary's trip. We established a commercial dialogue, and one aspect of that is increased technical coopera-

tion between the U.S. PTO and NP, which is their patent office. We are beginning that next month to try to help bring them up to speed, so to speak, because there are thousands of U.S. applicants that are waiting in line right there to get that protection. Of course, then the next step is to actually make it meaningful protection within the country, but you have to start somewhere.

Senator COLEMAN. I was going to ask you, Mr. LaPlaca—I am not sure I have enough time because I have so many questions I want to ask—whether the private side agrees with the public side in terms of progress being made in China, or the situation in India.

Mr. LAPLACA. I think raising awareness is key. From our perspective at least, from our industry, we go to trade shows now, and we are starting to see vendors from China who years ago would come in here and blatantly sell counterfeit products, are now backing off. And somehow they are getting the message, whether it is through the efforts of these organizations or just from enforcement within the industry, I am not sure. But we start to see some recognition that there are IP laws in the states that they need to be aware of.

Senator COLEMAN. Mr. Yager.

Mr. YAGER. If I could just add one thing, Senator Coleman. During the work we did on IP earlier, we visited China, Brazil, Russia, and Ukraine. And one of the things that we observed when we were doing that work is that when the United States is able to join with like-minded individuals in those countries, it is likely to be much more successful. So when those countries have their own IP to protect and you work with the folks that have a stake in it, then success is more likely to be achieved. I think Brazil is a good example of that. In some cases, they have quite a bit of intellectual property, whether it is in music or other things, and in those cases I think the United States has generally found like-minded groups that they can ally with and get some success.

In other areas, for example, in pharmaceuticals, those kinds of conditions may not exist, but I think that is a strategy that seems to have some real future to it. The difficulty is that in some countries, frankly, those kinds of groups are quite small, if you are talking about countries like Paraguay that really just exist on the illegal stuff and do not have much of their own in terms of property that they need to protect. But I think that is a strategy that generally can be effective.

I noted on the stopfakes website, they do list a lot of those other groups within other countries, like Brazil and others, that have an interest in protecting their own intellectual property.

Senator COLEMAN. I take it we are going to do another round, Mr. Chairman?

Senator VOINOVICH. We are.

Senator COLEMAN. Good. Thank you.

Senator VOINOVICH. I would like to follow up on Senator Coleman. I know when I met with Premier Wen a year ago this last May, I raised the issue of currency fixing and also intellectual property rights. He seemed to understand the problem, but as one of the witnesses pointed out, so often it is the localities that are involved, and it is just a way of life for some of them. My goal is to convince other nations such as China that it is in the best inter-

est of Chinese businesspeople to protect intellectual property rights.

I just wonder how much work is the Department doing in terms of American Chambord??? Commercies??? abroad AmChams that we have got around the country—around the world. I know when I have visited other countries on trade missions, we spent time not only with the embassy folks but, more importantly, with AmCham groups and other groups in those countries that were basically business organizations. Is there any targeting of those groups to try and get them engage in this effort?

Mr. ISRAEL. I think, Senator, there is a tremendous amount of interaction that happens between U.S. officials when they travel overseas and AmChams and, importantly, just day-to-day interaction between our embassy teams, our Foreign Commercial Service teams, and AmChams and other industry groups around the world.

For instance, in China, where PTO has had an IP attache posted for the last 2 or 3 years, there is a significant amount of interaction between the IP enforcement team in China and the U.S. Federal Government and the AmCham over there. The Quality Brands Protection Council, which is a number of trademark owners who have come together to form——

Senator VOINOVICH. Who is the spokesman? One of the problems that we identified at former hearings is that we have got all these various agencies. Who is the spokesman in this area for us? Is it Gutierrez or who is it that really drives this home? Is it the Secretary of State? Who is it that concentrates on this and speaks and says, "I represent all these agencies"?

Mr. ISRAEL. With a bit of humility in mind, Senator, I think that is a bit of the job that our office was asked to do, was to represent these agencies. Admittedly, that is at a much lower level, and that does not resonate nearly as much as when Cabinet officials and, indeed, the President, offer their views on this.

One thing we have tried to do over the past several years, the past couple years, in particular through the STOP! Initiative, is to make sure we are taking advantage of every opportunity we can that there is coordination within the government.

Senator VOINOVICH. Is the President briefed on IP issues and activities? For instance, when he went to the G–8 meeting, is he briefed on IP issues so that he can raise this issue with his colleagues at that level?

Mr. ISRAEL. Yes, sir, I know that was part of his briefing package. There was a G–8 leaders' statement on IP that came out of the recent meeting in St. Petersburg. The National Security Council in the White House, the economic trade team within the NSC, has really taken a leadership role on this. So it is part of the package that is prepared for the President as he travels internationally and addresses economic and trade issues with his counterparts.

Senator VOINOVICH. One of the other questions that came up that was a concern—and I would like Mr. Yager to comment on this—was that USTR had about 200 people and they continue to maintain that same number of people. I would like to know where are they in terms of that staffing? And then what they were doing is they were reaching out into other agencies in terms of trying to

get an expert here and an expert there. I think the observation of GAO was that this thing is large enough that some effort should be made to locate some of that expertise in-house because they have got enough work to do to justify that.

Mr. YAGER. That is right, Mr. Chairman. In our most recent report about USTR and the human capital challenges they face, we made two recommendations. One was to work more closely with the agencies that it relies on. Notwithstanding, the fact that they might bring more attorneys in, which I think USTR has done fairly consistently over the last couple years, some of which focus on particular problems like IP; but in addition to that, we felt it was important that they do a better job of trying to coordinate their efforts in a more systematic way with the agencies that they work with and the agencies that they rely on to help them, whether it is in negotiating new agreements with IP provisions or whether it is working with countries like China that need a great deal of assistance and an awful lot of encouragement to improve their IP laws.

Oour recommendations were aimed not only internally at the way they provided centers for their own personnel, but also the way that they communicate with those other agencies about the need for those folks to accompany them or to assist them in achieving the goals like protecting IP.

Senator VOINOVICH. Mr. Israel, are you aware that the Senate Appropriations Committee recommended no funding for NIPLECC in fiscal year 2007?

Mr. ISRAEL. Yes, sir, I am.

Senator VOINOVICH. The reason the Appropriations Committee cited for eliminating the funding is the lack of any tangible action in prior years, including a failure to release an annual report this year. I recognize that you have not been in your job very long—I think it was just a year ago?

Mr. ISRAEL. July, sir.

Senator VOINOVICH. What tangible actions have you undertaken since that time? And when do you expect to issue a 2006 report? What are you going to do about the committee's recommendations to eliminate NIPLECC funding? Because I understand that you work under, and get your funding through NIPLECC, and if NIPLECC is flat-funded or zeroed out, what happens?

Mr. ISRAEL. A difficult situation, Senator. First, to address the topic of the report, as you point out, our office came online July almost exactly a year. We are this year—and one reason that the report has not been sent to Congress yet is that we are in the process of finalizing the report. It should go into interagency clearance within the next few days. It should be delivered to Congress and to the President upon your return in September.

We are, quite frankly, putting much more effort and emergency and emphasis into this report this year. We are going to send you a new and improved report. It is going to have better analysis of the actual coordination that exists between agencies.

Senator VOINOVICH. This will be under the auspices of NIPLECC?

Mr. ISRAEL. Correct, sir. Yes, sir. That will be the report. It will, in addition, cover both 2005 and to the point we are at in 2006. It will be more expansive than previous reports.

It has been our goal to put more effort and more energy into this report to give Congress and the President a better assessment and analysis of the actual coordination that exists to address questions such as the relationship between STOP! and NIPLECC, to work with agencies to address some of the priorities that we are setting going forward, to have a looking-forward section to it as well. So it will be a much more value-added——

Senator VOINOVICH. What are you going to do to try to restore funding? How much money is NIPLECC getting and how much is going to be cut out?

Mr. ISRAEL. Well, under the current situation, the Office of Coordination at NIPLECC was funded with $2 million in the fiscal year 2004 Omnibus Appropriations Act running through September of the end of this fiscal year. So it has $2 million to run from 2004 to 2006. The President's request for fiscal year 2007 was $1 million, so we would continue, obviously, to urge Congress to look favorably upon the President's request.

I think it would impact the ability of our interagency process to move forward with a number of the priorities that we have set through the STOP! Initiative. I think also the removal of this function, the elimination of the coordination function at a senior level within the Administration, would also send an unfortunate signal to U.S. industry and to our international trading partners that we are downgrading, to some extent, the focus that we are paying to this issue. Our position is to continue to provide any and all information to members in terms of their decisionmaking process on how to allocate resources to the IP coordination function of the Federal Government in fiscal year 2007.

Senator VOINOVICH. If you can get that information to us so that we are on top of it, we will see if we cannot help get the money that is necessary. I hope that somebody over in Commerce is working to resolve those issues.

Mr. ISRAEL. We will provide you any information that would be helpful, Mr. Chairman.

Senator VOINOVICH. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman. I share your concerns you raised regarding NIPLECC, and I do hope that we get some information on that.

Let me throw out a question about terrorist funding from counterfeit, pirated materials. Does anybody have any information as to whether that is a problem, what we know about the problem, and what we are doing about it if there is a problem?

Mr. ALIKHAN. Senator Coleman, I will take that question. We have seen at least one case in which there was a tie to terrorist financing. This was a case in Detroit that was charged in March 2006 where 19 individuals allegedly operated a racketeering enterprise that supported Hezbollah by selling counterfeit Viagra and also contraband and counterfeit cigarettes.

That, of course, is of concern to the Department of Justice. Of course, the Department's No. 1 priority is the prevention of terrorism and concern of prosecuting terrorist activity. But aside from that one case, we have not seen, necessarily, a definitive link, but certainly there is the potential for the use by terrorists of financing through intellectual property because of the lucrative nature. And

we are remaining vigilant and making sure that message is going out to the law enforcement agencies to look out for that so we can prosecute it aggressively.

Senator COLEMAN. What about on the international level? Brief mention was made of Paraguay, the tri-border area; there has been concern that you have funding there that could be used to support Hezbollah, concern that Hezbollah was involved in the attack on Israeli—Jewish interests in Argentina that resulted in death a number of years back. I am not sure how much of this has been confirmed, but how do we keep track of the international side, particularly in light of concerns about Hezbollah activating sleeper cells and other potential dangers that we face as a result of what is going on today in the Middle East?

Mr. ALIKHAN. Well, we certainly can keep track of any criminal prosecutions that are resulting for that. With respect to whether, in fact, there is funding for terrorism, I think I would have to defer that to the intelligence agencies and what they are learning from that.

Mr. YAGER. If I could, briefly. We did a report just a couple years ago where we looked at a number of the different ways that terrorists might raise funds, and certainly counterfeiting and selling counterfeit goods was on the list because of, again, as others have mentioned, the very lucrative nature of it, the fact that it is either illegal or at least on the borders of legality. And I think that is also why it is quite important to have the allies like Brazil and Argentina, because in some places like Paraguay, frankly, the central government does not have the capacity, nor does it necessarily have the incentive, to try to drive out that kind of an element, because, in fact, some of the areas, particularly the tri-border area, thrives on this kind of illegal activity.

So, clearly, there are potential links there, and I think as Mr. Alikhan mentioned, the intelligence agencies are very aware of this as well. But it is a fairly significant problem. In fact, it is almost the only reason that some of these cities like the tri-border area exist.

Senator COLEMAN. It would seem to me that common sense would dictate that this is a great potential problem. Again, I do not have the detail, but the amount of money involved is massive. The ability to track it is difficult. And it is just kind of ripe for something that is problematic.

Just one more question in that regard. In terms of state-sponsored activity, we talked about China and Brazil, and obviously we are working with those countries and trying to deal with this. And some will question whether we are doing enough. What about renegade states like North Korea and Iran? Is there any indication of state-sponsored counterfeiting activities and whether it is having any impact here?

Mr. ISRAEL. Well, I know, Senator—and this, again, I think falls to some extent within the realm of our intelligence agencies and our security agencies. I do know of instances in Korea there have been concerns, counterfeit cigarettes, counterfeit products—North Korea—which is funding some of the activities of that government and keeping it afloat to some extent. And I know the Treasury Department in particular has a specialized unit that is focused on

issues such as that. And counterfeit currency is also an issue that our Treasury Department is focused on with regard to North Korea.

I would be happy to consult with them and provide additional information.

Senator COLEMAN. I would appreciate that.

Let me go from the global to the local STOP! program. I think, Mr. Yager, in your testimony you expressed concerns about the lack of permanency in the program. Could you elaborate on that a little bit and perhaps give us some direction as to what we can do to provide some greater long-term stability and continuity in dealing with these issues?

Mr. YAGER. Yes, we did talk about the permanence. In my oral statement I also talked about the fact that STOP! really has created some energy while NIPLECC has the permanence and accountability requirements that allow you to look and see what has been done from one year to the next. Obviously, I think everyone here knows that the IP problem will not be solved within this Administration's timetable, so it has to be a mechanism that continues to have the kind of attention, as well as the resources, that are necessary not just through this Administration but as we go forward.

And as I mentioned, to the extent that there is this linkage between a permanent mechanism made up by NIPLECC and the energy that was created with STOP!, that would be a positive development. But, we also think that the reporting on that needs to have some of the characteristics that allow Members of Congress, as well as others, to understand what is being done, the kind of accountability requirements in terms of results, leadership, some very specifically defined roles and responsibilities for the different agencies, and how those roles reflect the other agencies' internal goals.

And so I think that those are the kinds of things that we look for in a strategy, and we will be, in fact, reviewing the strategy to see if it has those kinds of characteristics that will allow you to look from one year to the next and really track the kinds of successes, as well as the challenges, that this organization will face.

Senator COLEMAN. Thank you, Mr. Yager. Thank you, Mr. Chairman.

Senator VOINOVICH. Have you reviewed the legislation that Senator Bayh and I have introduced?

Mr. YAGER. Yes, Mr. Chairman, we have. I think that there are a couple of things. Obviously, some of the more common features that we typically look for when you are talking about a group like this, which is designed to bring together so many different agencies—and I mentioned a couple of them before, but clear goals and objectives as well as performance measures, some discussion of the risks and the threats associated with it. The cost and resources are obviously something that you have always been interested in, particularly the human capital resources, the delineation of roles and responsibilities, and, in particular with this group, the relationship of this new organization to the existing organization of NIPLECC, as well as where will that leadership be.

We know in your legislation you have designated OMB as chairing this particular group, and one of the things that we have observed is that, obviously, it is important to have someone who is clearly in charge of this effort, and that person has to have the respect and certainly the participation of the different agencies. And so, we have seen different ways that this has happened, and, frankly, it depends upon the level of energy and the amount of assistance that the interagency mechanism provides.

I do not think it is as important as to where it is, as long as there is a dynamic group and someone who leads that group and can get the agencies to participate.

Senator VOINOVICH. One of the things I am worried about is that we have this energy or IP efforts, but as it is an Executive initiative, and it is extinguished after we get a new President in place. I am trying to figure out how do we institutionalize the current efforts in a way that does not burden the next Administration. But NIPLECC has been around for how long?

Mr. ISRAEL. Since 1999.

Senator VOINOVICH. I would like to work with you folks on trying to figure out what the relationship is and how we can expand and improve it.

Now, Mr. Pinkos, is your budget part of NIPLECC's budget, or do you get your money from some other source?

Mr. PINKOS. We get our money from patent and trademark applicants. We get no money from the general treasury, so a certain amount of money is used on our public policy and our training and enforcement efforts.

Senator VOINOVICH. The Patent Office, you are on their payroll?

Mr. PINKOS. That is correct.

Senator VOINOVICH. So it is separate? And you get your money from Commerce under NIPLECC, right?

Mr. ISRAEL. Correct.

Senator VOINOVICH. OK. Can you give me for the record the number of people that you brought on as a result of this? I would like, for example, in terms of the—how many lawyers do you have? I would really like to know the results of the telephone calls that come in to the PTO and what happens with them. Because that gives us an idea about the level of activity, and does anybody track results? Is there any follow-up as to whether anything has taken place or not?

Mr. PINKOS. We are focused very much on results, and we can provide a lot of those numbers to you for the record.

Senator VOINOVICH. Do you collect data from these calls in terms of the specific issues? Have you developed any plans to collect, analyze, and disseminate this data to other agencies or the private sector?

Mr. PINKOS. We collect data about the nature of the problem, where people are calling from, what advice we provided. Initially our determination was for privacy reasons, we were not keeping the person's contact information because certainly some people did not want to provide that. And then, also, there are FOIA issues.

We are re-examining that part of the issue. We are instructing our folks to make sure that they have the contact to call us back if they have follow-up questions or if they are having a problem

with another agency and they were not able to get through. So we do that, but we are not following back up with them currently to see what came to pass with their particular issue.

Senator VOINOVICH. OK. And you will be able to give me that information about the staffing, the human capital part of it?

Mr. PINKOS. Absolutely. Some of it off the top of my head is we have spent $25 million this year—we will have spent in 2006, and that includes sending attaches overseas to seven different countries to focus on IP issues. And we have increased our staffing—significantly, and I will get you those numbers as well.

Senator VOINOVICH. And the Foreign Commercial Service (FCS), you have got a special program for them——

Mr. PINKOS. That is right.

Senator VOINOVICH [CONTINUING]. To upgrade their information so they are better prepared to handle these issues?

Mr. PINKOS. Well, the Foreign Commercial Service, if I could speak a little bit for them: One, we are partnering with the Foreign Commercial Service and State Department on the attache program, sending these IPR experts to the hot spots around the globe. They have a particular—well, it is actually part of ITA, but not part of the Commercial Service, a case referral system that I think you have heard about with China, when someone alleges a systematic problem there. And I know that is sophisticated, monitored, etc., but I cannot speak much more about Mr. Israel has had some exposure to FCS, maybe, but I don't know precisely how all their systems work.

Mr. ISRAEL. Just a couple of things, Senator. Definitely, FCS has over the past 2 years—and we can provide some information to you about the type of material that is being provided to Foreign Commercial Service officers overseas to allow them to be more understanding of IP issues, to be better responders to companies that are coming to them in the countries they are posted in and help them out.

Senator VOINOVICH. A lot of those guys show up at those AmCham meetings, too. They are very active.

Mr. ISRAEL. Very active. It is an amazingly effective tool that we have internationally. Our Foreign Commercial Service is also working internationally on trade show initiatives and to make sure that if they are engaged in a trade show, as Foreign Commercial Service often is internationally, that there is a strong program in place and a strong policy in place by those trade show organizers. So the U.S. Government will never be involved in a foreign trade show that does not have a strong intellectual property enforcement program and policy in place.

Senator VOINOVICH. Have you been able to observe the Customs and Border Patrol? And do you feel the Department of Homeland Security has enough resources, including staffing and funding, to effectively and efficiently combat IP issues at the border?

Mr. ISRAEL. I have had several opportunities to work, and work very closely, with Customs and Border Protection officials over the past year. We have also expanded our interagency coordination efforts to include Immigration and Customs Enforcement (ICE), to bring them into the STOP! program, and also to allow them to participate in NIPLECC.

I would defer any questions regarding their resources and funding levels to DHS officials, but as I said, I do get the sense—and I know this is the reality—that this is a trade priority for them. IP enforcement is a strategic trade priority for the Department of Homeland Security. They have a Strategic Trade Center based in Los Angeles, with IP specialists who are focused on providing information to agents throughout the Customs infrastructure. Their seizure numbers have gone up significantly over the past 3 or 4 years. They are reaching out very aggressively to industry. They have put tools in place, such as a recordation system, an online recordation system that allows companies to record their trademarks with Customs to provide information to Customs in an online database that is then used by their agents at the border to give them information, for instance, about how you discern differences and how you pick up a counterfeit good when it comes in. An agent is faced with a shipment at 3 o'clock in the morning, and they have to make a very quick decision about whether or not they feel it is counterfeit or not. Customs is putting a big priority on working with industry to generate that type of expertise and information through intelligence gathering, and through tools such as their recordation system.

So, I think there is a tremendous amount of effort and emphasis that Customs has put into this problem. They realize it is a very huge trade issue they need to deal with.

Senator VOINOVICH. So your assumption is that they probably are putting a lot more resources into IP enforcement than they did before?

Mr. ISRAEL. I would want to verify that. I would not want to assume that, Mr. Chairman.

Senator VOINOVICH. Well, we have jurisdiction over them, so we will get it.

Mr. ISRAEL. OK.

Senator VOINOVICH. Mr. Yager.

Mr. YAGER. Yes, Mr. Chairman, if I could just make a point. In our written testimony on page 15, we talk about some initial observations from the work that we currently are performing for this Subcommittee, and our initial findings are that the resources to address this kind of issue have been dropping, and fairly significantly. We have not been to all the ports, and we have not completed our survey. We have been in some very important points like Los Angeles, Long Beach, San Francisco, Philadelphia, and others, and our initial findings are that the number of people who are available to do this kind of work is decreasing.

And I certainly agree with Mr. Israel, the challenges associated with this, because of the volume, the sophistication of the products, make that job very difficult. We are going to be reporting soon on the level of resources that we are able to find more systematically across the country. But, at least in Long Beach and Los Angeles, for example, we found that the number of CBP officers—those are the front-line officers that are opening the boxes, looking inside, trying to determine whether the goods are accurately described in the manifest, as well as the entry document, we found they dropped by about 43 percent. And in addition to that, the import specialists, those are the folks that the Customs and Border Patrol

officers call up and they say, "I have got some auto parts here. I frankly cannot tell whether this is a legitimate part or not. Can you help me out? Can you come look at it? Can I put a hold on this long enough to determine whether it is legitimate or not?" Those folks have also dropped in some of those key ports. So I think that there are reasons to be concerned about the level of resources.

Also, just one quick mention. CBP is putting out this risk model. They are trying to develop a risk model to help them select the highest-risk shipments so that they can focus their resources on the ones that are the highest risk. But that is still a work in progress. It has not been implemented fully. They are going to run another trial during the summer, but that particular model is not operational at this point, and it is obviously a very important way to try to target their efforts on the highest-risk shipments. And we would certainly support that kind of a risk-based model, but, frankly, it is not working yet. And they need to get that working in order to make maximum use of the personnel that they have.

Senator VOINOVICH. OK. In GAO's area of oversight, have you looked at Mr. Israel's efforts to coordinate U.S. IP enforcement efforts?

Mr. YAGER. Well, the work that we are doing for this Subcommittee really is what is happening at the border. So it would address exactly the kind of question that you just put on the table, which is, What is the status of the efforts at the U.S. border, particularly with CBP? And so that is the focus of the project that we are doing for this Subcommittee.

We are also doing some work for the House Government Reform Committee, which is looking at the national strategy and seeing whether the kinds of things that you can use for effective oversight are present in the strategy that will be put forward—as we hear now from Mr. Israel, is going to be put forward in the next month or so. So we really have efforts along both of those different avenues.

Senator VOINOVICH. Maybe we ought to get a letter. What I would like to do, would be to look at what Mr. Israel is doing, what Mr. Pinkos is doing what the Justice Department is doing, and the other agencies, to better understand whether or not we have the resources employed to get the job done.

One of the things that really bothers me—and it should bother, I think, the people of our country—is that the non-defense discretionary budget is being squeezed. And the President does not get credit for this, but, I mean, if you look at those budgets, many of the department budgets are less this year than they were last year. And at the same time, we are asking them to do more.

I think that we really need to better understand what resources do you need to get the job done. Just like Mr. LaPlaca, you say you have X number of people, they are all busy, and you say, here are two other things for them to do. And they say, well, what am I doing now that I am going to stop doing so I can do this new task.

It seems to me that this is a significant enough—I mean, I really believe—and I think that—again, I am not as eloquent as Senator Coburn, but the fact of the matter is that intellectual capital is the last competitive advantage that we, as a Nation, have. If people can steal our intellectual property, we are dead. We are not a

cheap labor nation and other costs, such as energy and healthcare, remains high, but the new ideas that come up will keep us ahead. If our competitons can take that advantage away from us, then we are really in bad, bad shape.

Mr. Israel, you are in Commerce. That is your shop, right?

Mr. ISRAEL. I am based on Commerce Department, yes.

Senator VOINOVICH. I am going to ask Secretary Gutierrez, to allow you to sit down and look at what would be the ideal operation to make this thing work effectively. OK? In other words, you are starting to get a feel of how all these processes and agencies come together, and it is all over the lot. I am not asking that it all come under one head agency, but it needs coordination. I want to know, what are your thoughts on how to best coordinate the Nation's efforts? What are the resources that we would need in these various agencies and departments to really get this job done? Because I think that if we can—and sometimes those of us in Congress—that is my big complaint—that the Congress, we are always coming up with how you guys ought to do things, and from my experience as a governor and mayor, usually the best way to find out how to get something done is to go to the people who really are doing it.

But, I have this legislation—we think it is good, but I don't know how it would effect your daily efforts. I would really like to have you look at it and say, from your perspective, this is the ideal way this thing can be organized. It may require us to do away with some existing efforts and do something else new and innovative. But I think that it would be a great gift to your country, and a great legacy for the Bush Administration, to come up with something in this area, so that once you complete your public service, we know that your efforts will continue. I believe that if the folks we are dealing with, the countries and the companies in those countries, understand that we have got a bunch of people that get up early in the morning and go to bed late at night working on this issue, that we are going to start to see some real progress. But if they think we are just putting in half the resources that we need to get the job done we will not see enough progress. But if we devote enough resources to these efforts, I think that we will make some significant headway in terms of dealing with this problem.

And, Mr. LaPlaca, I am going to look forward to getting your information back on some of the legislation that is pending.

I just want you to know that I am going to stay on this issue. I think it is important as part of our oversight of government management. So I just want all of you to know that this is not just something that I will let go until we get the job done. So you have my commitment that I am going to stay with this, and if you put your time in, you can be assured I will do everything I can to help you do the work.

So, I really thank you for coming today. This has been really worthwhile. I know a lot of my colleagues are interested. Before these hearings, we held a staff briefing and several Senators are really interested in this subject, so we have got some allies out there.

Thank you very much. The hearing is adjourned.

[Whereupon, at 5:05 p.m., the Subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR LEVIN

I commend Senator Voinovich for holding a hearing to look at the progress we are making in the protection and enforcement of our intellectual property rights laws as a follow up on the hearing he chaired last year on this topic.

People may not realize intellectual property theft is not just movies, high end handbags and watches being knocked off. Counterfeiting has exploded in recent years across many industries to become a serious threat to the competitiveness of the U.S. economy. One of the greatest assets of American businesses is their intellectual property, but when American innovations can quickly be stolen by competitors around the world the vitality of those businesses is at risk. The FBI estimates that counterfeiting costs U.S. businesses $200 billion to $250 billion annually, and growing. Counterfeiting money is a serious crime and treated as such. The Counterfeiting of products is a serious and growing crime, and the Justice Department and other Federal agencies should be doing more to fight it.

We know that China is the primary source of counterfeit auto parts and components and product counterfeiting is one of the U.S. auto parts industry's greatest concerns with China along with currency manipulation and the ongoing U.S.-European Union and Canadian WTO case challenging China's auto parts tariffs. The U.S. auto parts industry conservatively estimates it loses $12 billion annually to counterfeit auto parts and China is responsible for about three-fourths of that or $9 billion.

The auto parts industry estimates millions of counterfeit auto parts enter the U.S. every year and only a fraction of them are ever detected at the border. We need to act to stop it cold—because counterfeit and pirated automotive parts mean lost revenue and jobs in the Untied States. The FTC estimates that the auto industry could hire 250,000 additional Americans if the sale of counterfeit parts were eliminated. Fake parts also undermine U.S. safety standards and put customers at risk.

If I can relay only one message to today's witnesses representing some of the Federal agencies working to combat intellectual property theft, it is to urge you to increase your prosecution of auto parts piracy. So far there has been a lack of willingness to initiate criminal cases against auto parts counterfeiters because it was not viewed as a serious enough problem by the Department of Justice. The industry knows of only one prosecution for auto parts counterfeiting. The Department of Justice told us they were unaware of any pending case.

I certainly hope these statistics will change as the U.S. Government's initiatives to combat counterfeiting take shape and that we will begin to vigorously protect America's intellectual property.

If the government won't act against currency manipulation by our trading partners as they should, if it won't force open export markets for U.S. products blocked by tariff and non-tariff barriers and aggressively enforce U.S. trade laws as they should, the least it can do is enforce our anti-counterfeiting laws.

TESTIMONY OF

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

BEFORE THE

SENATE COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON OVERSIGHT OF FEDERAL MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

"UNITED STATES INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION"

July 26, 2006

Chairman Voinovich, Ranking Member Akaka 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 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 (IP), 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 and made it a key part of the recent U.S./EU summit. 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 (IPR). Working 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 (Federal Bureau of Investigation); 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 provide you with an assessment of progress made through the Administration's Strategy Targeting Organized Piracy (STOP!) Initiative and to discuss the steps we've taken to better coordinate and fully leverage federal IP enforcement capabilities.

* * *

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% more than the average U.S. wage. The 2006 Economic Report of the President states that IP accounts for over 1/3 of the value of all U.S. corporations, an amount equal to almost half of our GDP. Quite simply, our ability to ensure a secure and reliable environment for intellectual property around the world is critical to the strength and continued expansion of the U.S. economy.

The enforcement of intellectual property rights also carries great consequence for the health and safety of consumers around the world. The World Health Organization estimates that 10% of all pharmaceuticals available worldwide are counterfeit. The global surge in counterfeit auto parts has also damaged U.S. brands, and poses major safety issues, as most are inferior substitutes. China is one of the largest sources of such counterfeit parts, and is cited by the U.S. auto industry as one of its top concerns. The Motor and Equipment Manufacturers Association estimates that counterfeit parts cost the legitimate global industry $12 billion annually, $3 billion in the United States alone. The U.S. Federal Aviation Administration estimates that 2% of airline parts installed each year are fake – or about 520,000 parts. And we have seen counterfeit circuit breakers that overheat and explode, brake linings made of wood chips and cardboard, and fake 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.

Finally, the theft of American intellectual property strikes at the heart of one of our greatest comparative advantages – our innovative capacity. Through the applied talents of American inventors, researchers, entrepreneurs, artists and workers, we have developed the most dynamic and sophisticated economy the world has ever seen.

And 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. And, 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. In the recent State of the Union, President Bush outlined the American Competitiveness Initiative (ACI). ACI strengthens the President's ongoing commitment to research and development. We are creating a business environment that encourages entrepreneurship and protection of intellectual property. And this Administration is doing everything that we can to open markets and level the playing field.

We value our heritage of innovation and exploration – it is not only part of our history; it is the key to our future.

And 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.

* * *

Results of the Strategy Targeting Organized Piracy

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. I appreciate this opportunity to share with you the key areas which make up the Administration's overall Strategy for Targeting Organized

Piracy (STOP!) Initiative and discuss the results we have seen over the past year. The STOP! Initiative has five primary goals:

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! has built an expansive interagency process that provides the foundation and focus for all of our efforts. Under White House leadership, STOP brings together USTR, the Department of Commerce, the Department of Justice, the Department of Homeland Security and the State Department.

Through the STOP! Initiative 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. Over the past year this Administration has improved coordination across the U.S. government. And we are regularly reviewing our strategies and assessing the progress that we have made so that we can continue to take the appropriate next steps.

The message that we are delivering is – that 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.

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 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, 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 half of this year (2006) we have received over 1,000 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.

2. We are increasing 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.

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 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 U.S.-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 is leading the dismantling of 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, and 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 98% 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 25.
- 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:
    - 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 with a street value of over $5.6 million of which 25,000 were manufactured in China.
    - 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 EU 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 (Enacted in 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 (Enacted in 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 (Enacted in December 2004)*
  - 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.

4. <u>Working closely and creatively with U.S. industry</u>:
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, the U.S.-India Business Council 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.

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, Atlanta, 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.

5. 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.

At the recent 2006 G8 meeting in St. Petersburg, a comprehensive IP enforcement strategy was announced that delivered upon the commitment made in 2005. The G8 Statement on Combating IPR Piracy and Counterfeiting has several key objectives:

- To keep the spotlight on trade in counterfeit and pirated goods and secure agreement on projects that promote greater cooperation between national law enforcement officials.
- To link victims of IPR infringement to national enforcement authorities.
- To build capacity in developing countries to combat trade in counterfeit and pirated goods.
- To further research the economic impact of counterfeiting and piracy on national economies, brands, rights holders and public health/safety.

- To task relevant law-enforcement work (including online piracy) to the Lyon-Roma Anti-Crime and Terrorism Group (LR/ACT).

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 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 Oman 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. And in June, 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 – 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 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, in my role as the U.S. IPR Coordinator, I 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, I 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.

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.

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 actively with Russia to strengthen Russia's IP protection and enforcement. President Bush, Secretary Gutierrez, USTRs Portman and Schwab, Secretary of State Rice and other senior officials have raised our IPR concerns repeatedly with the Russian government. Recent positive statements made by President Putin and other senior Russian officials recognize that IPR protection is both an economic issue for the Russian government and a public health concern for the Russian people

are a step in the right direction. 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. The Russian government needs to close plants that produce pirated optical discs, prosecute pirates, shut down illegal Internet download sites, and improve legislation. We also highlight that any IP addition to Russia's Civil Code must comply with international norms and not detract from IPR enforcement. We are making it clear in WTO negotiations that Russia must take significant sustained action to address these issues.

We continue to place a high priority on the work of the U.S.-Russia IP Working Group, as the United States and Russia work to address a number of IPR-related issues and steps that need to be taken. Additionally, we have a robust IP training program in Russia and the Embassy has taken an active role in reaching out to rights holders, organizing events with rights holders and government officials, and resolving cases when IP rights are violated.

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 Trade Related Aspects of Intellectual Property Rights (TRIPs) obligations. In addition, U.S. intellectual property experts participated 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.

* * *

Stronger Coordination

Over the past year the Bush Administration has taken several steps to significantly strengthen the coordination of IP enforcement at the Federal level. Our mission is to ensure that we are effectively leveraging all of the capabilities and resources of the U.S. government to protect American rights holders domestically and around the world. We have met with some success and we are looking ahead to improve our efforts.

Revitalizing NIPLECC

Several factors have recently combined to breathe life into the NIPLECC framework and to bring about positive change. First, NIPLECC has served as the institutional infrastructure necessary to execute the elements of the STOP! Initiative. This has given NIPLECC a more clearly defined mission and focus.

In addition, the installation of a Coordinator for International Intellectual Property Enforcement has provided needed leadership and visibility. The Office of the Coordinator has been greatly benefited by

the tremendous cooperation of NIPLECC agencies and a true recognition that we can achieve greater results through structured coordination and focus on results.

NIPLECC has also increased interaction and communications among member agencies through the establishment of quarterly meetings, the development of consistent communications strategies and regular sharing of information.

The leadership demonstrated by NIPLECC members has translated into the elevation of intellectual property protection into a significant trade and economic issue regularly addressed by senior Administration officials in their contacts with trading partners. This has underscored the importance of conveying consistent messages and remaining closely coordinated.

The formation of the U.S. Chamber of Commerce's Coalition Against Counterfeiting and Piracy (CACP) and conscientious efforts by NIPLECC leadership to engage with CACP and its task forces has yielded new levels of cooperation and coordination between government and industry.

In short, NIPLECC has assumed a more central role than in the past and filled a gap that had previously inhibited coordination.

I would emphasize that NIPLECC does not seek to encroach upon or derogate from the independent authority, mission and operation of its member agencies. Each NIPLECC agency is separately charged with carrying out its statutory responsibilities and brings to the performance of those tasks specialized knowledge, invaluable expertise and, in some cases, literally centuries of experience. This separateness has operational, practical and even legal dimensions, such as in the standards that govern the activities of law enforcement agencies and the need of law enforcement agencies to protect sensitive information from disclosure.

Finally, I would note that NIPLECC will soon be releasing its 'Intellectual Property Enforcement Report to the President and Congress'. This year's report will mark a significant departure from reports produced prior to the creation of my office. The format of this year's report has been changed and its contents expanded from NIPLECC's prior reports. The extensive coordination that takes place amongst the various agencies in the Federal Government on IP enforcement often occurs in the background. The public usually only sees the end product. With this report we will bring together all of the pieces of the puzzle to show how agencies are working together, often behind the scenes, to accomplish the goals laid out by President Bush through the STOP! Initiative and to achieve the results called for by Congress and that serve the needs of U.S. industry.

The Office of International Intellectual Property Enforcement

To lead NIPLECC in carrying out its function, Congress created the position of Coordinator for International Intellectual Property Enforcement ("the Coordinator"). President Bush moved expeditiously to fill this post, and I was honored to be appointed to this position July 2005. Arif Alikhan, Senior Counsel to the Deputy Attorney General at the Department of Justice, serves as NIPLECC's Deputy Coordinator. The staff of the Coordinator's office is composed of employees or detailees from a number of NIPLECC agencies.

The Coordinator's office hit the ground running, interacting on a sustained and intensive basis with government agencies, industry representatives, trading partners, Congress and the general public. As the one-year mark has just recently passed, the office can look back upon a number of contributions that have advanced the STOP! initiative and have long been a part of the NIPLECC agenda.

The Coordinator's office played a significant role in helping to revitalize the relationship between the U.S. and the EU regarding IP enforcement. Shortly after the November 2005 ministerial meeting that established the U.S. - EU IPR Working Group, an interagency team from the U.S. began working with our EU counterparts on a strategy for strengthening customs cooperation, focusing mutual efforts on IP protection issues in China and Russia and engaging our respective private sectors. This effort resulted in the launch of the U.S. – EU Action Strategy for the Enforcement of Intellectual Property Rights just prior to the recent U.S. – EU Leaders Summit in Vienna.

Our office has worked to support the NIPLECC-wide focus on improving IP protection internationally and in particular regions and countries. I have had the privilege of leading broad interagency delegations on official visits to China, Russia, the EU and India to pursue greater cooperation among our trading partners in protecting IP.

An important function that the Coordinator seeks to fill is to promote and support regular and consistent communications by senior Administration officials regarding IP protection in their contacts with trading partners. For example, our office has assumed the task of preparing country-specific memoranda that provide at-a-glance information on the background of U.S. engagement on IP issues, the status of enforcement and policy issues and key priorities and challenges. The memoranda also bring together prior statements by Administration officials regarding IP protection in particular countries.

From his senior position within the Department of Justice, NIPLECC's Deputy Coordinator, Arif Alikhan, has provided leadership in focusing and leveraging the efforts of law enforcement agencies to protect intellectual property. The Department of Justice Task Force Report contains accounts of coordination between a number of law enforcement agencies on particular investigations and prosecutions, as well as between federal law enforcement and non-law enforcement agencies on matters involving training, legal reform and outreach. The NIPLECC Deputy Coordinator brings that inclusive perspective to the work of the Council.

We have continuously engaged rightsholder groups and industry representatives. The ability of our office to communicate effectively and efficiently with all stakeholders (particularly industry and Congress) is one of our key strengths. Indeed, it is one of the primary objectives articulated by Congress upon the creation of the Coordinator's Office. This has allowed us to tackle more directly industry's key concerns, enabled us to coordinate public/private efforts and, very importantly, made us more accountable.

Our regular public appearances and presentations, aimed at sharing information about the federal government's IP enforcement and protection efforts have helped to build greater public awareness regarding the government's efforts.

I have also had the privilege of testifying several times before Congress, and conducted numerous meetings with Members and Congressional staff. We have sought to bring greater accountability, increased public understanding and a more coordinated perspective to the work that various governmental agencies are doing. It has been our goal to, in essence, give voice to and put a face on the Administration's IP protection efforts.

As noted, many, if not all, of the activities of the Coordinator's office have been carried out in cooperation with representatives of one or more of the NIPLECC agencies. In some cases, the Coordinator's office has joined or supported pre-existing, agency-led initiatives. In others, the office has spearheaded the initiative and enlisted agency participation. The touchstone throughout has been to optimize results by engaging the most appropriate and complete combination of government IP enforcement and protection resources.

The Coordinator's office contributes to inter-agency coordination in more routine and often less visible ways. For example, our office organizes quarterly NIPLECC meetings to discuss ongoing IP matters and -- in conjunction with the White House -- convenes regular STOP meetings to discuss overall IP strategy. We have worked to engage the FBI, ICE and FDA -- three IP enforcement agencies that are not by statute formally part of NIPLECC. In addition, we are working with a number of NIPLECC agencies to provide support and resources for specific projects and initiatives. Having built this foundation in its first year of operation, the Coordinator's office is well-positioned to accomplish more going forward.

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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 necessary 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.

STATEMENT OF

STEPHEN M. PINKOS

**DEPUTY UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY
and
DEPUTY DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

BEFORE THE

**Subcommittee on Government Management,
the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate**

"STOP!: A Progress Report on Protecting and Enforcing Intellectual Property Here and Abroad"

July 26, 2006

Introduction

Chairman Voinovich, Ranking Member Akaka, and Members of the Subcommittee:

Thank you for inviting me to testify today. I want to thank you all for your leadership on the issue of intellectual property theft.

I appreciate this opportunity to discuss the progress we have made in promoting effective protection and enforcement of Americans' intellectual property rights here and abroad.

I am pleased to join my colleagues with whom we are united through the White House-led STOP! initiative to combat the growing problem of global piracy and counterfeiting. STOP! is a comprehensive government-wide initiative that brings together all the major players to protect the intellectual property assets of America's inventors, creators, entrepreneurs, and manufacturers.

Unlike some of our colleagues in this comprehensive effort, U.S. Patent and Trademark Office (USPTO) personnel do not carry a badge or a gun, and are not authorized to seize or destroy illicit merchandise or prosecute those who market such merchandise.

What USPTO brings to this initiative is expertise in domestic and international intellectual property law, policy and procedure. We consult, advise and otherwise share that expertise with the American public – including small and medium sized enterprises – other Federal agencies, the Congress, and foreign officials.

Because American intellectual property owners compete in a global marketplace, our efforts include the promotion of effective intellectual property protection internationally. We help provide American intellectual property owners with sufficient knowledge and legal tools to fight piracy and counterfeiting both home and abroad and assist them in their enforcement efforts overseas. We also provide foreign countries with technical assistance on drafting and implementing effective intellectual property laws and promoting the effective enforcement of intellectual property rights. I am pleased to describe our ongoing efforts in more detail.

Training and Capacity Building - Global Intellectual Property Academy

The USPTO coordinates, organizes and participates in intellectual property rights training, trade capacity building, and technical assistance programs throughout the world.

In the Fall of 2005, USPTO created the Global Intellectual Property Academy (GIPA), which greatly expands USPTO-led training and capacity building programs on intellectual property rights protection and enforcement. Through the GIPA, USPTO brings foreign government officials – including judges, prosecutors, police, customs officers, patent, trademark and copyright officials and policy makers – to the U.S. to learn, discuss and strategize about global IPR protection and enforcement. GIPA programs cover the gamut of patent, trademark, copyright and IPR enforcement issues facing the global economy, and are offered by USPTO acting in close cooperation with other U.S. federal government agencies, including the U.S. Department of Justice, the U.S. Customs and Border Protection, and U.S. Department of State.

By the end of FY 2006, the USPTO will have conducted 16 Global Intellectual Property Academy Programs for foreign officials at its headquarters in Alexandria. The USPTO will continue to provide IPR training, trade capacity building, and technical assistance in the U.S. and abroad. In 2007, the USPTO will conduct 21 such programs domestically as well as countless other programs around the world.

STOP! Hotline

The USPTO manages a hotline (1-866-999-HALT) that helps small-and medium-sized businesses leverage the resources of the U.S. Government to protect their intellectual property rights in the U.S. and abroad. Callers receive information from a staff of approximately 37 intellectual property attorneys at the USPTO with regional expertise on how to secure patents, trademarks, and copyrights, and on enforcement of these rights.

In fiscal year 2005, the Hotline received 955 calls. In fiscal year 2006, through July 5, 2006, we have received 1,048 calls through the Hotline.

Stopfakes.gov

The USPTO has established a link on its website to *www.stopfakes.gov* which provides in-depth details of the STOP! initiative. One key feature of the website is the country specific "Toolkits" that have been created by our embassies overseas to assist small- and medium-sized businesses with intellectual property rights issues in China, Korea, Mexico, Taiwan, Russia, Brazil, and Malaysia. STOP! also seeks to increase global awareness of the risks and consequences of intellectual property crimes through a section of its website, *www.stopfakes.com/smallbusiness*, that is specifically designed and operated by the USPTO to answer common questions of small businesses so they can better identify and address their intellectual property protection needs.

Outreach to Small Business - Public Awareness Campaign

While counterfeiting and piracy pose a serious threat to all American businesses, small businesses are particularly at risk since they often lack the knowledge and expertise to effectively combat it. Because small businesses typically do not have personnel or maintain large operations in other countries, theft of their intellectual property overseas can go undetected. As part of the STOP! initiative, in April of 2005 the USPTO launched an intensive national public awareness campaign to help educate small businesses on protecting their intellectual property both here and abroad.

According to the U.S. Small Business Administration, America is home to about 23 million diverse, geographically dispersed small businesses. As a result, the most significant challenge confronted by the campaign was developing a program that would appeal to – and reach – as many target smaller businesses as possible.

The campaign consists of market research, stakeholder outreach, earned media outreach, online outreach, and conferences. The market research we conducted overwhelmingly shows that small businesses are not aware that their intellectual property rights do not travel abroad, underscoring the need for the campaign.

We used this market research to design a campaign to educate small businesses on the information that is most critical to their success, and about which the most misinformation exists.

The USPTO conferences have been conducted throughout the country including Salt Lake City, Phoenix, Austin, Miami, San Diego, Northern Virginia, Columbus and Nashville. Since May 2005, USPTO has presented these eight programs to more than 1,400 attendees. Members of Congress have been very supportive of this program, and five U.S. Representatives have joined you, Chairman Voinovich, as guest speakers at previous conferences.

The USPTO will continue to hold small-business outreach seminars to give American businesses face-to-face contact with intellectual property experts.

Intellectual Property in the Global Marketplace Conferences

This is a 2-day program offered free of charge to the public designed to raise awareness of intellectual property in general, and increase awareness among small businesses of the new realities of counterfeiting and piracy of intellectual property. The program explains the government's role in enforcing IP rights and also the IP owners' responsibilities.

The conference consists of presentations by our attorney-advisors on patents, trademarks, copyright, the patent cooperation treaty, trade secrets, and the problems China poses specifically. We cover the basics of intellectual property protection – why to apply, how to apply, the difference between all kinds of intellectual property – as well as how to enforce your intellectual property rights.

Furthermore, we produce a handout workbook with all of the presentations for the conference attendees, and allow time for questions and answers. Additionally, this year we have added a new feature of our conference, which are the one-on-one consultations with our attorney-advisors. The small businesses have really taken advantage of this service.

Additionally, we gather written evaluations at each program, and modify the programs based on evaluations results.

China Conferences

We have also hosted special educational outreach conferences on China in several U.S. cities for companies ranging from small businesses contemplating entering the China market to large corporations with established presence in China. Topics have included a review of recent laws and regulations promulgated by the Chinese government that affect protection and enforcement of intellectual property, what the United States government is doing to improve intellectual property protection and enforcement in China, how to best protect business assets to avoid intellectual property problems, how to recognize product infringement, and the practical steps to take if it occurs.

Our China events have been held in Alexandria, Virginia, Baltimore, Detroit, Atlanta, Chicago and Seattle.

The USPTO has reached out to both government and non-government stakeholders to help publicize the conferences and the campaign. Some of the organizations that we have worked with to promote awareness of the conferences and of the issue of IP theft are: Small Business Administration, Minority Business Development Centers, U.S. Export Assistance Centers, U.S. Customs and Border Protection, American Intellectual Property Law Association, Intellectual Property Owners Association, U.S. Chamber of Commerce, National Association of Manufacturers, Service Core Of Retired Executives, National Federation of Independent Business, and United Inventors Association.

Results

In December 2005, six months into the small business education campaign, the USPTO conducted a second, follow-up survey to help measure the results of campaign efforts.

Overall, the survey showed significant and positive improvements between the target markets (those in which we conducted a conference), taken collectively, and the national sample. For example, respondents from the four target markets were more than twice as likely to have seen, read or heard something about IP protection for small businesses (31% in the target markets vs. 15% nationally). Respondents in the target markets were also more confident in their knowledge of IP terms (22% vs. 14%) and rights (59% vs. 39%) than those in the national sample.

Awareness that the best time to apply for IP protection is before the product is brought to market jumped from 19% before the campaign to 85%.

We found that people in the target markets were more likely to have applied for protection than the national sample. Respondents in the target markets were significantly more likely to say they have taken steps to ensure that they have patent, trademark, or copyright protection overseas (52% vs. 18%).

Almost one-fourth of small businesses in target markets said they had been in contact with USPTO, while only 10% nationally said so.

Attendees leave our conferences recognizing that IP protection is a business decision, and we have found that they take action as a direct result of our awareness campaign.

We have been in contact with one Ohio man in particular who illustrates this point well. He left our conference in Columbus and decided to take immediate action to apply for trademark protection abroad. He told us himself that our conference was critical in opening his eyes to the need to consider applying if you have any interest in exporting.

We found that intention to apply, and actual applications both increase as you look at our target markets, compared to the national sample. We found that 95% of respondents found the website useful and almost as many (85%) found it easy to use.

In survey after survey of our conferences, we see positive statements such as "the whole program shattered the myth of lazy, apathetic federal government workers," and "the best program I've undertaken since beginning developing patents 15 years ago."

In the last 4 conferences we have received a rating of "Excellent" or "Good" from more than 90% of our attendees. Businesses of all types – from mom and pop inventors to manufacturers to researchers to upstart technology companies – are all gaining a better understanding of IP rights, and the new realities of IP in the global market.

Educating Our Children

The USPTO also seeks to educate children on the value of ideas and creativity:

The USPTO Office of Public Affairs coordinates a school visitation and event – in conjunction with our IP in the Global Marketplace conferences – which is attended by either the Under Secretary or me. Some of the schools and students are already participating in special programs for children created and promoted by USPTO and the National Inventor's Hall of Fame, such as Camp Invention and Club Invention.

In January 2006, the USPTO launched a pilot intellectual property education initiative titled ©®ea™. The ©®ea™ program involves a curriculum and national IP competition aimed at increasing students' confidence in their abilities to explore, discover and create, while teaching them the importance of patents, trademarks, and copyrights in America's history and future.

The education curriculum is targeted for students in grades 2 through 12. Two weeks ago, nine contest finalists came to Washington for the ©®ea™ awards ceremony where they were recognized for their creations. This fall, the USPTO will expand on the pilot project with a launch of the full curriculum and competition. The full curriculum will be sent to at least 800 schools in all 50 states. The USPTO will be working with the private sector to increase awareness of the campaign and generate interest to an even wider audience.

USPTO and USCBP Cooperation

As part of STOP!, the USPTO began working with U.S. Customs and Border Protection (USCBP) to streamline the recordation process. The USCBP maintains a trademark recordation system for trademarks registered at the USPTO to prevent the importation of goods that infringe registered trademarks. The USPTO now mails notices to new trademark registrants directing them to the services that USCBP offers and has established a website link on the USPTO homepage which contains the USCBP form for recordation.

Posting of Intellectual Property Experts

In partnership with the Department of Commerce's U.S. and Foreign Commercial Service and the Department of State, the USPTO is working to post additional intellectual property experts in selected, high-profile countries where U.S. IP challenges are greatest. These countries include China, Brazil, India, Thailand, Russia and Egypt. The experts will advocate U.S. IP policy and interests, conduct training on IP rights matters, assist U.S. businesses and otherwise support the Embassy or Consulate action plan on IP rights. Arrangements are being made now for deployment this fall.

Promoting Strong IPR Enforcement In and Through International Agreements

Of note is the work the U.S. government has done in promoting free and fair markets for U.S. businesses abroad. This has been a prime focus of the federal government, especially since the beginning of the Bush Administration.

In support of the United States Trade Representative (USTR) and other U.S. Government agencies, the USPTO plays a key role in the negotiation and drafting of intellectual property provisions of free trade and other international agreements. These provisions generally require U.S. trading partners to provide stronger, more effective protection for intellectual property than the minimum that is required under the World Trade Organization's Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement.

We provide technical expertise in numerous negotiating rounds and the necessary implementation discussions for free trade agreements. Mostly recently the USPTO has provided assistance in negotiations with the Andean region, Morocco, Thailand, United Arab Emirates and Oman. Our efforts have included analysis of all intellectual property rights components, provisions and ramifications in international documents, including position papers or proposed policy statements of the World Health Organization, World Intellectual Property Organization, Asia-Pacific Economic Cooperation Forum, Association of Southeast Asian Nations, and Caribbean Community and Common Market.

Conclusion

Mr. Chairman, the USPTO, the Department of Commerce and the entire Administration recognize the increasing significance of effective intellectual property protection for American businesses and innovators. We have made combating piracy and counterfeiting a top priority and look forward to working with you and all interested parties to ensure that our efforts are successful.

Thank you.

STATEMENT OF
ARIF ALIKHAN
VICE CHAIRMAN
DEPARTMENT OF JUSTICE'S TASK FORCE ON INTELLECTUAL PROPERTY
AND
DEPUTY DIRECTOR
NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

PRESENTED ON

JULY 26, 2006

Introduction:

Chairman Voinovich, Ranking Member Akaka, and Members of the Subcommittee, thank you for the opportunity to discuss the Department of Justice's contribution to the Administration's Strategy Targeting Organized Piracy ("STOP!") Initiative and the Department of Justice's additional efforts to protect and enforce intellectual property rights.

One of the Department's most important contributions toward protecting intellectual property rights is the prosecution of organized criminal networks that steal the creative works of U.S. businesses, both large and small. This is also one of the Department's core missions in support of the STOP! Initiative. To fulfill this mission, the Department executes an aggressive and creative prosecution strategy that is grounded in practical experience from actual investigations and prosecutions of intellectual property crimes and is constantly evaluated for potential improvement.

Out of this practical experience and continual reassessment comes the Department's principal contribution to the STOP! Initiative: the Department of Justice's Intellectual Property Task Force ("IP Task Force"). In October 2004, the IP Task Force issued a wide-ranging and exhaustive report detailing numerous recommendations on a number of fronts, which the Department then spent the next year-and-a-half implementing. I am proud to announce that as of June 2006, when the Task Force issued its Progress Report, the Department implemented all of the recommendations contained in the 2004 Report, including:

- Increasing the number of intellectual property prosecutors in the field by creating five additional Computer Hacking and Intellectual Property ("CHIP") Units in:
    - the District of Columbia
    - Nashville, Tennessee
    - Orlando, Florida
    - Pittsburgh, Pennsylvania
    - Sacramento, California

- Deploying an experienced federal prosecutor as an Intellectual Property Law Enforcement Coordinator ("IPLEC") to southeast Asia and obtaining funding for an IPLEC in Eastern Europe to handle regional efforts to enforce and protect intellectual property;

- Dismantling international criminal organizations that commit intellectual property offenses;

- Expanding international training and technical assistance efforts;

- Increasing the number of extradition and mutual legal assistance treaties that include intellectual property offenses;

- Prosecuting intellectual property cases involving a threat to public health and safety;

- Carefully monitoring and vigorously protecting the right of victims to pursue intellectual property cases in civil courts;

- Organizing victims' conferences on intellectual property awareness; and

- Creating innovative intellectual property educational programs for America's youth.

The Department of Justice did not stop at simply implementing the recommendations of the Task Force. Instead, the Department of Justice went well beyond the recommendations by taking these additional steps:

- Creating seven additional CHIP Units in:
    - Austin, Texas
    - Baltimore, Maryland
    - Denver, Colorado
    - Detroit, Michigan
    - Newark, New Jersey
    - New Haven, Connecticut
    - Philadelphia, Pennsylvania

- Increasing the number of defendants prosecuted for intellectual property offenses by 98 percent;

- Transmitting to Congress the President's Intellectual Property Protection Act of 2005;
- Providing training and technical assistance to over 2,000 foreign prosecutors, investigators, and judges regarding intellectual property investigations and prosecutions;
- Working with the United States Trade Representative to improve language regarding intellectual property protections in Free Trade Agreements and other international treaties;
- Publishing a nearly 400-page comprehensive resource manual on prosecuting intellectual property crimes;
- Filing 13 amicus, or "friend of the court," briefs in the Supreme Court in cases involving intellectual property disputes; and
- Partnering with the United States Patent & Trademark Office to dedicate $900,000 over three years for piracy prevention efforts with non-profit educational institutions.

In addition to these important accomplishments, the Department also participates in the interagency collaboration and international outreach that is fundamental to the STOP! Initiative's mission. Department officials are working with other agencies to increase public awareness of the harms of intellectual property theft and to help U.S. businesses work with foreign law enforcement to protect intellectual property rights.

My remarks today are intended to describe in more detail the Department's prosecution strategy and some of its recent successes, as well as to provide an overview of the Department's contributions to other aspects of the STOP! Initiative.

1. Prosecuting Organized Crime Groups Engaged in Intellectual Property Theft

a. Training and Retaining Expert Intellectual Property Prosecutors

A large part of the Department's success stems from its efforts to marshal the right people to do the job the right way. In doing so, the Department has implemented a three-part approach.

First, the Department of Justice's anti-piracy and anti-counterfeiting enforcement is anchored by the Criminal Division's Computer Crime and Intellectual Property Section ("CCIPS"), a team of highly specialized prosecutors focused on computer crime and intellectual property crime. With the support of Congress, CCIPS has nearly doubled in size over the past six years and it now devotes 14 of its 35 attorneys to criminal intellectual property enforcement. These attorneys prosecute intellectual property cases, assist prosecutors in the field, and then use this experience to help develop and implement the Department's and Administration's overall IP

strategy and legislative priorities. As the complexity and frequency of intellectual property crimes have increased, so have CCIPS's accomplishments: in the past four years, CCIPS's own caseload has increased eight-fold, even as it has continued its training; its on-call, 24/7 legal guidance to agents and prosecutors in the field; and its technical assistance on legislative issues.

In addition to working on intellectual property matters domestically, CCIPS also places a high priority on fostering international cooperation. Building relationships between American law enforcement and our counterparts overseas is the most effective method of ensuring success in multi-national cases. These relationships are fostered through international casework, as well as through international training and outreach. In the last year, CCIPS attorneys have provided training and technical assistance on IP enforcement to more than 2,000 prosecutors, investigators, judges, and intellectual property experts from 94 countries, and it expects to continue these efforts in the years to come.

As with all federal crime, primary responsibility for prosecuting federal IP offenses falls to the 94 U.S. Attorneys' Offices across the United States and its territories. Thus, the second component of the Department's approach is the placement of Computer Hacking and Intellectual Property ("CHIP") Coordinators in every U.S. Attorney's Office in the country. CHIP Coordinators are Assistant U.S. Attorneys who are given specialized training in intellectual property and certain types of computer crime every year, and who serve as subject-matter experts within their districts. Each district has at least one CHIP Coordinator; many have two or more. Placing a CHIP Coordinator in each District ensures that a prosecutor with training and experience in intellectual property crimes is available wherever and whenever an offense occurs. In addition, a number of components within the Department of Justice, such as the Tax Division, have also designated their own CHIP Coordinators. Many of the current CHIP Coordinators have been part of the program since the creation of its predecessor program in 1995.

The third component of the Department's approach is the placement of CHIP Units, generally in districts where the incidence of intellectual property and hi-tech crimes is higher and more likely to affect the national economy significantly. Each CHIP Unit consists of a concentrated number of trained CHIP prosecutors in a specific U.S. Attorney's Office. Former Attorney General Ashcroft created 13 CHIP Units and, in conjunction with the first Intellectual Property Task Force Report, created another 5 CHIP Units and provided additional funding to two already-existing Units. Because providing districts with CHIP Units has dramatically increased the number of defendants charged with IP offenses in the past, the Department has expanded the program once again in June of this year by creating 7 more CHIP Units in Austin, Baltimore, Denver, Detroit, Newark, New Haven, and Philadelphia, for a total of 25 CHIP Units across the country.

CCIPS provides this network of CHIP Units and Coordinators regular training and support. Last December, CCIPS provided CHIP attorneys across the country a 4-1/2 day seminar on computer and intellectual property crime, and it is planning another such conference for next June. In June 2006, the Department of Justice also published a comprehensive resource manual on prosecuting intellectual property crimes. This nearly 400-page manual is an

invaluable training resource for federal prosecutors and agents nationwide. It presents comprehensive descriptions and analysis on all the federal criminal intellectual property laws, including copyright, trademark, theft of trade secrets, and counterfeit labeling. It improves on earlier versions by adding broader and more in-depth coverage of all areas; fully identifying recent changes to the case law, statutes, and sentencing guidelines; and adding new chapters on the Digital Millennium Copyright Act, patent law, and victim issues. As Congress has given prosecutors new tools to fight IP crime, the Department has guided the field on how to use them.

In addition, CHIP AUSAs have been encouraged to conduct in-office legal training to keep other AUSAs apprised of critical search-and-seizure law applicable to obtaining electronic evidence and conducting electronic surveillance. Finally, CHIP prosecutors, especially those in CHIP Units, have been directed to enhance regional training on intellectual property enforcement for federal and state agents, and to continue their outreach to the high-tech industry and rights-holder sector to foster the sharing of information critical to effective prosecutions.

Through this three-part approach, the Department has developed a highly-motivated and effective nationwide network of more than 230 skilled federal prosecutors who can handle the complex intellectual property investigations and prosecutions that are central to the Department's overall prosecution strategy.

b. Prosecuting Organized Crime Networks

In the IP Task Force's 2006 Progress Report, the Department conveyed the principles that should apply to intellectual property enforcement:

- The laws protecting intellectual property rights must be enforced;
- The federal government and intellectual property owners have a collective responsibility to take action against violations of federal intellectual property laws;
- The Department of Justice should take a leading role in the prosecution of the most serious violations of the laws protecting copyrights, marks, and trade secrets;
- The federal government should punish the misappropriation of innovative technologies rather than innovation itself; and,
- Intellectual property enforcement must include the coordinated and cooperative efforts of foreign governments.

The Department has given special priority to the online groups that are the original source or supply for pirated and counterfeit goods, as well as to novel prosecutions that are likely to have the greatest deterrent effect on intellectual property criminals and the general public. As I'll discuss below, focusing on these principles has increased the number and quality of intellectual property cases prosecuted dramatically.

Copyright Piracy

The Department has developed a number of successful undercover investigations and prosecutions targeting the Internet piracy groups that steal digital works, strip away or circumvent embedded copyright protections, and distribute those works worldwide on the Internet --- often before the movie, game, music CD, or software is released for commercial sale to the public.

Organized Crime

In April 2006, the Department of Justice obtained convictions against two Chinese nationals as part of a crackdown against a violent criminal group in New York known as the Yi Ging Organization. These defendants had been included, along with 39 others, in a September 2005 indictment charging racketeering offenses, including extortion, witness tampering, trafficking in counterfeit DVDs and CDs, money laundering, operating a large-scale illegal gambling business, and drug trafficking. The Yi Ging Organization allegedly generated millions of dollars in profits from their counterfeit DVD and CD business. Gang members traveled to China to obtain illegal copies of American and Chinese DVDs, which they then smuggled into the United States, copied, and sold along with pirated music CDs at stores the gang controlled in Manhattan and other parts of New York City.

Operation Remaster

On April 3, 2006, the Department of Justice obtained convictions against two California men who pleaded guilty to conspiracy to mass-produce pirated music and software CDs. The two men were among five arrested as part of an undercover investigation targeting large-scale suppliers of pirated music and software. Agents seized nearly half a million pirated CDs and 5,500 high-speed, high-quality stampers used to make bootleg products. The recording industry called Operation Remaster the largest music manufacturing piracy seizure in United States history.

Operation D-Elite

On May 25, 2005, FBI and U.S. Immigration and Customs Enforcement (ICE) agents executed search warrants at 10 locations across the United States as part of this ongoing investigation. Those targeted included the leading members of an international P2P network known as Elite Torrents, which used the new BitTorrent file-sharing technology to allow its 133,794 members to distribute copyrighted software, movies, and music. As part of this effort, federal agents seized the Elite Torrents main computer server and replaced the publicly accessible web page with a strongly worded law enforcement message saying:

> This site has been permanently shut down by the Federal Bureau of Investigation and U.S. Immigration and Customs Enforcement. Individuals involved in the operation and use of the Elite Torrents network are under investigation for criminal copyright infringement.

In the first week, this message was read by more than 500,000 visitors to the Elite Torrents network.

Building on the success of Operation Gridlock, a similar takedown in 2004 that led to the felony convictions of four P2P copyright thieves, Operation D-Elite targeted the administrators and "first providers" or suppliers of copyrighted content to the Elite Torrents network. Through BitTorrent, the newest generation of P2P technology, Elite Torrents members could download even the largest files – such as those associated with movies and software – far faster than was possible using more traditional P2P technology. The content available on the Elite Torrents network was virtually unlimited and often included illegal copies of copyrighted works before they were available in retail stores or movie theaters. For example, the final entry in the Star Wars series, "Episode III: Revenge of the Sith," was available on the network for downloading more than six hours before it was first shown in theaters, and was downloaded from the network over 10,000 in the next day.

On July 19, 2006, an active member of Elite Torrents pled guilty to a two-count information charging him with conspiracy to commit copyright infringement and violating the provisions of the Family Entertainment Copyright Act by uploading a pre-release copyrighted work onto a publicly available computer network. The defendant faces a maximum of 5 years in prison and a $250,000 fine.

Apocalypse Crew

On May 19, 2006, the Department of Justice obtained sentences of up to 15 months for three members of pre-release music piracy groups. Two belonged to the Internet piracy group Apocalypse Crew and the third belonged to the group Chromance. Both groups sought to acquire digital copies of songs and albums before their commercial release in the United States, which they would then prepare for distribution to secure computer servers throughout the world. The stolen songs were then distributed globally and, within hours, filtered down to peer-to-peer and other public file-sharing networks.

www.buyusa.com

On June 16, 2006, a Florida man pleaded guilty in Alexandria, Virginia, to one count of conspiracy and one count of criminal copyright infringement for selling pirated software through the mail, and agreed to forfeit numerous airplanes, a helicopter, boats and cars, which he had purchased with the profits from his illegal enterprise, including: a Cessna 152; a Cessna 172RG; a Model TS-11 ISKRA aircraft; a RotorWay International helicopter; a 1992 Lamborghini; a 2005 Hummer; a 2002 Chevrolet Corvette; two 2005 Chevrolet Corvettes; a 2005 Lincoln Navigator; an IGATE G500 LE Flight Simulator; a 1984 twenty-eight foot Marinette hardtop express boat; and an ambulance. Beginning in late 2002 and continuing until its shutdown by the FBI last October, the man and his associates operated the www.BUYSUSA.com website, which sold copies of copyrighted business software at prices substantially below the suggested retail price. The software purchased on the website were reproduced on CDs and distributed through the mail, along with a serial number that allowed the purchaser to activate and use the product. Over the course of its operation, www.BUYSUSA.com illegally sold more than $2.47 million of

copyrighted software, causing the copyright-owners losses of nearly $20 million. The defendant now faces a maximum sentence of ten years in prison and a $500,000 fine.

Operation Copycat

On April 6, 2006, the Department of Justice obtained charges against five individuals who were "first-providers" of stolen movies on the Internet. Operation Copycat, a San Jose-based FBI undercover investigation, was one of three investigations contributing to Operation Site Down. The Department of Justice has obtained charges against 36 individuals and convicted 28, including the first convictions under the newly-enacted Family Entertainment and Copyright Act for camcording movies and distributing pre-release works on the Internet.

Operation Western Pirates

On November 23, 2005, two men were convicted by a Puerto Rico jury for copyright infringement and trafficking in pirated motion pictures. The convictions resulted from Operation Western Pirates, an FBI movie piracy investigation in which approximately 50,000 pirated motion pictures in DVD and VHS format were seized from more than 25 locations in western Puerto Rico, including 23 video rental stores and 3 laboratories where employees manufactured the pirated movies. Agents also seized more than $125,000 in currency and approximately 450 pieces of computer and other electronic equipment.

Pre-Release Music

On March 8, 2006, the Internet posting of unreleased copyrighted music led to the federal indictment of two men who obtained and made portions of the musical album "Jacksonville City Nights" available to the public prior for copying prior to its legitimate commercial release, by posting the songs on an Internet website frequented by Ryan Adams fans. If convicted on all counts, the defendants each face a potential of 11 years' imprisonment.

Operations FastLink and Site Down

The Department of Justice led the largest ever international enforcement efforts against organized online piracy in Operations FastLink and Site Down. Each of these undercover operations by the FBI involved coordinated law enforcement action among 12 countries and targeted elite, criminal organizations, known as "warez release groups," which are the first to provide pirated works on the Internet. Law enforcement agents conducted more than 200 searches and arrested numerous people worldwide, seized hundreds of thousands of pirated works conservatively valued at more than $100 million, and eliminated more than 20 major online distribution centers. To date, these operations have yielded 60 criminal copyright convictions in the United States.

Counterfeit Goods

Terrorist Financing

In March 2006, a federal indictment was unsealed in Detroit charging 19 individuals

with operating a racketeering enterprise that supported the terrorist organization Hizballah. The defendants are alleged to have financed their criminal enterprise by trafficking in counterfeit Viagra, counterfeit Zig-Zag papers, and contraband cigarettes, and by producing counterfeit cigarette tax stamps.

Counterfeit Cholesterol Medication

In 2006, the Department of Justice obtained convictions against 8 people for selling counterfeit Lipitor tablets, a drug widely used to reduce cholesterol, and 13 people are awaiting trial in Kansas City, Missouri for their alleged participation in a $42 million conspiracy to sell counterfeit, illegally imported, and misbranded Lipitor and other drugs. More than $2.2 million has been forfeited.

U.S. v. Luong & Vu

On June 19, 2006, two Massachusetts residents pleaded guilty to money laundering and trafficking and conspiring to traffic in more than $1.4 million of counterfeit luxury handbags and wallets, as well as the materials needed to make these counterfeits. They admitted that they and two others used thirteen self-storage units as their counterfeiting operation's home base. Ten of the storage units were used for storage; two were configured to display items in the open, like showrooms; and one held a work-table and tools that could be used to turn the generic wallets and handbags into counterfeits. When raided by law enforcement officers last year, these storage units held approximately 12,231 counterfeit handbags; 7,651 counterfeit wallets; more than 17,000 generic handbags and wallets; and enough counterfeit labels and medallions to turn more than 50,000 generic handbags and wallets into counterfeits. These items copied luxury brand trademarks, but were of lower price and quality and were sold at a flea market and to smaller gatherings at approximately 230 "purse parties" throughout Massachusetts. All together, the counterfeit and generic handbags and wallets were worth approximately $1.4 million at average counterfeit prices.

Viagra and Cialis

In February 2006, the Department of Justice obtained a conviction in Houston against a United States citizen for importing from China counterfeit pharmaceuticals bearing the Viagra and Cialis trademarks. ICE Special Agents conducted an undercover operation in Beijing, China, involving the Internet site bestonlineviagra.com, which the defendant owned and used to distribute bulk quantities of counterfeit Viagra and Cialis manufactured in China. Chinese officials cooperated in the investigation, and 11 additional individuals in China were arrested by Chinese authorities for manufacturing and distributing counterfeit drugs. Chinese officials seized 600,000 counterfeit Viagra labels and packaging, 440,000 counterfeit Viagra and Cialis tablets, and 260 kilograms of raw materials used to manufacture counterfeit pharmaceuticals.

Hazardous Counterfeit Batteries and Electrical Extension Cords

On December 22, 2005, a federal grand jury in Miami, Florida, indicted five individuals on charges of conspiring to traffic in counterfeit goods, trafficking in counterfeit goods, and concealing and selling imported counterfeit goods, namely electrical cords, batteries, handbags,

wallets, suitcases, shoes, hats, sunglasses, watches, key holders, umbrellas, and different items of clothing and accessories bearing counterfeit trademarks of Underwriters Laboratories, Duracell, and other brands. The indictments also allege that after the defendants imported counterfeit goods from China, they then sold the counterfeits directly from the warehouses and at a flea market. When federal and local law enforcement officers arrested the defendants, they seized enough counterfeit items to fill several tractor trailers with not only counterfeit clothing and clothing accessories, but also untested and hazardous electrical cords and batteries. In addition, illegal toy Glock pistols were seized from two defendants. The maximum statutory sentences are five years in prison and a $2 million fine for each count of conspiracy to traffic in counterfeit goods; ten years in prison and a $2 million fine for each count of trafficking in counterfeit goods; and five years in prison and a $250,000 fine for each count of illegally concealing and selling counterfeit goods.

Protecting Business Trade Secrets

The Department's prosecution strategy also prioritizes cases involving trade secret theft, particularly those cases in which U.S. businesses are threatened by unscrupulous foreign competition.

Coca Cola Trade Secrets

On July 11, 2006, the Department of Justice obtained indictments against three people on a charge of conspiring to steal and to sell The Coca Cola Company's trade secrets. According to the pleadings filed in the case, these individuals tried to take Coca Cola's trade secrets and market them to PepsiCo, including a sample of a new Coca Cola product being developed by the company. In an undercover sting, an FBI undercover agent paid for and received certain Coca Cola trade secrets and offered to buy additional trade secrets for more than $1.5 million. The defendants were arrested the day the $1.5 million deal was to take place.

Metaldyne

On July 5, 2006, a federal grand jury indictment was unsealed in Detroit charging one former vice president and two former senior employees of Metaldyne Corporation with plotting to steal and stealing Metaldyne Corporation's secret process for manufacturing heavy automotive parts from powdered metal, and providing this information to a Chinese competitor. Metaldyne Corporation is one of only two automotive parts manufacturers in the world to have developed a process to successfully fabricate powdered metal into large, heavy-duty automotive parts, such as connecting rods. The indictment also alleges the theft of confidential information belonging to GKN Sinter Metals, the other company that manufactures powdered metal parts, which was given to one co-conspirator and another Chinese auto parts manufacturer. The defendants now face numerous counts of trade secret theft, wire fraud, computer fraud and abuse, interstate transportation of stolen property, and conspiracy.

Software Trade Secrets

On December 7, 2005, the CEO of a software company pleaded guilty to conspiracy to steal and download the trade secrets and to interstate transportation of stolen property, all from

the company's chief competitor, a publicly-traded company that had twenty offices in the United States and overseas. The CEO admitted that he conspired with other executives from his firm to illegally access the competitor's computer network and applications repeatedly over a 10-month period, to steal and download its trade secrets, and to transmit the trade secrets to others within his firm to secure a competitive advantage. Two other executives previously pleaded guilty to conspiring in the same scheme.

c. Statistical Accomplishments

The breadth of the Department of Justice's success in criminal prosecution is borne out by the numbers. As I mentioned earlier, CCIPS's own caseload has increased more than eight-fold in the last four years. Between fiscal years 2003 and 2005, the FBI's intellectual property enforcement program increased the number of open intellectual property investigations 22 percent --- from 304 to 372 investigations per year --- and the number of undercover investigations increased 87 percent. During the same period, the number of indictments filed from IP investigations increased 38 percent, from 92 to 127. During fiscal year 2005, the number of defendants charged with intellectual property offenses nearly doubled from 177 in fiscal year 2004 to 350 in fiscal year 2005.

As a result of increased investigations, indictments, and prosecutions, the Department is confident that intellectual property violators are learning that their crimes will not go undetected or unpunished.

2. The Department of Justice's Contributions to the STOP! Initiative

In addition to the contributions set forth above, the Department has also contributed to the STOP! Initiative in other important ways, including its legislative efforts.

Legislation

Of course, in order to accomplish the Department's mission of criminal intellectual property rights enforcement, the Department needs not only the right people and training, but also the right laws. In this regard, the Department has been extremely active.

Intellectual Property Protection Act

Consistent with Congress's recent IP legislation, such as the Family Entertainment and Copyright Act and the Stop Counterfeiting in Manufactured Goods Act, the Department of Justice has developed its own legislation, known as the Intellectual Property Protection Act of 2005. This proposed legislation is designed to advance three general objectives. First, it would toughen penalties for intellectual property crimes by:

- Strengthening the repeat-offender penalties against copyright criminals;
- Implementing broad forfeiture reforms that, among other things, ensure the ability to seize and obtain forfeiture of property derived from or used in the commission of intellectual property offenses; and

- Strengthening a victim's ability to recover losses for certain intellectual property crimes.

Second, the bill would expand the criminal laws to increase intellectual property protection by:

- Clarifying that registration of a copyright is not a prerequisite to criminal prosecution;

- Criminalizing the attempt to commit copyright infringement --- not one who merely *thinks* about committing an IP crime, but rather one who takes a substantial step towards committing the type of IP crime we already prosecute; and

- Clarifying that both the exportation and importation of infringing items is illegal, even if the export or import is not to a third party (such as when the shipment is from one party to itself).

Third, the bill would add needed investigative tools for criminal and civil enforcement by:

- Amending civil copyright law to parallel civil trademark law by permitting civil litigants to obtain *ex parte* seizure orders for records or evidence in civil cases.

The Intellectual Property Protection Act is an important legislative effort that builds upon Congress's past legislative successes. For example, it would expand the forfeiture remedies that Congress passed in the Stop Counterfeiting in Manufactured Goods Act from trademark offenses to all intellectual property offenses. Doing so would not only deprive criminal IP defendants of their ill-gotten gains, but it would also protect the rights of innocent owners of assets used by IP criminals. The Department of Justice's Task Force recommends that the Congress enact the Intellectual Property Protection Act at its earliest opportunity.

Family Entertainment and Copyright Act and Stop Counterfeiting in Manufactured Goods Act

In 2005, Congress enacted the Family Entertainment and Copyright Act of 2005 (S. 167), which, among other things, amended the federal criminal code to prohibit camcording motion pictures in a movie theater without authorization, and to prohibit willful copyright infringement through distribution of certain pre-release works by making them available on a computer network accessible to the public. In 2006, Congress enacted the Stop Counterfeiting in Manufactured Goods Act, which, among other things, prohibited trafficking in labels, documents, and packaging that bear counterfeit marks intended for goods or services and expanded the definition of "trafficking" to include distribution for a wider variety of commercial purposes than was covered previously. Both acts also reformed certain forfeiture remedies in beneficial ways.

The Administration and the Department of Justice supported passage of both bills and provided Congress technical assistance. Moreover, the Department's newly-published criminal

IP manual instructs AUSAs on how these new provisions work so the government can prosecute the criminals these bills were intended to ensnare.

Sentencing Guidelines

During 2005, in response to Congress's guidance in the Family Entertainment and Copyright Act, the Sentencing Commission amended the Sentencing Guidelines for IP crimes to account for the special harm that occurs when criminals unlawfully make copyrighted works available to the public before the copyright owners have their own chance to do so. The Department aided the Sentencing Commission in these efforts and at the same time assisted with clarifications regarding peer-to-peer file-sharing and prosecutors' ability to use financial records to estimate the quantity of infringement.

This year, in response to Congress's guidance in the Stop Counterfeiting in Manufactured Goods Act, the Sentencing Commission is considering whether the guidelines adequately account for the value of labels, documents, and packaging with counterfeit trademarks or for counterfeit copyrighted works. Again, the Department is eagerly lending whatever technical assistance it can.

We are confident that this work will result in fairer and more just sentences.

Education

Education is a key tool in Department of Justice's mission to promote intellectual property protection. Protecting intellectual property is a collective effort of all citizens and therefore the public must be aware of their individual responsibilities. Therefore, the Department constantly explores opportunities to educate the public about intellectual property laws and the role that the Department plays in enforcing those laws. In addition, the Department continues to form partnerships with victims of intellectual property theft in common educational initiatives. The Department has forged important, long-term partnerships with federal agencies, nonprofit educational institutions, and network television, with the goal of educating students and adults about the importance of protecting creativity through the development of educational programs and materials for classroom use.

In a joint venture, the USPTO and the Department of Justice are funding a three-year, $300,000 annual program with three national nonprofit educational organizations: Street Law, i-Safe, and the Constitutional Rights Foundation. The program will focus on training teachers (who in turn will train other teachers) about intellectual property, the laws protecting it, and the responsibilities of citizens to respect it. The program will select major cities across the country to develop teacher-training seminars where teachers will be instructed about intellectual property by education experts, a network of local professional volunteer lawyers, federal investigators; federal prosecutors, and curriculum developers. Teachers will take their experience and knowledge back into the classroom and, with the curriculum developed by the nonprofit educational organization i-Safe, students will be taught about intellectual property and the importance of respecting it. The program also contemplates developing a website with free downloadable materials, games, and links to other Department of Justice intellectual property educational and outreach activities.

In October 2005, Attorney General Gonzales joined Commerce Secretary Carlos Gutierrez, Senator John Cornyn, and Congressman Lamar Smith at the University of Texas Law School in Austin, Texas, to discuss intellectual property with legal scholars and high-tech industry leaders. The panelists discussed the importance of the criminal and civil enforcement of intellectual property for future economic growth and innovation. This event was filmed by Court TV and incorporated into its educational programming that aired as part of its "Choices and Consequences" series. Copies of the program will be disseminated in conjunction with the Department of Justice's educational package for classrooms.

In partnership with the United States Chamber of Commerce's Coalition Against Counterfeiting and Piracy ("CACP"), the Department of Justice has developed a working group of federal, State, and local prosecutors, investigators, and law enforcement officials to address the problems facing intellectual property enforcement and the importance of intellectual property victim-industry referrals. This working group participated in two conferences and invited intellectual property victim-industry members to attend. The purpose of the conferences was to explain the various aspects of intellectual property investigations for federal, state, and local enforcement and develop a better understanding among intellectual property victims of how to refer an intellectual property theft to law enforcement.

Finally, the Department of Justice has heavily promoted the use of the FBI's Anti-Piracy Seal to industry associations. Currently, the FBI has written agreements with the Motion Picture Association of America, the Recording Industry Association of America, the Software Information Industry Association, and the Entertainment Software Association, which use the Anti-Piracy Seal on copyrighted works to serve as a visible warning of the consequences of committing intellectual property crimes. The Department of Justice will continue to promote the use of the Anti-Piracy Seal with industry association representatives.

Written Testimony before the United States Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia

Title: STOP!: A Progress Report on Protecting and Enforcing Intellectual Property Rights Here and Abroad

Anthony C. LaPlaca
Vice President and General Counsel
Bendix Commercial Vehicle Systems LLC

Washington, DC

July 26, 2006

Statement Prepared by Anthony C. LaPlaca, Vice President & General Counsel of Bendix Commercial Vehicle Systems LLC

Introduction

Mr. Chairman and distinguished members of the Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, my name is Anthony LaPlaca and I am Vice President and General Counsel for Bendix Commercial Vehicle Systems LLC. I am testifying on behalf of Bendix and will be sharing our views and experiences on dealing with intellectual property theft, one of the fastest growing and most concerning issues we face not only as an individual company, but as a transportation industry in total.

First, I would like to thank the Subcommittee for the invitation. We are honored to represent business interests in this matter and hope that our testimony will lead to greater understanding of the issue and how government action can further address counterfeiting and other intellectual property violations that impact American companies.

Introduction to Bendix Commercial Vehicle Systems LLC

Bendix Commercial Vehicle Systems is a global leader of commercial vehicle safety and braking system technologies. The company develops and supplies leading-edge active safety technologies, air brake charging and control systems and components under the Bendix® brand name for medium- and heavy-duty trucks, tractors, trailers, buses and other commercial vehicles throughout North America and abroad. Bendix, and its joint venture, Bendix Spicer Foundation Brake LLC, are headquartered in Elyria, Ohio, outside of Cleveland, Ohio, and employ 2,200 people in North America.

Bendix markets and sells both original equipment and aftermarket replacement products to the global commercial vehicle industry. Its customers and end users include original equipment truck manufacturers, trucking fleets, distributors, dealers and owner operators.

Bendix and its predecessors have shaped the commercial vehicle industry by developing and delivering innovative air brake system design, system components and vehicle safety systems for the past 76 years. Throughout that time, Bendix has been responsible for a number of revolutionary changes in the commercial vehicle market, and its innovations often become industry standards. In 2005, Bendix experienced one of its most prolific years for technological advances as it was granted 16 patents and filed applications for 40 more. In summary, intellectual property protection and a desire to continually advance commercial vehicle safety and braking system technology are mission critical at Bendix and help drive the company's success.

Impact of Product Counterfeiting on Bendix

While the Motor and Equipment Manufacturers Association (MEMA) estimates counterfeiting to have a $12 billion impact on the transportation industry, Bendix is equally concerned about the issue's potential impact on vehicle brake performance, overall highway safety and the equity in the Bendix® brand.

The financial impact to Bendix from this influx of knock-off and non-genuine parts, and the infringement of intellectual property rights, is significant. For the valves product portfolio alone, an estimated $10 – 20 million in lost revenue is realized annually attributed to this issue. Valves are not isolated in this financial drain. Bendix product lines such as air dryers and compressors are also currently affected, with other component groups becoming prime targets for this activity.

The challenge is more than financial, however. At Bendix, we're concerned about the dire consequences that knock-off parts can create for users. Bendix components and systems relate directly to the safe and reliable function of the air brake system on commercial vehicles. Disruption to the uninterrupted flow of clean air to vehicle wheel ends – sometimes even from just one valve or poorly constructed component – can adversely impact the air brake system's performance. Bendix' brand reputation, meanwhile, is built on products that are highly engineered and validated through extensive testing to ensure quality and reliability to withstand the demanding operating conditions of commercial vehicle use. Customers rely on Bendix air brake systems to stop commercial vehicles that weigh as much as 80,000 pounds and transport valuable commercial goods (e.g., consumer electronics valued at hundreds of thousands of dollars), hazardous or dangerous cargo loads (e.g., tankers hauling gasoline or chemicals), or the most precious of cargo (e.g., busses carrying school children).

High-volume "wear components" such as brake valves and air dryers are among the most commonly copied parts that affect Bendix. While they may look similar on the outside, these knock-off parts lack the design, testing and quality control that goes into every Bendix component to ensure consistent performance and durability. Instead, the non-genuine parts are reverse engineered and mass produced using inferior materials, in many cases, and substandard manufacturing processes that produce inconsistent to poor quality and performance.

Potential risks of using knock-off replacement parts range from performance issues such as premature brake wear, poor brake timing, overheating of brakes, longer stopping distances and cracked brake drums to catastrophic brake failure.

One recent example of a component returned from the field demonstrates how a poorly built knock-off relay valve can have a potentially serious safety impact. Following his purchase of a replacement relay valve, an air brake technician experienced significant issues in getting the new valve to work after replacing the current component. After numerous adjustments and rechecking of the air lines as a part of this standard repair, he then removed the component to check it as well. While the valve appeared fully functional on the exterior, a closer inspection by the technician of the valve's disassembled interior revealed that its control port was not drilled all the way through. Without the diligent work of the technician in detecting the problem, use of this valve with the partially blocked port would have lead to inadequate airflow and a 30 – 70 percent decrease in braking capability for the commercial vehicle on which it was installed. This can pose a significant safety risk both to the driver of the vehicle as well as to the others who share the highway. Thankfully, catastrophic brake failure was avoided in this situation.

Bendix believes customer confusion is a major contributor to the proliferation of knock-off replacement parts. Through warranty claims and ongoing anecdotal evidence from the field, Bendix is aware of multiple instances of end users being confused or misled at the time of purchase. Daily, in scenarios taking place across North America, customers are under the impression that they were purchasing genuine Bendix replacement parts – influenced in a number of ways, including by the look of the part and by the use of Bendix part names and part numbers. Only after a problem surfaces do they eventually learn that the component they bought wasn't genuine Bendix.

Deception occurs easily. Unless they specifically request an original Bendix replacement part, purchasers run the risk of getting a "will fit" or non-genuine part in return. Many of these knockoffs look so similar to genuine parts that they are often returned to Bendix as part of a

warranty claim. Even Bendix personnel at times have trouble telling the difference until the parts are disassembled to examine the interior. (*See Exhibit A*)

Asia is the most common source of counterfeit and other knock-off parts that Bendix encounters. Typical differences in quality include cheaper, inferior materials, thinner walls and the lack of design improvements that would be evident in a genuine Bendix component throughout a product's life time. With the copied parts, quality control is lacking, there is no consistency in the manufacturing process, and there's no product warranty or field service support.

What Bendix has Done to Combat the Issue

Bendix has taken numerous actions, legal and otherwise, to protect its intellectual property rights and enforce those rights against entities that infringe on Bendix' trademarks, patents and other intellectual property. Counterfeit and knock-off replacement parts are entering the North American market at alarming rates, and their product depth and level of sophistication are expanding as well. This has caused great concern within Bendix.

Bendix has instituted a three-pronged Intellectual Property Protection and Enforcement Program, which focuses on protection, enforcement, and education and awareness. Examples of the intellectual property protection and enforcement actions Bendix has taken include:

-- Instituted patent and trademark infringement action in United States District Court against a company that sold and distributed knock-off parts that infringed Bendix patents and trademark rights.

-- Trade show enforcement actions at major industry events around the world, including at one of the industry's largest, the annual Automotive Aftermarket Products Expo (AAPEX) in Las Vegas; Bendix successfully worked with this show's sponsors to have infringing products, product literature and promotional materials removed from the offending party's trade show booth.

-- Sent numerous cease and desist letters to successfully stop patent and trademark infringing sales by companies in the United States and Canada.

-- We continually file for patent and trademark registrations in the United States Patent and Trademark Office (USPTO) and other foreign filing offices (49 patent applications and 26 trademark registration applications in the last 18 months).

-- Circulation of Bendix Trademark Usage Guidelines to our distributors and dealers.

While our efforts to enforce our patent and trademarks against infringement have been successful, the problem of customer confusion with the proliferation of knock-offs still persists. Look-alike products sold with the same names and part numbers continue to exacerbate the situation. With that in mind, Bendix has taken the following steps and actions to promote industry awareness:

-- Continuous training of Bendix sales force and customer service people.

-- A multi-faceted customer and industry awareness campaign aimed at fleets, our distributors and dealers, and end-users.

-- Ongoing meetings with senior level management at distributors to discuss the importance of IP compliance.

-- Bendix trade show booth displays and sales support materials including various print and audio/visual depictions of side-by-side comparisons of inferior quality of knock-off products compared to genuine Bendix products.

Overview of Government Intervention

To date, Bendix has conducted its program entirely with its own resources, spending over $1 million annually on intellectual property protection and enforcement activities, in addition to the significant expenditures of internal management time and attention. Although Bendix has not had occasion to utilize many of the government's resources, Bendix representatives did attend an anti-counterfeiting conference sponsored by the National Intellectual Property Rights Coordination Center in September 2004. There, representatives from many U.S. government agencies, including Immigrations and Customs Enforcement, gave presentations that provided specialized training and guidance to businesses. The seminar provided participants with clear direction as to what the government can and cannot do for companies, trained them to register trademarks with the USPTO for enforcement by U.S. Customs and positioned them to take advantage of government services. Bendix received value from the seminar by developing solid contacts within the respective government organizations and learning more about available government resources. In addition, after attending this seminar Bendix accelerated its process of registering common law trademarks as another step in its multi-faceted program. Bendix recommends expanding and promoting these seminars and making them more widely accessible, particularly to the distributors and dealer segment.

In many instances, existing intellectual property laws do not adequately address Bendix' current problem with customer confusion with knock-offs. The buying and selling of look-alike products is a problem propagated by the knock-off reseller's use of the company part names and part numbers as the genuine Bendix products. Often, the part numbers are not eligible for trademark protection. For this reason, Bendix would benefit from extending intellectual property protection to industrial designs of its safety critical air brake products and components. In fact, the entire automotive industry, and perhaps other key US sectors, would benefit from this type of legal protection. (*See Exhibit B*)

Conclusion

Instances of knock-off parts in the commercial vehicle industry are happening all too often. The sophistication of counterfeit operations has improved to the point of making it difficult for consumers to discern the real from the fake. But in terms of performance, quality and actual costs, there are obvious differences. And for Bendix, in particular, dealing with components and systems that directly influence the braking ability of a heavy truck – with its impact on vehicle operation, driver safety and the safety of others who share the highway – underscores the need to control this issue.

The transportation industry, through the MEMA Brand Protection Council, of which Bendix is a charter member, has taken steps to raise awareness through education programs provided by governmental agencies and the private sector, as well as jointly policing the counterfeiting issue. Government agencies should proactively seek out and join with industry groups such as this to combine resources and collectively battle this serious problem. The ability to share in best practices and programs across industries will help all of us more effectively and efficiently address the situation.

Bendix would like to thank the members of the Subcommittee for the invitation to testify and for focusing much needed attention on this issue. Bendix welcomes the opportunity to answer questions or provide any additional information requested by the Subcommittee.

Respectfully submitted,

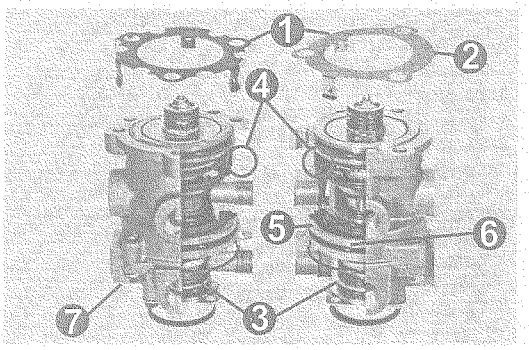
Anthony C. LaPlaca
Bendix Commercial Vehicle Systems LLC

Exhibit A
Valves Side by Side Comparison

Think these two valves look alike? Think again.

"They look the same, so they must work the same." That's just what the manufacturers of knock-off and look-alike valves are counting on when you make your next purchase.

Even the smallest detail in valve manufacturing can, and often does, jeopardize the long-term reliability of your braking system . . . not the place where you'd consider cutting corners. While they may appear identical on the surface, the construction and performance of these valves are drastically different. Take a closer look.



Non-Genuine knock-off

1. A rubber coated retention clip on the genuine Bendix valve, compared to the uncoated clip on the knock-off, provides a flexible seal that protects against water ingestion.
2. External venting in the primary piston area of the knock-off valve can lead to water ingestion and freeze-up, resulting in brake imbalance and longer stopping distances.
3. Untreated and uncoated surfaces mean premature corrosion along with sharply decreased durability. Bendix provides treated and anodized surfaces on the valve piston, primary and secondary IE valve and primary and secondary IE guides for long-lasting, reliable performance no matter the elements.
4. The knock-off valve's wall is 56% thinner, making it more susceptible to cracking or even a complete valve rupture.
5. Quality engineering that incorporates radiused casting transitions rather than sharp corners in the castings as seen on the knock-off valve, provide greater overall strength and internal spring guiding and more consistent performance year over year.
6. Poor casting quality on the machined surfaces on this knock-off valve's secondary piston can cause internal component misalignment, accelerated wear and leakage.
7. Genuine Bendix valves use body bolts with lock washers and the proper head size to eliminate the chance of backing out or breakage frequently found on knock-off components.

The only thing consistent about non-genuine components is that they suffer from inconsistent quality materials, manufacturing and performance. Just one faulty valve can mean overheated brakes that result in brake fade, cracked drums, roasted seals . . . even brake failure or a vehicle fire. Protect your vehicle by using only genuine Bendix® parts.

Look for the familiar Bendix name and logo on the box. For the name of the authorized Bendix outlet nearest you, talk to your Bendix Account Manager, call 1-800-AIR-BRAKE (1-800-247-2725) or visit www.bendix.com today.

Bendix®

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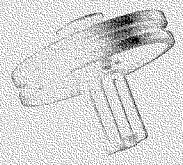
Genuine vs. Knock-Off Valve Components

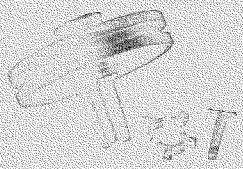
TAKE A CLOSER LOOK.

THE GENUINE BENDIX E-6 VALVE COMPONENT
At 2,000,000 durability cycles, equal to roughly one million highway miles:
• good valve alignment still maintained
• uniform wear pattern
• even contact of sealing area for seal durability

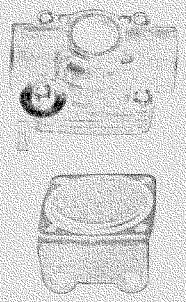
THE KNOCKOFF E-6 VALVE COMPONENT
At only 450,000 durability cycles:
• excessive uneven surface wear
• severe scoring on the sealing surface
Result: High air leakage. Possible vehicle sidelined.



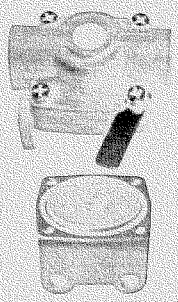
THE GENUINE BENDIX E-6 RELAY PISTON
At 2,000,000 durability cycles:
• still meets all original OE specifications



THE KNOCKOFF E-6 RELAY PISTON
At only 450,000 durability cycles:
• premature broken and cracked parts
• heavy surface abrasion on the piston bore
Result: Unpredictable primary pressure delivery. Significant leakage and system imbalance. Poor vehicle brake performance.



THE GENUINE BENDIX QUICK RELEASE VALVE
At 2,000,000 durability cycles:
• near-new condition
• valve functioning per specification



THE KNOCKOFF QUICK RELEASE VALVE
At only 450,000 durability cycles:
• torn diaphragm
• leaked supply air to atmosphere
Result: High air leakage. Possible vehicle sidelined. Poor vehicle brake performance.

Transport Topics (2-27-06) Reprint

Transport Topics

The Weekly Newspaper of Trucking and Freight Transportation

Week of February 27, 2006

Imitation Parts Pose Safety Risk, Executives Say

DRIVETRAINS, BRAKES AND SUSPENSIONS

By Andrea Fischer
Staff Reporter

Sales of counterfeit and knock-off parts for use on heavy-duty trucks are posing safety risks to fleets, with the largest problem being brake components, manufacturing executives told TRANSPORT TOPICS.

Aftermarket executives said parts that do not meet braking system specifications compromise truck safety because they can cause increased wear to other components, lead to premature part failure and increase stopping distance.

"Any one variance in any one component in the whole system can affect the entire braking system and can lead to serious safety problems," said Dave Schultz, marketing manager for the valve division of Bendix Commercial Vehicle Systems, an Elyria, Ohio, brake manufacturer.

"According to internal testing, [the use of] a look-alike part [in braking systems] can increase stopping distance 15% to 30%," he said.

Bendix said that when it compared one of its brake valves with a knock-off valve, the knock-off's wall was 56% thinner, making it more susceptible to cracking or even a complete valve rupture.

Schultz said look-alike parts such as valves, brake drums and shoes, O-rings, pistons, seals and bolts can contribute to a range of problems.

"There are different standards for each component, so if you use a genuine part, you can be sure it is within those standards. If you are using a non-genuine part, who knows?" Schultz said.

Steve Slesinski, director of product planning for Dana Corp.'s Commercial Vehicle Systems Division, which makes axles, driveshafts, suspensions and other components for trucks, agreed.

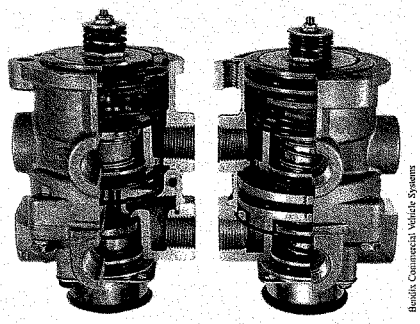
"The biggest cost to the industry [from counterfeit parts] is safety," and the problem is not likely to ease anytime soon, Slesinski said.

"The trucking industry is at an all-time-high build rate," he said. "That means more demand for parts and components and a greater likelihood that this is a problem we will all have to face."

Parts for medium- and heavy-duty trucks accounted for $66.5 billion, or one-fourth, of domestic aftermarket sales in 2004, according to figures released by the Automotive Aftermarket Industry Association.

Sales of counterfeit parts cost aftermarket parts manufacturers an estimated $12 billion a year, said the Motor and Equipment Manufacturers Association. But MEMA spokesman Neil Zipser said the figure is likely much higher than that because the Internet and sophisticated manufacturing techniques and shipping practices have made it easier for companies to make, import and sell counterfeit and look-alike products.

The proliferation of information on company Web sites also has helped counterfeit and knock-off parts manufacturers gain access to intellectual property, including the design of the legitimate parts they copy, Zipser said. "Information like photos and design [of products], which wasn't there 10-15 years ago, can be downloaded now."



Bendix Commercial Vehicle Systems

The knock-off brake valve, right, looks similar to the genuine Bendix brake valve, left, but its valve wall is 56% thinner, said Bendix.

According to Tim Kraus, vice president of the Heavy Duty Manufacturers Association, brake parts rank as one of the top five most heavily counterfeited truck parts, with brake shoes the product most likely to be copied.

"Most of the counterfeiting takes place on safety-critical parts, and that's definitely a huge safety issue for heavy-duty trucks," said Kraus. "The biggest problem we see is with brake shoes and brake drums," he said, adding that truck alternators and air brakes are also frequently copied.

Slesinski said the most common counterfeit product that Dana encounters is the axle gearing. "It's a critical part of the axle, and an inferior knock-off would cause a loss of reliability and damage to other truck components," he said.

Zipser said the counterfeit truck parts problem has at least doubled since 1997, primarily because China has become "such a player in this market. For them to build their economy, their citizens need jobs, and unfortunately, a large portion of those jobs are in counterfeit operations," alleged Zipser. He declined to speculate on how many truck-parts counterfeiting operations currently supply products to the United States.

He also said that without government help (see story, p. 9), there is no easy way to stop counterfeit parts manufacturing or stop counterfeit parts from coming into the United States, no matter how vigilant fleets, distributors or aftermarket parts manufacturers are.

"Counterfeits look very real these days, and the people installing and selling them would have no idea what they really have on their hands

unless they took the part apart or were experts on that specific product," said Zipser.

Schultz agreed: "With the increase of products being manufactured at a lower cost in other countries in the past five to seven years, it's easier to be confused about whether a part is genuine or not."

As a result, the presence of a counterfeit part often is not detected until after a manufacturer investigates a warranty claim and discovers the faulty component was not theirs, Zipser said.

Slesinski agreed with Zipser and added that it is a growing problem for original equipment manufacturers as well as for aftermarket parts makers.

"We are impacted when the original equipment has a warranty and the warranty repair is unknowingly made [by a third party] with inferior parts," he said.

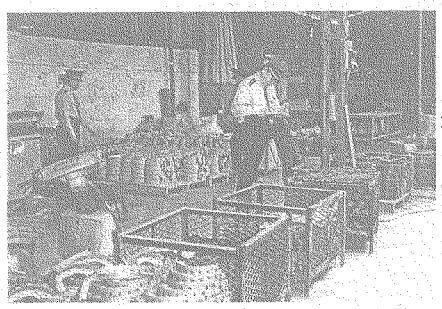
Jim Sharkey, director of sales for the commercial vehicle aftermarket of ArvinMeritor, a Troy, Mich., aftermarket and original equipment parts manufacturer, said the company is very quick to respond when it hears reports of possible counterfeit parts from its customers.

If a part shows up at a distributor and the part "clearly is not ArvinMeritor's or the cost is lower [than normal], that sends up a red flag" to investigate, Sharkey said.

Fleets "dealing with legitimate sales representatives from companies they know are hopefully not experiencing a big problem," Zipser said. But he cautioned that because smaller companies trying to compete are often lured by the promise of lower prices for the replacement parts they need, "legitimate dealers, distributors and fleets are duped into thinking they are dealing with a genuine parts seller."

"As a distributor, you just have to know who you do business with," agreed Dick Bell, president of Bell Frame and Brake Service in Dothan, Ala., adding that his company has received offers to "buy branded products at a ridiculously low price. The last thing you want to do is give illegal parts to a customer."

MEMA's Zipser and Bendix's Schultz agreed the Internet has spurred counterfeit and knock-off growth.



Motor and Equipment Manufacturers Association

Chinese authorities take inventory of goods seized after a raid on a manufacturer of counterfeit brake parts earlier this year.

"Web sites are breeding grounds for counterfeit parts makers," Zipser said, adding that in many cases the customers of legitimate manufacturers expect them to post detailed information about the parts they sell — such as technical diagrams and other senaitive material — on their Web sites to aid distributors who are looking for specific parts.

"The distributors just want to know if a part is available and if it meets the needs of their customer," Zipser said. "But that demand for efficiency makes it easy for other businesses to steal or copy information. The Web has helped out counterfeiters by getting them the information they need faster and easier."

'For Bendix's Schultz, the buying and selling of non-genuine parts is a much bigger problem than counterfeiting because many times a common part or part number of a component, such as a brake pad, cannot be trademarked.

"Look-alikes are a much more significant threat because people who compete with our distributors want to sell the same product to the same customer," he said.

Look-alike parts are made and sold in a number of ways that may not be considered outright counterfeiting but nevertheless pose the same problems, Zipser said.

A contracted overseas manufacturer may copy a part using inferior materials, or may simply produce more of the product than they are licensed to make, and then sell the surplus to whatever market is available, he said.

The most common practice is to "reverse engineer" a product to determine how it was made and then find a way to make it with "inferior components," Zipser said.

Schultz told TT the proliferation of counterfeit parts has manufacturers using a variety of techniques to keep their products distinct in the marketplace.

Legitimate manufacturers can distinguish themselves from counterfeit or knock-off parts, Schultz said, if they "stay ahead of the counterfeiters" by changing the company logo or employing technology like RFID tags to track products "back through the supply chain."

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Exhibit B

Proposal for Industrial Design Protection

Bendix Would Benefit from Legislation that Protects Safety-Related Products

Bendix Commercial Vehicle Systems LLC recommends that critical air brake system components would benefit from additional legal protection for industrial designs. Protecting the original designs of useful articles that are used in the braking systems of heavy trucks would reduce the potential for consumer confusion and benefit highway safety.

Similar measures have been enacted for both architectural works as embodied in actual buildings under the Architectural Works Copyright Protection Act and for boat hulls and decks under the Vessel Hull Design Protection Act, which is part of the Digital Millennium Copyright Act.

Both of these copyright enhancements address the inadequacies of existing intellectual property laws protecting the designs of useful articles. While some protection for industrial design is available under existing patent, trademark and copyright laws, certain industrial designs are not entitled to intellectual property protection if any design element is a result of the utilitarian function of the article.

There are numerous instances where look-alike valves and air brake system components are sold to an aftermarket consumer who believes the look-alike is genuine product. Additional protection could be made available for industrial designs to avoid confusion in the purchase of these important safety-related components. Given the significant safety-related nature of our products and the importance of assuring that the highest quality possible be provided to the heavy vehicle industry, we believe that additional protection, at least similar to that afforded to the design of boat hulls and buildings, would be beneficial to assure customers receive the parts they expect when they make a purchase.

July 26, 2006

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United States Government Accountability Office

GAO

Testimony

Before the Committee on Homeland Security and Government Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, United States Senate

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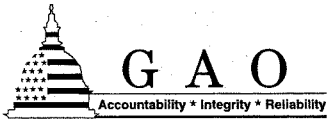
INTELLECTUAL PROPERTY

Initial Observations on the STOP Initiative and U.S. Border Efforts to Reduce Piracy

Statement of Loren Yager, Director
International Affairs and Trade



GAO-06-1004T

July 26, 2006

INTELLECTUAL PROPERTY

Initial Observations on the STOP Initiative and U.S. Border Efforts to Reduce Piracy

GAO Accountability•Integrity•Reliability

Highlights

Highlights of GAO-06-1004T, testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Government Affairs, United States Senate

Why GAO Did This Study

U.S. goods are subject to substantial counterfeiting and piracy, creating health and safety hazards for consumers, damaging victimized companies, and threatening the U.S. economy. In 2004, the Bush administration launched the Strategy for Targeting Organized Piracy (STOP) – a multi-agency effort to better protect intellectual property (IP) by combating piracy and counterfeiting. This testimony, based on a prior GAO report as well as from observations from on-going work, describes (1) the range and effectiveness of multi-agency efforts on IP protection preceding STOP, (2) initial observations on the organization and efforts of STOP, and (3) initial observations on the efforts of U.S. agencies to prevent counterfeit and pirated goods from entering the United States, which relate to one of STOP's goals.

What GAO Recommends

GAO is not recommending executive action.

www.gao.gov/cgi-bin/getrpt?GAO-06-1004T.

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.

What GAO Found

STOP is the most recent in a number of efforts to coordinate interagency activity targeted at intellectual property (IP) protection. Some of these efforts have been effective and others less so. For example, the Special 301 process – the U.S. Trade Representative's process for identifying foreign countries that lack adequate IP protection – has been seen as effective because it compiles input from multiple agencies and serves to identify IP issues of concern in particular countries. Other interagency efforts, such as the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), are viewed as being less effective because little has been produced beyond summarizing agencies' actions in the IP arena.

While STOP has energized IP protection and enforcement efforts domestically and abroad, our initial work indicates that its long-term role is uncertain. STOP has been successful in fostering coordination, such as reaching out to foreign governments and private sector groups. Private sector views on STOP were generally positive; however, some stated that it emphasizes IP protection and enforcement efforts that would have occurred regardless of STOP's existence. STOP's lack of permanent status and accountability mechanisms pose challenges for its long-term impact and Congressional oversight.

STOP faces challenges in meeting some of its objectives, such as increasing efforts to seize counterfeit goods at the border – an effort for which the Department of Homeland Security's Customs and Border Protection (CBP) and Immigration and Customs Enforcement are responsible. CBP has certain steps underway, but our initial work indicates that resources for IP enforcement at certain ports have declined as attention has shifted to national security concerns. In addition, prior GAO work found internal control weaknesses in an import mechanism through which a significant portion of imports flow, and which has been used to smuggle counterfeit goods.

Examples of authentic and counterfeit products.

Source: GAO.

Authentic (left) versus counterfeit batteries, counterfeit Nike shoes, and counterfeit toothpaste (left) versus authentic toothpaste.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear again before the subcommittee to discuss our work on U.S. efforts to protect U.S. intellectual property (IP) rights. We appreciate the opportunity to contribute to the record that this Committee has established on IP protection. The United States dominates the creation and export of intellectual property—creations of the mind—and provides broad protection for intellectual property through means such as copyrights, patents, and trademarks. However, because protection of intellectual property in many parts of the world is inadequate, U.S. goods are subject to substantial counterfeiting and piracy. Such goods are widely distributed in global markets, including here in the United States. As you stated in this Subcommittee's June 2005 hearing on IP protection, the production and distribution of counterfeit and pirated goods create health and safety hazards for consumers, damage companies that are victims of this theft, and pose a threat to the U.S. economy.

Since my last testimony before this committee, the United States has continued to develop and implement its Strategy for Targeting Organized Piracy, or STOP, which outlines priority IP enforcement efforts of 6 agencies. To understand more fully how this strategy might contribute to better protection of IP, I will address three topics: (1) the range and effectiveness of multi-agency efforts on IP protection that preceded STOP; (2) initial observations on the organization and efforts of STOP; and (3) initial observations on the efforts of U.S. agencies to prevent counterfeit and pirated goods from entering the United States, which relate to one of STOP's goals.

To address these issues, we have drawn on a number of completed and ongoing GAO studies, including a report on this subject that we published in 2004 and updated in testimony before this committee last year.[1] In addition, we are presenting some initial and preliminary observations based on three ongoing reviews related to IP protection. These include (1) a study that we have initiated for this committee focusing on IP enforcement at the U.S. border, (2) a study for the House Government Reform Committee on interagency efforts to protect IP rights, and (3) additional work on a Customs and Border Protection (CBP) program

[1]GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, GAO-04-912 (Washington, D.C.: Sept. 8, 2004). GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Significant Enforcement Challenges Remain*, GAO-05-788T (June 14, 2005).

called the "in-bond system" that allows goods to enter U.S. commerce at a port other than the port of arrival. In conducting the GAO studies, we have performed work at multiple U.S. agency headquarters in Washington, at U.S. ports of entry, and in other nations. In addition, we have met with representatives from multiple industry associations to obtain their views on STOP. We obtained technical comments on this testimony from CBP officials and incorporated their changes where appropriate. All work was conducted in accordance with generally accepted government auditing standards.

Summary:

Prior to STOP's creation in 2004, the U.S. government established a number of mechanisms and structures to coordinate interagency IP protection activity, and they achieved varying levels of success. For example, as we reported in 2004, the Special 301 process[2] that is annually led by the Office of the U.S. Trade Representative (USTR) was generally cited as being quite effective in collecting input from multiple agencies, identifying IP issues of concern in particular countries, and achieving policy changes in many of those nations. On the other hand, U.S. government efforts to improve IP enforcement under the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), a multi-agency coordinating body, were generally believed to be ineffective, having resulted in little more than the publication of an annual report compiling individual agency submissions. STOP, a presidential initiative, was, in part, a response to the need for further attention to IP enforcement. The initiative is led by the White House under the auspices of the National Security Council and involves collaboration on IP protection and enforcement efforts among six federal agencies.

STOP has energized U.S. efforts to protect and enforce IP and has initiated some new efforts, but its long-term role is uncertain. One area where STOP has increased efforts is outreach to foreign governments. In addition, STOP has focused attention on helping small- and medium-sized enterprises to better protect their IP rights. Private sector views on STOP were generally positive, although some said that STOP was a compilation of new and on-going U.S. agency activities that would have occurred

[2]The Special 301 process identifies foreign countries that deny adequate and effective protection of IP rights or fair and equitable market access for U.S. persons who rely on IP protection.

anyway. As a Presidential initiative, STOP was not created by statute, has no formal structure, funding or staff, and appears to have no permanence beyond the current administration. STOP's lack of permanence and of accountability mechanisms poses challenges for its long-term impact and Congressional oversight.

Certain weaknesses in agencies' IP enforcement efforts at the border illustrate the challenges STOP faces in carrying out some of its objectives. One of STOP's goals is to increase efforts to seize counterfeit goods at the border, an undertaking that rests primarily with CBP and the Immigration and Customs Enforcement (ICE) agency within the Department of Homeland Security. However, STOP doesn't direct these agencies' efforts or resource allocations and national security remains a top priority. Nonetheless, CBP continues to have a trade enforcement role and is taking steps to improve its IP enforcement. Our initial work for this Committee indicates that significant challenges remain. The overall task of assessing whether particular imports are authentic has become more difficult as trade volume and counterfeit quality increase. While the number of IP seizures has grown, there is generally no similar trend in the estimated value of goods seized. New tools that CBP has developed to better target suspect shipments and deal with problem importers are largely works in progress whose future impact is uncertain. CBP and ICE have undergone dramatic restructuring to manage their new priorities, and our initial evidence indicates that resources dedicated to IP enforcement are shrinking. Finally, a range of internal control weaknesses continue to plague a critical CBP system, called the in-bond system, that allows goods to enter U.S. commerce at a port other than the port of arrival. These weaknesses have been exploited by importers to smuggle counterfeit goods. In our recent work, CBP staff continue to observe that the limited information required from importers on in-bond shipments makes it difficult for CBP to assure that these shipments have reached their proper destinations.

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. The State Department has cited estimates that counterfeit goods represent about 7 percent of annual global trade,

but we would note that it is difficult to reliably measure what is fundamentally a criminal activity.[3] Industry groups suggest, however, that counterfeiting and piracy are on the rise and that a broader range of products, from auto parts to razor blades, and 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 entities, the Federal Bureau of Investigation (FBI), and the U.S. Patent and Trademark Office (USPTO) undertake the primary U.S. government activities to protect and enforce U.S. IP rights overseas. These 8 agencies are: Departments of Commerce, State, Justice, and Homeland Security; USTR; the Copyright Office; the U.S. Agency for International Development; and the U.S. International Trade Commission. They undertake a wide range of activities that fall under 3 categories: policy initiatives, training and technical assistance, and law enforcement. U.S. policy initiatives to increase IP protection around the world are primarily led by USTR, in coordination with the Departments of State, Commerce, USPTO, and the Copyright Office, among other agencies. These policy initiatives are wide ranging and include reviewing IP protection abroad, using trade preference programs for developing countries,[4] and negotiating agreements that address intellectual property. Key activities to develop and promote enhanced IP protection in foreign countries through training or technical assistance are undertaken by the Departments of Commerce, Homeland Security, Justice, and State; the FBI; USPTO; the Copyright Office; and the U.S. Agency for International Development. A smaller number of agencies are involved in enforcing U.S. IP laws. Working in an environment where counterterrorism is the central priority, the FBI and the Departments of Justice and Homeland Security take actions that include engaging in multi-country investigations involving intellectual property violations and seizing goods that violate IP rights at U.S. ports of entry. Finally, the U.S. International Trade Commission has an adjudicative role in enforcement activities involving patents and trademarks.

[3]The Organisation 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.

[4]U.S. IP rights policy efforts include use of the Generalized System of Preferences (GSP) originally authorized under the Trade Act of 1974. When GSP was re-authorized under the Trade and Tariff Act of 1984, new "country practice" eligibility criteria were added, including a requirement that beneficiary countries provide adequate IP rights protection.

STOP Is One of Several Interagency IP Coordination Mechanisms

STOP is the most recent of several interagency IP coordination mechanisms that address IP policy initiatives, training and technical assistance, and law enforcement. Some of these have been effective, particularly the Special 301 process that identifies inadequate IP protection in other countries and the Intellectual Property Rights (IPR) Training Coordination Group. However, U.S. law enforcement coordination efforts through NIPLECC have had difficulties. STOP was, in part, a response to the need for further attention to IP enforcement.

Coordination Efforts Involving Policy Initiatives and Technical Assistance Have Been Generally Effective

Results of our September 2004 report found that coordination efforts through the Special 301 process and the IPR Training Coordination Group have generally been considered to be effective by U.S. government and industry officials.[5] "Special 301," which refers to certain provisions of the Trade Act of 1974, as amended,[6] requires USTR to annually identify foreign countries that deny adequate and effective protection of IP rights or fair and equitable market access for U.S. persons who rely on IP protection. USTR identifies these countries with substantial assistance from industry and U.S. agencies and then publishes the results of its reviews in an annual report. Once a list of such countries has been determined, the USTR, in coordination with other agencies, decides which, if any, of these countries should be designated as Priority Foreign Countries, which may result in an investigation and subsequent actions. As our report notes, according to government and industry officials, the Special 301 process has operated effectively in reviewing IP rights issues overseas. These agency officials told us that the process is one of the best tools for interagency coordination in the government, and coordination during the review is frequent and effective.

The IPR Training Coordination Group is a voluntary, working-level group comprised of representatives of U.S. agencies and industry associations involved in training and technical assistance efforts overseas for foreign officials. Meetings are held approximately every 4 to 6 weeks and are well attended by government and private sector representatives. The State Department leads the group, and meetings have included discussions on training "best practices" responding to country requests for assistance, and improving IPR awareness among embassy staff. According to several agency and private sector participants, the group is a useful mechanism

[5]GAO-04-912.

[6]19 U.S.C. 2242.

that keeps participants informed of the IP activities of other agencies or associations and provides a forum for coordination.

IP Law Enforcement Coordination Efforts Have Faced Challenges

Coordination efforts involving IP law enforcement through NIPLECC have not been as successful. NIPLECC was created by the Congress in 1999 to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities.[7] NIPLECC members are from 5 agencies and consist of: (1) Commerce's Undersecretary for Intellectual Property and Director of the United States Patent and Trademark Office; (2) Commerce's Undersecretary of International Trade; (3) the Department of Justice's Assistant Attorney General, Criminal Division; (4) the Department of State's Undersecretary for Economic and Agricultural Affairs; (5) the Deputy United States Trade Representative; and (6) the Department of Homeland Security's Commissioner of U.S. Customs and Border Protection. Representatives from the Department of Justice and USPTO are co-chairs of NIPLECC. [8]

In our September 2004 report, we stated that NIPLECC had struggled to define its purpose and had little discernible impact, according to interviews with industry officials and officials from its member agencies, and as evidenced by NIPLECC's own annual reports.[9] Indeed, officials from more than half of the member agencies offered criticisms of NIPLECC, remarking that it was unfocused, ineffective, and "unwieldy." We also noted that if the Congress wishes to maintain NIPLECC and take action to increase its effectiveness, the Congress should to consider reviewing the council's authority, operating structure, membership, and mission.

In the fiscal year 2005 Consolidated Appropriations Act, the Congress provided $2 million for NIPLECC expenses, to remain available through fiscal year 2006.[10] The act also created the position of the Coordinator for International Intellectual Property Enforcement, appointed by the

[7]NIPLECC was mandated under Section 653 of the Treasury and General Government Appropriations Act, 2000 (P.L. 106-58), 15 U.S.C. 1128.

[8]NIPLECC is also required to consult with the Register of Copyrights on law enforcement matters related to copyright and related rights and matters.

[9]GAO-04-912.

[10]The Consolidated Appropriations Act, 2005 (P.L. 108-447), Division B Title II.

President, to head NIPLECC.[11] The NIPLECC co-chairs are to report to the Coordinator. In July 2005, Commerce Secretary Gutierrez announced the Presidential appointment filling the IP Coordinator position. Since then, NIPLECC has added an assistant, a policy analyst, part time legislative and press assistants, and detailees from USPTO and CBP. Since the Consolidation Appropriations Act, NIPLECC has held two formal meetings but has not issued an annual report since 2004.

STOP Was Created to Strengthen IP Enforcement

In October 2004 the President launched STOP, an initiative to target cross-border trade in tangible goods and strengthen U.S. government and industry IP enforcement actions. The initiative is led by the White House under the auspices of the National Security Council and involves collaboration among six federal agencies: the Departments of Commerce, Homeland Security, Justice, and State; USTR; and the Food and Drug Administration.[12] STOP has five general objectives: (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, and (5) aggressively engage our trading partners to join U.S. efforts.

The IP Coordinator is also serving as the coordinator for STOP. Both agency officials and industry representatives with whom we spoke consistently praised the IP Coordinator, saying that he was effectively addressing their concerns by speaking at seminars, communicating with their members, and heading U.S. delegations overseas.

STOP Has Energized U.S. Efforts, but Its Impact and Long-Term Viability Are Uncertain

STOP has energized U.S. efforts to protect and enforce IP and has initiated some new efforts, however its long-term role is uncertain. One area where STOP has increased efforts is outreach to foreign governments. In addition, STOP has focused attention on helping small- and medium-sized enterprises to better protect their IP rights. Industry representatives generally had positive views on STOP, although some thought that STOP was a compilation of new and on-going U.S. agency activities that would have occurred anyway. STOP's lack of permanent status as a Presidential

[11]This official may not serve in any other position in the federal government.

[12]STOP and NIPLECC share the same member agencies, with the exception of the Food and Drug Administration which is a member of STOP but not NIPLECC.

initiative and lack of accountability mechanisms could limit STOP's long-term impact.[13]

STOP Has Fostered Coordination and Undertaken Some New Initiatives

Agency officials participating in STOP cited several advantages to STOP. They said that STOP energized their efforts to protect and enforce IP by giving them the opportunity to share ideas and support common goals. Officials 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. Another agency official pointed out that IP was now on the President's agenda at major summits such as the G-8 and the recent EU-U.S. summits.[14]

STOP has initiated some new efforts, including a coordinated U.S. government outreach to foreign governments that share IP concerns and enforcement capacities similar to the United States. For example, the United States and the European Union (EU) have formed the U.S.-EU Working Group on Intellectual Property Rights, and in June 2006, the United States and European Union announced an EU-U.S. Action Strategy for Enforcement of IP Rights meant to strengthen cooperation in border enforcement and encourage third countries to enforce and combat counterfeiting and piracy.

One particular emphasis of STOP has been to help small- and medium-sized enterprises (SMEs) protect their IP in the United States and abroad through various education and outreach efforts. In 2002, we reported that SMEs faced a broad range of impediments when seeking to patent their inventions abroad, including cost considerations and limited knowledge about foreign patent laws, standards, and procedures.[15] We recommended that the Small Business Administration (SBA) and the USPTO work together to make a range of foreign patent information available to SMEs. Within the last year, an SBA official told us that SBA began working with STOP agencies to distribute information through its networks and recently

[13]GAO will be issuing a report on STOP and NIPLECC in the fall at the request of the Chairman of House Committee on Government Reform.

[14]The G-8 is an annual summit whose members include Canada, the European Union, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States.

[15]GAO, *International Trade: Federal Action Needed to Help Small Businesses Address Foreign Patent Challenges*, GAO-02-789 (Washington, D.C.: July 17, 2002).

linked the Small Business Administration's website to the STOP website, making information about U.S., foreign, and international laws and procedures accessible to its clients.

Many industry representatives with whom we spoke viewed STOP positively, maintaining that STOP had increased the visibility of IP issues. For example, one industry representative noted a coordinated outreach to foreign governments that provided a more collaborative alternative to the Section 301 process, 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 members with whom we spoke agreed that STOP was an effective communication mechanism between business and U.S. federal agencies on IP issues, particularly through the CACP, the Coalition Against Counterfeiting and Piracy, 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 who questioned whether STOP had added value beyond highlighting U.S. IP enforcement activities. Some considered STOP to be mainly a compilation of ongoing U.S. IP activities that pre-existed STOP. For example, Operation Fast Link[16] and a case involving counterfeit Viagra tablets manufactured in China, both listed as a STOP accomplishment, began before STOP was created. In addition, some industry representatives believed that new activities since STOP was created would have likely occurred without STOP.

STOP Has Features That May Limit Its Long-Term Impact

As a presidential initiative, STOP was not created by statute, has no formal structure, funding, or staff, and appears to have no permanence beyond the current administration. NIPLECC, on the other hand, is a statutory initiative, receives funds, and is subject to Congressional oversight. Recently, the lines between NIPLECC and STOP have blurred, possibly lending STOP some structure and more accountability. For example, as mentioned before, NIPLECC's IP Coordinator is also the focal point for STOP. In addition, NIPLECC recently adopted STOP as the strategy it is

[16]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.

required to promulgate under the Consolidated Appropriations Act of 2005. This legislation calls for NIPLECC to establish policies, objectives, and priorities concerning international intellectual property protection and intellectual property law enforcement; promulgate a strategy for protecting American intellectual property overseas; and coordinate and oversee implementation of these requirements.

However, the nature of the relationship between STOP and NIPLECC is not clear. Although the IP Coordinator has recently reported in congressional hearings that NIPLECC adopted STOP as its strategy, there have been no formal announcements to the press, industry associations, or agency officials responsible for carrying out STOP activities. In addition, STOP documents do not refer to NIPLECC. Our meetings with agency and industry officials indicated that they are unclear about the relationship between STOP and NIPLECC. The absence of a clearly established relationship makes it difficult to hold NIPLECC accountable for monitoring and assessing the progress of IP enforcement under STOP. We believe that accountability mechanisms are important to oversight of federal agency efforts and can contribute to better performance on issues such as IP protection.

IP Enforcement Efforts at the Border Illustrate Challenges Facing STOP

One of STOP's five goals is to increase federal efforts to seize counterfeit goods at the border, but work we are conducting for this Subcommittee illustrates the kind of challenges that STOP faces in achieving its goals. CBP and ICE are responsible for border enforcement efforts but their top priority is national security. CBP has taken several steps since fiscal year 2003, when it made IP matters a priority trade issue, to update and improve its border enforcement efforts. While CBP seizures of IP-infringing goods have grown steadily since fiscal year 2002, the total estimated value of seizures during that time generally did not experience similar growth. Some steps that CBP is taking to improve IP enforcement are works in progress whose impact on this STOP objective is uncertain. CBP's ability to effectively enforce IP rights at the border is also challenged by limited resources for such enforcement and by long-standing weaknesses in its ability to track the physical movement of goods entering the United States using the in-bond system.[17]

[17]Early next year, GAO will provide a detailed report to this Subcommittee on our findings related to IP border enforcement and a separate report to the Congress on our findings related to the in-bond system.

CBP IP Seizures Have Increased in Number but the Estimated Value Has Fluctuated

STOP documents cite increases in IP-related seizures as a positive indicator of its efforts to stop counterfeit goods at the border. The overall task of assessing whether particular imports are authentic has become more difficult as trade volume and counterfeit quality increase. The number of IP-related seizures has grown steadily, with CBP and ICE together making about 5,800 seizures in fiscal year 2002 and just over 8,000 seizures in fiscal year 2005.[18] However, there is no corresponding trend in the estimated value of such seizures.[19] The estimated value of goods seized in fiscal years 2002 and 2003 was $99 million and $94 million, respectively. This figure jumped to a peak of about $139 million in fiscal year 2004, but dropped back to the former level, about $93 million, in fiscal year 2005.

According to CBP officials, the agency's goal is to focus its resources in part on high-value seizures, but a large percent of annual seizure activity does not result in a significant seizure value. For example, nearly 75 percent of fiscal year 2005 seizures were small-scale shipments made at mail and express consignment facilities (facilities operated by companies that offer express commercial services to move mail and cargo, such as the United Parcel Service) or from individuals traveling by air, vehicle, or on foot. These seizures represented about 14 percent of total estimated seizure value in that year. Conversely, about 14 percent of fiscal year 2005 seizures involved large-scale shipments (i.e., containers) and accounted for about 55 percent of that year's estimated seizure value. The number of seizures made on goods emanating from China has risen from about 49 percent of the estimated domestic value of all IP seizures in fiscal year 2002 to about 69 percent of estimated seizure value in fiscal year 2005.

While CBP seizes goods across a range of product sectors, in recent years, seizures tend to be concentrated in particular goods, such as wearing apparel, handbags, cigarettes, and consumer electronics. CBP also seeks to increase seizures of goods involving public health and safety risks, and their data show that the estimated domestic value of seized goods involving certain health and safety risks, specifically pharmaceuticals,

[18]Each seizure action is counted as one seizure, regardless of the amount of goods seized.

[19]It is important to note that total estimated seizure value in any given year is a function of the type of goods seized, which varies from year to year. CBP estimates the value of IP-related seizures using "domestic value." CBP defines domestic value of goods as landed cost plus profit (the cost of the merchandise when last purchased, plus all duties, fees, broker's charges, profit, unlading charges, and U.S. freight charges to bring the goods to the importer's premises).

electrical articles, and batteries, increased during fiscal years 2002-2005. However, seizures in these and certain other health and safety categories represented less than 10 percent of the total estimated domestic value of seizures in fiscal year 2005, and seizures of other potentially dangerous goods, such as counterfeit auto parts, remain relatively limited. For example, CBP estimated in a letter to an automotive industry trade association that it made 14 seizures in fiscal years 2003-2005 of certain automotive parts.[20] A representative from another automotive industry trade association noted that CBP's ability to make seizures in this area depends on its receiving quality information about counterfeiters from companies.

CBP Has Taken Steps to Improve IP Enforcement, but Several Are Still Works In Progress

In various STOP documents, CBP cites steps it has taken to improve IP enforcement, but many of these are works in progress whose impact and effectiveness are undetermined. CBP identified IP matters as a priority trade issue in fiscal year 2003 and developed an agency-wide strategy for IP enforcement. The strategy addresses several components of IP enforcement, such as targeting (identifying high risk shipments), international coordination, communication to employees, and industry outreach. A CBP official who oversees the IP strategy told us that CBP seeks to perform IP enforcement more efficiently, and the strategy notes the importance of conducting IP enforcement while minimizing the burden on front line resources whose priority is national security. Several elements of the strategy were specifically designated as activities to support STOP.

CBP's key STOP-related activity is the creation of a statistical computer model that is designed to identify container shipments that are at higher risk of involving IP rights violations. To develop the model, CBP examined elements of past seizures and container examinations and identified certain factors that were significant characteristics of IP-infringing imports and that could be used to identify future IP rights violations. CBP piloted this model on a nation-wide basis for about one month in February 2005,

[20] In this estimate, CBP counted seizures that were based in whole or in part on infringement of IP rights owned by motor vehicle manufacturers; manufacturers of motor vehicle parts, equipment, tools, and supplies; and manufacturers of automotive chemicals and other products used in the production, repair, and maintenance of all motor vehicles. CBP did not include seizures of IP-infringing products that are not used in production, repair, and maintenance of motor vehicles, such as key chains, toys, and wearing apparel, or counterfeit goods used in the interior of a motor vehicle, such as car organizers, can holders, sunshades, steering wheel covers, and floor mats.

but the pilot revealed several issues that need to be addressed before the model can be implemented. CBP plans to pilot the model again for up to 3 months this summer at two land border ports and one seaport. CBP will use the results of the second pilot to further evaluate the viability of the model.

Another STOP-related activity for CBP is the use of post-entry audits to assist with IP enforcement.[21] CBP officials said using such audits for this purpose is a new approach that is designed to assess whether companies have adequate internal controls to prevent them from importing goods that infringe IP rights. Initiated in fiscal year 2005, these audits are a novel approach that is likely to work best with established importers, but they may be less effective for dealing with importers that are engaged in criminal activity and deliberately take steps to evade federal scrutiny. CBP selected 40 known and potential IP-infringing companies to audit in fiscal years 2005-2006 and by July 2006, had completed 17 of these audits.[22] In three audits, CBP found that the companies possessed or had already sold infringing goods that were not seized at the border. In two of these cases, CBP imposed penalties on the companies totaling about $4.6 million.[23] In the third case, the audit closed in September 2005 but the decision on whether to impose penalties is still pending in CBP. A CBP official said that some less significant IP-infringing activity was found in several other audits, but CBP chose not to impose penalties in these cases. CBP also found that internal controls to prevent IP rights violations were lacking or inadequate for most of the 17 companies, and has worked with them to improve these controls.

A third STOP activity for CBP is the development of a system that allows companies to electronically record their IP rights through CBP's website. While trademark and copyright protection is obtained from USPTO and

[21]CBP's Regulatory Audit Division in the Office of Strategic Trade performs various types of audits on importing companies. "Quick Response Audits" are designed to address single-issue trade compliance or enforcement concerns. The IP enforcement audits are a type of Quick Response Audit that examines importer controls to prevent IP infringement. They are referred to as post-entry audits because they examine controls over goods that have already entered the country.

[22]The same computer model being developed to detect high-risk shipments was used to help select some companies for the post-entry audits in fiscal year 2005.

[23]CBP imposed penalties under 19 U.S.C. 1595a(b), which allows it to assess penalties equal to the domestic value of any articles introduced or attempted to be introduced into the United States contrary to law.

the Copyright Office, respectively, these rights must be separately recorded with CBP, for a fee.[24] Recording with CBP provides CBP officials with information about the scope, ownership, and representation of protected IP rights being recorded. Although CBP officials have said recordation is important because it helps CBP effect legally defensible border enforcement, some companies fail to record their rights with CBP, either because they are unaware of the recordation requirement or because they choose not to. The electronic recordation system, implemented in December 2005, is designed to streamline the process, reduce processing times, and, ideally, increase the number of recordations.[25] A link to the recordation system has been established on USPTO's website, and a link from the Copyright Office is planned. CBP expects that most paper-based applications will eventually be eliminated.[26] While these are important steps, we have not yet evaluated the impact of the new recordation system. Several industry representatives have cited other concerns about recordation generally, such as long recordation processing times and the effective lack of border protection caused by the inability to record copyrights with CBP before such rights are issued by the Copyright Office. For example, one private sector representative said that during the six to nine months it takes to process a copyright, pirated master CDs may be allowed to enter the United States because the rights holder has not yet been able to record the title with CBP.[27]

Initial Evidence Indicates That Resources for IP Enforcement Are Shrinking

CBP and ICE priorities and resource allocations changed dramatically after September 2001, and our initial work indicates that some headquarters and field resources for IP enforcement have declined since then. As you indicated in your statement at the June 2005 IP hearing, the ultimate success of STOP, and of IP enforcement generally, depends on whether agencies are able to recruit, train, and retain the necessary

[24]The recordation fee is $190 per trademark or copyright application, or, if a trademark application covers more than one class of protected goods, the fee is $190 per class of goods to be recorded.

[25]Pendency times for paper-based recordation applications could be months long, according to a CBP official.

[26]CBP would still offer paper-based recordation to accommodate companies that lack Internet access.

[27]A CBP official said that an exemption to allow companies to record certain copyrights with CBP based on the copyright application, rather than the issued copyright, awaits approval in CBP.

workforce to meet their objectives. You also noted that prior hearings before this Subcommittee revealed that human capital issues were hindering federal enforcement of trade laws. At several border locations we visited, we found that resources for trade and IP enforcement are thinly spread, certain IP enforcement positions had been reduced or eliminated, and one location faced challenges in filling vacant CBP Officer positions.

At CBP port operations, employees in two job categories are responsible for IP enforcement — CBP Officers and Import Specialists. CBP Officers are responsible for targeting incoming shipments for security and trade purposes and conducting physical examinations of suspect goods. Import Specialists are responsible for assessing the actual value and composition of goods for duty and quota purposes and for making initial determinations of whether goods are believed to be in violation of U.S. IP rights laws. While CBP Officers are typically assigned to a single port of entry, Import Specialists assigned to a large port may be responsible for covering other smaller ports that report to the larger port. ICE field office agents investigate IP infringement cases.

We have not yet gathered comprehensive data on the number of CBP Officers, Import Specialists, and ICE agents devoted to IP enforcement, but we found reduced resources, thinly spread, at several border locations that we have visited.

- At the Port of Los Angeles/Long Beach, the largest U.S. seaport by volume, two trade enforcement teams have been disbanded and their CBP Officers shifted to national security details. Port officials said that since the late 1990s, the number of CBP Officers performing trade-related examinations has dropped by about 43 percent, and the number of Import Specialists on an IP-devoted enforcement team has dropped by half.

- The Port of San Francisco services multiple port facilities, including two major seaports, two major airports, and seven smaller port locations. CBP Officers at the San Francisco air cargo facility said that 4 out of 13 CBP Officers are assigned to inspect cargo for trade violations. These 4 officers share coverage of a 7-day work week, such that about 2 CBP Officers perform trade inspections on any day. In 2001, there were about 12 CPB Officers assigned to trade inspections. San Francisco's Director of Field Operations told us that filling 33 vacancies within his approximately 450 CBP Officer positions is a high priority. Currently, there are 3 Import Specialists, down from 6 in 2003, that focus primarily on IP enforcement

and service the seaports, airports, and smaller ports within the Port of San Francisco's area.

- ICE also performs IP enforcement and houses the National IPR Coordination Center (called the IPR Center) – a joint effort between ICE and the FBI intended to serve as a focal point for the collection of intelligence involving, among other things, copyright and trademark infringement. Currently, 9 of the 16 authorized ICE positions are filled and a 10th is slated to be filled. Neither of the 2 CBP authorized positions are filled. Additionally, in February 2006, 7 of 8 FBI positions were empty and the 8th position was filled by rotating FBI staff. In July 2006, an FBI official told us that no FBI staff were working at the IPR center because of limited physical space and pressing FBI casework, but that some staff would return in September 2006.

- The ICE field office in Los Angeles, one of the largest field offices in the country, had two commercial fraud enforcement teams before the formation of the Department of Homeland Security but now has one. The number of agents working on commercial fraud enforcement cases, which include IP enforcement, dropped from about 14 to 9 since 2003. However, an official from this office said resource changes have not affected how the team addresses IP enforcement nor caused it to turn away any IP enforcement cases.

In-Bond System Faces Persistent Control Weakness and Has Been Used to Circumvent IP Laws

The in-bond system has been identified by CBP and ICE officials as one of the mechanisms used to circumvent import and IP laws and regulations and presents an enforcement challenge. A significant portion of goods received at U.S. ports do not immediately enter U.S. commerce but are instead shipped "in-bond" for official entry at other U.S. ports or are transported through the United States for export.[28] When goods are shipped in-bond, they are subject to national security inspections at the

[28]CBP regulations provide for three different types of "in-bond" shipments: (1) immediate transportation (IT) in-bond, which allows goods arriving at one U.S. port to move to another U.S. port where they enter U.S. trade; (2) transportation and exportation (T&E) in-bond, which allows goods arriving at a U.S. port to be transported through the United States for export to another country, and; (3) immediate exportation (IE) in-bond, which allows goods arriving at a U.S. port to be shipped to a foreign port without transport through the United States. In our 2004 report, GAO found that in-bond entries comprised about 58 percent of total entries in Miami, 60 percent in New York, and 46 percent in Los Angeles. Recent work confirmed that in-bond shipments continue to account for a considerable share of all cargo arriving through these ports.

port of arrival, but are exempt from U.S. duties or quotas and formal trade inspections until they reach the final port where they will officially enter U.S. commerce.[29] For many years, GAO and others have noted weaknesses in the in-bond system used to monitor shipments between ports.[30]

CBP and ICE officials recognize that the in-bond system has been used by certain importers to bring counterfeit and pirated goods into the United States by avoiding official entry at the port of arrival and then diverting the goods afterwards. Some CBP officials said the in-bond system may contribute to imports of counterfeits by allowing some importers to "port shop" for ports that are less likely to identify IP violations. Indeed, CBP has made sizable IP-related seizures from the in-bond system, including 220 seizures valued at about $41 million in fiscal year 2004, representing nearly 30 percent of the total estimated domestic value of IP seizures in that year. In fiscal year 2005, there were 126 seizures valued at about $14 million, representing about 15 percent of estimated domestic value of IP seizures that year.

We have found weakness in the past with the in-bond system and are currently conducting follow-up work to determine whether these weaknesses have been corrected. Our audit is still underway, but work to date indicates that some previously identified weakness in tracking and monitoring in-bonds remain. For example, in January 2004 GAO reported that CBP collects significantly less information on in-bond shipment than for regular entries and that this lack of information makes tracking in-bond shipments more difficult.[31] In our recent work, CBP staff continue to observe that the limited information required from importers on in-bond shipments makes it difficult for CBP to assure that the shipments have reached their proper destinations.

Conclusions

Intellectual property protection is an issue that requires the involvement of many U.S. agencies, and the U.S. government has employed a number of

[29]The in-bond system allows arriving cargo that is intended for export to other countries to move through the United States without being subject to formal U.S. entry, duties, and quotas.

[30]GAO, *International Trade: U.S. Customs and Border Protection Faces Challenges in Addressing Illegal Textile Transshipment*, GAO-04-345 (Washington, D.C.: January 23, 2004).

[31]GAO-04-345.

mechanisms to combat different aspects of IP crimes, with varying levels of success. The STOP initiative, the most recent coordinating mechanism, has brought attention and energy to IP efforts within the U.S. government, and 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. Our initial observations on the structure of STOP suggest that it is not well suited to address the problem over the long term as the presidential initiative does not have permanence or the accountability mechanisms that would facilitate oversight by the Congress. Our ongoing work on IP protection efforts at the U.S. border, one of the 5 areas identified by STOP, also illustrates the types of challenges that need sustained attention to make progress on the issue. We believe that our more detailed reports to be released in the near future will contribute to continuing Congressional oversight of these issues.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other members of the subcommittee may have at this time.

Post-Hearing Questions for the Record
Submitted to Mr. Chris Israel, Coordinator for International Intellectual Property Enforcement, U.S. Department of Commerce

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
"STOP! A Progress Report on Protecting and Enforcing Intellectual Property Rights Here and Abroad"
July 26, 2006

Senator George V. Voinovich

1. **The President has at least two interagency efforts to coordinate U.S. IP efforts: STOP!, which is a Presidential "initiative" and without legal standing, and the second, National Intellectual Property Law Enforcement Coordination Council, which was created by Congress in 1999. How do these two initiatives relate to one another, both on a legal basis, and a practical day-to-day basis?**

The National Intellectual Property Law Enforcement Coordination Council (NIPLECC), established in 1999, brings together the leaders of the key operational entities within the federal government that are responsible for IP enforcement, providing the infrastructure that supports the Administration's efforts. STOP! is a White House initiative that is led by the Office of the U.S. Coordinator for International Intellectual Property Enforcement. STOP! represents the high priority that the Bush Administration places on intellectual property protection. STOP! calls upon government agencies to expand and make more effective the many and varied efforts underway to assist rightsholders -- and to seek out new approaches and solutions. STOP! brings direction and greater cohesion to those efforts.

In practice there has been sustained, high-level leadership with regard to the STOP! initiative – it has effectively engaged industry/foreign leaders, it has evolved and developed new initiatives, it has built an unprecedented framework to bring together the capabilities of our trade and economic agencies to work closely with our enforcement agencies.

In practice, NIPLECC is providing the infrastructure to maximize the leadership and focus of STOP! – it represents a strong coordination network at both a working and senior official level, it has developed common communications strategies, it has provided a platform for coordinated engagement with the Hill, industry and others, it is providing resources to support a variety of agency IP enforcement initiatives and it is developing a clear and effective report to the President and Congress on U.S. IP enforcement efforts.

2. **With regard to the STOP! Initiative, do you feel that this initiative is achieving its mission of coordinating domestic and international intellectual**

property law enforcement among federal and foreign entities? What concrete examples of improved coordination can you share with me? What strategic plans are being developed to further this coordination?

The STOP! Initiative is achieving results and provided greater cohesion to our efforts. For example, as part of STOP!, my office, the Department of Commerce, the U.S. Trade Representative (USTR), the Department of Justice, the Department of Homeland Security and the State Department are actively promoting the adoption of best practices for enforcement internationally. As part of this effort these departments in coordination with other agencies, are introducing new initiatives in multilateral fora to improve the global intellectual property environment. Key initiatives have gained endorsement and are undergoing implementation in the G-8, the US-EU Summit, the Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum.

The 2006 G8 Statement on Combating IPR Piracy and Counterfeiting, for example, tasked the G8 Lyon-Roma Anti-Crime and Terrorism Group with addressing relevant IP law enforcement work including online piracy.

3. **I understand that the impact of counterfeiting is difficult to measure. I also understand that the OECD has undertaken efforts to analyze the impact. To what extent has the U.S., through STOP! or other efforts, been involved in this project? Are there any other efforts being made to quantify the impact of this problem?**

In response to U.S. industry's interest, the U.S. government was instrumental in getting the OECD counterfeiting and piracy study launched and has contributed $125,000, more than any other government, to the project. The U.S. government has been actively working with the OECD to examine the impact of global counterfeiting and piracy. Our inter-agency team has met with OECD officials to follow-up and assist with this study. We are currently reviewing the draft OECD summary of its analytical report and will continue to work with the OECD and industry stakeholders to obtain better information on the worldwide problem of counterfeiting and piracy and its impact on world trade.

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 industry as we continue building international support to stem the flow of counterfeit and pirated goods and to keep them out of global supply chains.

Other industry-specific studies have occurred in the past, and the U.S. government has actively monitored their findings and results, such as studies conducted by the Business Software Alliance, the Motion Picture Association, and the International Federation of Phonographic Industry.

4. **As a Presidential initiative, STOP! has a lack of operating structure and permanence. How do we know whether STOP! will still be combating piracy after the end of this Administration and that the next administration will not reinvent the wheel?**

President Bush has provided strong and effective leadership on intellectual property issues. Through President Bush's leadership we developed 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.

The STOP! principles effectively cover each of the key areas of intellectual property enforcement. We believe that this direction from the Bush Administration coupled with enhanced coordination amongst the various U.S. government agencies will continue. Effectively protecting our intellectual property is fundamental to the future growth and success of our economy and we believe that future administrations will continue to recognize the critical necessity of these efforts.

5. **I understand that you have also been working with some of out trading partners to improve information sharing as well as developing strategies for improved enforcement and prosecution of IP violations. Please provide specific details about these efforts. How are you measuring the effectiveness of these efforts? What improvements have been measured so far? Do you think our trading partners are allocating the necessary resources to combat counterfeiting within their countries? Which of our trading partners do we need to develop closer relationships with to combat counterfeiting?**

We are breaking new ground through the leadership of my office. We have helped to revitalize the U.S. - EU IPR relationship. Shortly after the November 2005 ministerial meeting that established the U.S. - EU IPR Working Group, an interagency team began working with their EU counterparts on a strategy for strengthening customs cooperation, focusing mutual efforts on IP protection issues in China, Russia, and elsewhere, engaging their respective private sectors. 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. In June, the U.S. – EU Action Strategy for the Enforcement of Intellectual Property Rights was launched just prior to the recent U.S. – EU Leaders Summit in Vienna.

Japan is another 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 IPR initiatives. 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 our 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.

The Bush 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. A meeting of the SPP IPR Working Group will be held in Washington on September 14-15.

Another example of cooperation can be found in the US-Russian Bilateral IPR Working Group, through which the U.S. government actively engages Russia on IPR enforcement issues. This forum has served as an effective platform for information exchange on piracy and counterfeiting issues. For example, through this forum, the U.S. government has directed attention to the vital need to combat internet piracy, by providing guidance on statutory reforms needed to comply with accepted international standards and prosecutorial strategies. Although much work is still needed to address this problem, on September 1, 2006, Russia amended one of its criminal statutes on internet piracy in order to close loopholes that had previously existed. The U.S. government will continue to actively engage Russia on these issues, as continued cooperation is needed to combat piracy and counterfeiting.

And finally, at the 2006 G8 meeting in St. Petersburg, leaders announced a comprehensive IP enforcement strategy that delivered upon the commitment made in 2005. The G8 Statement on Combating IPR Piracy and Counterfeiting has several key objectives:

- To keep the spotlight on trade in counterfeit and pirated goods and secure agreement on projects that promote greater cooperation between national law enforcement officials.
- To link victims of IPR infringement to national enforcement authorities.
- To build capacity in developing countries to combat trade in counterfeit and pirated goods.
- To further research the economic impact of counterfeiting and piracy on national economies, brands, rights holders and public health/safety.
- To task relevant law-enforcement work (including online piracy) to the Lyon-Roma Anti-Crime and Terrorism Group (LR/ACT).

Additionally, the U.S. government is engaged in a global program to provide technical assistance training and capacity building to foreign IP offices and IP enforcement agencies. Such training recognizes that foreign agencies may be inexperienced and untrained in IP enforcement and thus require assistance in becoming equipped to combat piracy and counterfeiting. Through this outreach, the U.S. government continues to work with many of its trading partners to improve information sharing as well as develop strategies for improved IP enforcement. Particular focus has been made to foster and

develop closer relationships with such key trading partners as China, Russia, Brazil and India in order to combat piracy and counterfeiting.

As we continue to work with our trading partners, both bilaterally and multilaterally, we will continue to evaluate our efforts to ensure that we are taking the steps necessary to effectively combat the global trade in counterfeit and pirated goods.

Post-Hearing Questions for the Record
Submitted to Stephen Pinkos, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, U.S. Patent and Trademark Office

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
"STOP! A Progress Report on Protecting and Enforcing Intellectual Property Rights Here and Abroad"
July 26, 2006

Senator George V. Voinovich

1. **I understand that PTO maintains the stopfakes hotline. How many calls did the hotline receive in 2005 and 2006 so far? Do you track how many of these callers are able to obtain a remedy? What is the follow-through to make sure those companies that call receive adequate assistance? Does the PTO collect data from these calls in terms of the specific issues? Is PTO developing any plans to collect, analyze and disseminate this data to other agencies and the private sector?**

In FY 2005 we received 955 calls. In FY 2006, we have received 1,381 calls to date (an increase of more than 40 percent).

A call to the hotline is answered by a member of our administrative staff. The staffer refers the caller to the correct attorney-advisor according to the issue. The attorney-advisor and the caller discuss the caller's options, among which are referral to an IP enforcement contact (including investigators at the Federal Bureau of Investigation or Immigration and Customs Enforcement, or to a prosecutor at the Department of Justice's Computer Hacking Section or U.S. Attorney office).

The nature of the call, time and date, and place of origin are all recorded. We do not, however, keep track of the company name and caller name due to concerns over the nature of the call and the privacy of the caller. We are consulting with our General Counsel's office to explore the benefits of recording the caller name and company name.

We do note the caller's response, and often it is one of appreciation. Many times the assistance provided is a referral to another agency or a website. More often than not, the caller is unaware of the procedures he must follow to have the full protection of U.S. intellectual property law, or within another country. Our research shows that many small- and medium-sized businesses do not understand that they lack protection abroad if they have only a U.S. patent or trademark, and our attorney-advisors stress this point to our callers.

I also refer you to section IV entitled "Introduction: Supporting American Business" of the 2006 NIPLECC report (pages 5-19) for a full list of references for U.S. businesses.

2. **This past May, I participated as a guest speaker in one of the two-day programs that USPTO has been conducting around the country. What feedback has USPTO gotten from participants about these programs? What have they found useful, and what areas do they want to see improved? What additional outreach efforts are planned for the future?**

We received very positive feedback from our Intellectual Property in the Global Marketplace (IPAC) conferences and outreach. More than ninety percent of our conference participants consistently rated our conferences "Excellent" or "Good." Some of the highlight comments include:

- "This is the best use of my taxes that I have ever seen." –San Diego participant
- "More government agencies should follow this model of bringing the government to the grassroots level." –San Diego participant
- "The whole program shattered the myth of lazy, apathetic federal government workers. Great program." –Austin participant
- "I would highly recommend this conference to all of my business partners." – Miami participant

We have had frequent requests from participants from states we have not yet visited to provide conferences in their home states.

In each city we visit, the Under Secretary or I do local media interviews to spread our message to more people in the area about the importance of intellectual property protection. We highlight intellectual property's impact on the U.S. economy and its importance to success in a global market. We combine our outreach efforts to small and medium enterprises with educational events at local schools to highlight to children that it is wrong to steal intellectual property, whether it be a classmate's painting or a song or movie online.

At all of our conferences we ask participants to rate the speakers and provide comments on how we can improve the program. We have used participant responses to tweak our presentation. We have added time for speakers on topics the audience found particularly useful. One feature we have added as a result of a participant request is one-on-one consultation with our IP experts at the end of each day of the conference, an addition that consistently receives high marks from our participants. While our experts cannot give legal advice, they can listen to a person's unique situation and explain options.

We have also experimented in shortening the two-day conference to one day. There are benefits to having all the information in one day so that small business owners need not return for a second day away from their business; however this limits the amount of time available for Q&A and one-on-one consultations.

One helpful suggestion came in discussing how to disseminate the conference information to a wider audience. We are exploring the ability of technology to allow us to hold web seminars through our website, or at www.stopfakes.gov/smallbusiness.

We are currently planning on hosting at least another six IPAC events and at least three more China-focused conferences in FY 2007.

Senator Daniel K. Akaka

1. **Last year, the Chinese Ministry of Public Security announced the establishment of a leading group with responsibility for overall research, planning, and coordination of all intellectual property rights criminal enforcement. As you know, the group was designed to coordinate a nationwide enforcement effort in China. With the establishment of this group, have you seen any difference in Chinese efforts to enforce intellectual property rights?**

The question addresses two separate efforts. The coordination effort of the Ministry of Public Security combines the Social Order (copyright), Economic Crimes (trademark, trade secret, patents), Cybercrime (copyright/trademark/anything involving the Internet), smuggling, and foreign affairs offices of MPS. The anti-smuggling division (which prosecutes illegal, including pirated goods upon import) may also be involved.

This is a coordination mechanism to improve intellectual property rights (IPR) enforcement across Ministry of Public Security (MPS) divisions. It has been replicated on a local level by various public security bureaus. Thus far the principal operations of the Ministry of Public Security in the IPR context have been the "Operation Mountain Eagle" campaign. Mountain Eagle 1 was primarily directed to trademark issues. Mountain Eagle 2 was intended to be directed to copyright, as well as safety products (e.g., pharmaceuticals, foods).

During the duration of the Mountain Eagle campaign, IPR criminal enforcement numbers were up across the board in China; 505 resolved cases in 2005 versus 385 resolved cases in 2004.[1] Both trademark and copyright criminal cases increased year on year; although, from relatively low initial numbers.

For copyright, Articles 217-218, the resolved cases increased from 15 in 2004 to 31 in 2005. The actual number of cases for criminal copyright may be much higher as anecdotally we have heard that most of those cases, at least in southern China, are instituted under Art. 225 as a violation of Illegal Business Operations. In Shenzhen, we were told that the Culture Bureau only transferred their first criminal copyright case in

[1] For these figures, we are excluding violations under the Product Quality laws of Articles 142-149 and under Illegal Business Operations under Article 225. These numbers are for cases taken under Articles 213-219 and come from the figures that were given to the U.S. government in the World Trade Organization Art. 63 Request meeting held in early March 2006.

2004. Since then, however, they have transferred a total of 145 cases.[2] Trademark cases increased in 2005, from 321 in 2004 to 435 the next year.

International cooperation with the U.S. government and with other foreign law enforcement agencies on transnational IPR crimes also appears to be improving. There are several examples of direct bilateral law enforcement contact leading to successful criminal enforcement, including Operation Spring (pirated DVDs) and Operation Ocean Crossing (counterfeit pharmaceuticals). In addition, the Joint Liaison Group for Law Enforcement Cooperation, co-chaired by the State Department and the Department of Justice, is actively discussing methods to increase joint criminal IP enforcement.

Nationwide enforcement efforts have occurred largely under the direction of Vice Premier Wu Yi and her State Intellectual Property Protection Office (SIPPO), which is physically housed in the Ministry of Commerce, and works alongside the somewhat older Market Order Rectification Office. This is an interagency enforcement coordination effort, including China's administrative enforcement structure, criminal law enforcement (Ministry of Public Security) and including coordination with the Procuratorate (prosecutor's office) and the courts, which are separate branches of government within China. Wu Yi's action plan was announced this past spring, and includes many different IPR enforcement initiatives, including civil, criminal, administrative and Customs, as well as other efforts, such as improving public awareness and drafting of new laws and rules.

We cannot say at this time that there is a marked improvement in social deterrence involving IPR in China that has led to a reduction in the incidence of infringement involving foreigners. Social deterrence would likely take some time as well as more significant changes to China's legal and financial system, such as requiring that prosecutors and police and courts are nationally rather than locally paid.

However, we have seen some improvement in law enforcement cooperation, a higher priority for IPR protection and a greater willingness of many law enforcement authorities to work along with U.S. rights holders in bringing IPR cases. We have also seen an improvement in statistics of cases. Some major multinational companies report that it is has become relatively easier to bring criminal cases. Civil protection, however, remains weak, and small- and medium-sized enterprises and the copyright community continue to face significant challenges either in resources to fight infringement from afar or in the willingness of authorities to bring criminal cases throughout the distribution chain.

We have also seen progress in Internet-related criminal cases, which are beginning to make their way through the courts.

One of the most important messages the U.S. government can send to the Chinese is the abandonment of the campaign mentality in enforcing IPR. We would like them to make this a full-time priority as part of their National IP Strategy. However, this may take

[2]These figures are for Article 225 violations rather than Articles 217-218.

some time to achieve given their resource constraints and lack of ability to control provincial and municipal governments.

2. **China currently enjoys an enormous trade surplus with the United States, and the size of this imbalance continues to grow every year. Does the Patent and Trademark Office have any recent data on the effect that counterfeit products have on this trade deficit, and has your office determined whether the problem is lessening or worsening?**

While the USPTO is unaware of data quantifying the specific effect of counterfeit and pirated products on the U.S. trade deficit with China, we believe that China's manufacture and distribution of such products are significant contributing factors. Counterfeits and pirated versions of U.S.-branded merchandise, manufactured in China, are sold and used in China as well as exported to the U.S. and third countries. In each of those cases, the sales of illicit merchandise displace revenues to legitimate American producers and owners of intellectual property and can restrict trade. In response to ongoing Administration engagement, China has expanded its efforts to deter and prosecute illicit manufacturing operations and otherwise enhance its protection and enforcement of intellectual property rights, but critical deficiencies remain.

Post-Hearing Questions for the Record
Submitted to Arif Alikhan, Vice Chairman and Executive Director, Taskforce on Intellectual Property, U.S. Department of Justice

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
"STOP! A Progress Report on Protecting and Enforcing Intellectual Property Rights Here and Abroad"
July 26, 2006

Senator George V. Voinovich

1. **In March 2004, the Department of Justice established a Task Force on Intellectual Property. Later that year, the Task Force issued a comprehensive report that made a number of substantive recommendations to improve the Department of Justice's efforts to protect and enforce intellectual property rights through criminal, civil, and antitrust enforcement; international cooperation; legislation; and prevention programs. I am pleased to hear that all of the recommendations have been implemented. Do you have plans to follow up this report and issue any updated recommendations?**

   The Department of Justice's Task Force on Intellectual Property was created in March 2004 and conducted a comprehensive review of the Department's efforts to enforce and protect intellectual property crime. As set forth in its first Report, issued in October 2004, the Task Force made 31 recommendations to improve the Department's intellectual property protection and enforcement programs. In June 2006, the Task Force issued its Progress Report indicating that all 31 recommendations had been implemented and making additional recommendations, such as the creation of seven additional Computer Hacking and Intellectual Property ("CHIP") Units. Because the threat to intellectual property rights is constantly changing as technology and criminal methods change, the IP Task Force will continue to monitor such changes and continue to assess the Department's efforts in effectively protecting and enforcing intellectual property rights.

2. **DOJ has undertaken a number of initiatives aimed at prosecuting software and other computer-related IP theft through the efforts you have described in your testimony. Have you quantified how these efforts have increased prosecutions?**

   The impact of the increased efforts by the Department of Justice to protect intellectual property rights can be seen not only by the breadth of its enforcement initiatives, but also by the impressive results in prosecutions. The Department of Justice has prosecuted significantly more defendants for intellectual property offenses over the course of the past two years. For example, during Fiscal Year

2005, 350 defendants were charged with intellectual property offenses, nearly double the 177 defendants charged in Fiscal Year 2004 – representing a 98 percent increase. A similar increase occurred in districts with CHIP Units, where the number of charged defendants climbed from 109 in Fiscal Year 2004 to 180 in Fiscal Year 2005 – a 65 percent increase. In addition, the number of cases filed and defendants charged in all districts between Fiscal Years 2001 and 2005 has steadily risen over time. Likewise, the Computer Crime and Intellectual Property Section of the Criminal Division has seen an 800% increase in its case load over the past four years from just 27 cases to over 200 pending matters. These results reflect, in a meaningful way, that the Department of Justice is committed to protecting intellectual property rights.

These statistics and others compiled by EOUSA can be accessed at the following links:

- AG Annual Reports: http://www.usdoj.gov/05publications/05_1.html
- FY 2005 Annual Performance and Accountability Report, Appendix C (Intellectual Property Report): http://www.usdoj.gov/ag/annualreports/pr2005/Appd/A-c.pdf
- FY 2004 Annual Performance and Accountability Report, Appendix C (Intellectual Property Report): http://www.usdoj.gov/ag/annualreports/pr2004/Appd/A-c.pdf
- FY 2003 Annual Performance and Accountability Report, Appendix C (Intellectual Property Report): http://www.usdoj.gov/ag/annualreports/ar2003/appendices.htm#cc
- FY 2002 Performance and Accountability Report, Appendix C (Intellectual Property Report): http://www.usdoj.gov/ag/annualreports/pr2002/AppendixC.htm

3. These DOJ initiatives appear to have a heavy emphasis on technology theft and prosecution. Does DOJ have any plans to expand the scope of this effort to other business areas such as manufacturing?

Interpreting your question to mean that Department initiatives have emphasized online and digital piracy and counterfeiting, I would note that although the Department has made significant strides in combating intellectual property offenses occurring over the Internet or involving digital technology, that work reflects only a portion of the Department's overall prosecutions. For example, as reflected in the FY 2005 Annual Performance and Accountability Report, Appendix C (Intellectual Property Report), the Department initiated prosecutions under 18 U.S.C. § 2320 (Trafficking in Goods or Services) against

195 defendants in 2005, more than twice as many defendants prosecuted under 18 U.S.C. § 2319 for criminal copyright infringement. The following are just three examples from the past two months of prosecutions involving counterfeit hard goods:

- In June 2006, two Massachusetts residents pleaded guilty to money laundering and trafficking and conspiring to traffic in more than $1.4 million of counterfeit luxury handbags and wallets, as well as the materials needed to manufacture these counterfeits. The defendants are scheduled to be sentenced in October 2006.

- In May 2006, a Houston, Texas resident and licensed pharmacist was convicted by a jury of conspiracy to introduce in interstate commerce counterfeit and misbranded pharmaceutical drugs and trafficking in counterfeit drugs from China. The defendant is scheduled to be sentenced in September 2006.

- In May 2006, a San Jose, California resident pleaded guilty to criminal copyright infringement for his involvement in the largest music manufacturing piracy seizure in the United States to date. On October 6, 2005, law enforcement conducted searches of 13 locations in California and Texas in the undercover investigation called Operation Remaster. The FBI estimates that approximately 494,000 pirated music, software, and movie CDs, and DVDs, and more than 5,500 stampers, were seized during those raids. Two additional defendants previously pleaded guilty to their role in this illegal manufacturing operation in April 2006. The defendant is scheduled to be sentenced in November 2006.

That said, it is also important to recognize that technology and the Internet play an increasing role in the counterfeiting of manufactured goods and their distribution. Today's technology allows criminals to use sources both online and offline to create infringing products. In many instances, it is difficult, if not impossible, to separate physical piracy from piracy occurring over the Internet. It is often through the digital transmission of copyrighted material over the Internet that pirates obtain perfect counterfeit logos to affix to manufactured goods. Moreover, criminals increasingly use the Internet to identify potential customers and to market and sell their infringing goods – essentially operating "mail order" businesses through the Internet. For instance, we have brought numerous cases involving the online auction site eBay which criminals have abused to sell counterfeit goods throughout the world. These auction sales are crippling to the manufacturing industry, and the Department will continue to work closely with industry representatives to address this and other types of IP theft that exploit the Internet and new technologies.

4. **Now that DOJ had deployed an experienced federal prosecutor to Southeast Asia, have IP prosecution in these regions increased? What role are these**

prosecutors playing in those jurisdictions? Does the DOJ have additional plans to deploy others prosecutors across the globe? If so, what is the timetable?

The Department of Justice does not have statistical information to determine whether intellectual property prosecutions in the region have increased since the Intellectual Property Law Enforcement Coordinator ("IPLEC") was deployed to Asia less than a year ago in January 2006. The IPLEC, however, has spearheaded a number of important efforts that are designed to increase intellectual property enforcement in the region. For example, the IPLEC has participated in IPR enforcement seminars and meetings in various countries including China, Hong Kong, Cambodia, Thailand, Taiwan, the Philippines, Indonesia and Malaysia. These meetings, whose participants have included foreign judges, prosecutors, investigators and other IP officials, have allowed the Department of Justice to establish valuable contacts with regional counterparts and gather information about the unique IPR enforcement challenges confronting individual Asian countries.

Second, the IPLEC for Asia is developing an Intellectual Property-Prosecution and Investigation Network ("IP-PIN") comprised of key IP prosecutors and investigators from countries in the region. IP officials from several countries have already committed to participate in the network, which will better enable the sharing of information and strategies, help identify regional training opportunities, and facilitate coordinated prosecutions. The Department of Justice plans to host an IP-PIN conference in the coming months to strengthen these important law enforcement contacts.

Third, recognizing that effective prosecutions of IP crime depend heavily on cooperation between victims and law enforcement authorities, the IPLEC has regularly met with regional industry representatives who have extensive experience in IP enforcement in Asia. The IPLEC also organized an Industry Roundtable in Singapore in June 2006 to further enhance the cooperation and information sharing between the DOJ and victims of IP crime in the region.

In addition to the IPLEC for Asia, the Department anticipates placing an IPLEC in Eastern Europe in the near future. The Department has already secured funding from the Bureau for International Narcotics and Law Enforcement Affairs at the Department of State to provide start-up costs to support a full-time IPLEC position in Eastern Europe through Fiscal Year 2007, and is working with the State Department to identify an appropriate location for the IPLEC's placement within the region.

5. **How have national security priorities affected the resources DOJ previously dedicated to the detection, investigation, and prosecution of counterfeiting and other IP-related crimes?**

As reflected by the Progress Report of the Department of Justice's Task Force on Intellectual Property (June 2006), during the past two years the Department has worked toward increasing and making more effective the resources devoted to prosecuting intellectual property offenses. The FBI's investigative resources are certainly impacted by the appropriate prioritization of our national security interests. Nevertheless, between Fiscal Year 2003 and Fiscal Year 2005, the FBI increased the number of open IP investigations by 22 percent, from 304 to 372 investigations per year, while the number of undercover IP investigations increased 87 percent. In addition, during the same time period, the number of indictments filed from intellectual property investigations increased 38 percent, from 92 to 127. The Department continues to dedicate substantial resources to combat these crimes, and the 2007 President's Budget for DOJ's Criminal Division included a requested increase of 2 attorney positions, and $218,000 for intellectual property prosecutions.

Senator Daniel K. Akaka

1. **A significant concern with counterfeit goods is the threat posed to public health and safety. Counterfeit electronics and automobile parts concern us all, but counterfeit medicines entering the market place may be sold to individuals who are unaware of the dangers posed by such goods. What efforts are in place to protect the public from counterfeit medicines and other health products?**

The impact of counterfeit goods on the health and safety of our citizens is of paramount importance to the Department and we have increased our focus on aggressively prosecuting intellectual property offenses that endanger the public's health or safety. To this end, the Department has met with a cross-section of people inside and outside the U.S. Government to coordinate intellectual property prosecutions that threaten public health or safety, including the Department of Justice's Office of Consumer Litigation and Environment and Natural Resources Division; the Department of Homeland Security, Immigration and Customs Enforcement; the Food and Drug Administration; and the Consumer Product Safety Commission. With respect to pharmaceuticals in particular, Department attorneys have participated in an interagency Pharmaceutical Task Force that consists of agents and attorneys from the Food and Drug Administration, Immigration and Customs Enforcement, Customs and Border Protection, and the Drug Enforcement Administration.

The Department has made prosecuting offenses that risk the health and safety of consumers a high priority. There can be no doubt that counterfeit prescription drugs pose particularly significant risks to public health and safety. The following are recent examples of DOJ prosecutions involving counterfeit pharmaceuticals:

- In February 2006, a Shelton, Washington resident was convicted in Houston, Texas for importing from China counterfeit pharmaceuticals bearing the Viagra and Cialis trademarks. ICE Special Agents conducted an undercover operation in Beijing, China, involving the Internet site *bestonlineviagra.com*. The Internet site was owned and used by the defendant to distribute bulk quantities of counterfeit Viagra and Cialis manufactured in China. Chinese officials cooperated in the investigation, and 11 additional individuals in China were arrested by Chinese authorities for manufacturing and distributing counterfeit drugs. Chinese officials seized 600,000 counterfeit Viagra labels and packaging, 440,000 counterfeit Viagra and Cialis tablets, and 260 kilograms of raw materials used to manufacture counterfeit pharmaceuticals.

- In May 2006, a Houston, Texas resident and licensed pharmacist was convicted by a jury of conspiracy to introduce in interstate commerce counterfeit and misbranded pharmaceutical drugs and trafficking in counterfeit drugs from China. The defendant is scheduled to be sentenced in September 2006.

- After being indicted in August 2005 in Kansas City, Missouri, eight people pleaded guilty to selling counterfeit Lipitor tablets, a drug widely used to reduce cholesterol, and an additional 13 people are awaiting trial for their alleged participation in a $42 million conspiracy to sell counterfeit, illegally imported, and misbranded drugs. More than $2.2 million has been forfeited.

- In May 2005, the former president of an Italian drug firm pleaded guilty to violating the Federal Food, Drug, and Cosmetic Act by introducing an unapproved copy of the antibiotic Cefaclor. The defendant was sentenced to a year in confinement, fined $16,481,000, and required to forfeit $300,000. The corporate defendant pleaded guilty and paid criminal and civil penalties of more than $33 million.

- In January 2005, a Los Angeles, California defendant was convicted for manufacturing, importing, and distributing over 700,000 counterfeit Viagra tablets, valued at more than $5.5 million, over a four-year period.

2. Congress measures the success of government programs by examining metrics and milestones. Can you share with us the measures the Department of Justice is applying to the STOP! initiative to determine its effectiveness?

The STOP! initiative has resulted in a number of milestones that are detailed more fully in the 2006 National Intellectual Property Law Enforcement Coordination Council Report, which the Department anticipates will be published shortly. One of the Department's primary contributions to the STOP! initiative has been the successful implementation of all 31 recommendations of the

Department of Justice's Task Force on Intellectual Property. These recommendations and a detailed description of their implementation are contained in the Progress Report of the Department of Justice's Task Force on Intellectual Property ("Progress Report") which was issued in June 2006. Although the Department has not maintained metrics for other agencies' efforts, the Department is proud of the results we were able to achieve through the IP Task Force.

Response by
Anthony C. LaPlaca
Vice President and General Counsel
Bendix Commercial Vehicle Systems, LLC

To

Post-Hearing Questions for the Record
Submitted by
Senator George V. Voinovich
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

"STOP! A Progress Report on Protecting and Enforcing Intellectual Property Rights Here and Abroad"
July 26, 2006

1. **It appears to me that counterfeiting is not only a serious economic issue, but also a very serious public safety issue. Does your company or any industry trade groups keep statistics as to how many accidents are caused as a result of the use of counterfeit products?**

   Bendix does not keep statistics as to how many accidents are caused as a result of the use of counterfeit products. Bendix senior engineering professionals do frequently become involved with accident investigations when a Bendix product is suspected to be involved, and through this process, we have discovered counterfeit product that was believed to be genuine Bendix.

   At this point, Bendix has not found a source for industry statistics relating to the involvement of counterfeit product in accidents. To our knowledge, no such data exists. We requested the assistance of the Motor & Equipment Manufacturers Association (MEMA) to better answer this question. Brian Duggan, director of trade and commercial policy for MEMA, responded as follows:

   "In nearly all cases, accident investigations are conducted by local authorities, such as state police. Accident investigations determine the causes of crashes, that data is aggregated across an entire state and at the national level. To the best of our knowledge, state police and local authorities are not gathering samples of auto parts and equipment that could be associated with a crash and sending those samples to the manufacturer for testing. State investigators could not determine if a part is counterfeit or genuine on their own. Education of state crash investigators into the possibility of counterfeit parts causing or contributing to accidents, especially accidents of heavy duty trucks, deserves attention and work in the future."

2. **Mr. Alikhan's testimony cites to the case of Metaldyne, another auto parts supplier, which faced internal IP theft from former employees who had stolen the companies IP, and then**

worked with foreign companies. Are you aware of similar instances where internal IP theft has contributed to global counterfeiting?

A European-based sister company of Bendix – serving a different market segment – experienced a similar situation in the recent past. An employee that left the company stole company IP when they departed and provided it to a competitor. While this incident did not contribute to global counterfeiting, it did result in substantial changes and enhancements in our global organization's IT and overall security policies and practices to prevent such an incident in the future.

MEMA is not aware of any similar cases.

3. **Many counterfeit goods cause damage to legitimate companies and to the economy, but items related to health and safety are of particular concern. What is the auto parts industry doing to help inform the government about shipments of counterfeit auto parts? Are you satisfied with the government efforts to seize counterfeit auto parts?**

To date, Bendix Commercial Vehicle Systems has focused our enforcement efforts on stopping counterfeit product at the point of sale, and we have had success with this policy. We have not, as of yet, pursued the counterfeit product back to its origin.

In a training session sponsored by the National Intellectual Property Rights Coordination Center, we learned about the types of support that the US government can provide in stopping shipments. This training led us to take further action to prepare ourselves to work with the US government if an opportunity should arise.

Brian Duggan of MEMA provided the following comments:

"This question points to a central problem in any company's efforts to protect its marks and brands. Most counterfeit auto parts are manufactured in China. Obtaining sufficiently detailed knowledge of shipment of fake goods requires access to informants in China, or access to a very small number of possible informants on the West Coast of the United States. Very few automotive parts suppliers have been successful in obtaining access to this kind of criminal intelligence either directly or indirectly through a detective service.

In a typical scenario, a rights holder will detect counterfeit product in the distribution chain (e.g. in a retail outlet or a warehouse.) In some cases the rights holder will send a cease and desist letter to the seller of the counterfeit goods. If that action does not produce the desired results, the rights holder may hire an investigator to find the location where the counterfeit goods are being manufactured, boxed or stored within the United States and seek seizure of the goods by local or federal law enforcement. In very few cases have auto parts suppliers been successful in tracing counterfeit goods further back to their source or to the exact time and point of importation.

The second part of this question pertains to industry's views toward government efforts to seize counterfeit auto parts. It is significant that these questions were asked together; they are two halves of the circular problem. Government has been most responsive to industry mainly when industry has been able to gather detailed intelligence on the activity of counterfeiters. However industry has struggled to gather the kind of detailed criminal intelligence government investigators demand to take action. Industry generally lacks the criminal investigation expertise possessed by the FBI and US Customs to gather useful intelligence; the Federal investigators possess the expertise, but lack the intelligence to seize specific shipments or take other enforcement actions.

A solution to this dilemma is still not apparent, but we will continue to work on this problem."

washingtonpost.com

Barclays Again Chosen to Manage Main TSP Index Funds

Advertisement

By Stephen Barr
Thursday, September 7, 2006; D04

Barclays Global Investors, one of the world's largest money managers, has been selected for the fifth time to manage the four primary stock and bond index funds at the Thrift Savings Plan, the 401(k)-type program for more than 3.6 million government employees and retirees, officials announced yesterday.

The San Francisco company, owned by the British banking giant Barclays PLC, has held the contract for the TSP index funds since Congress opened up the first fund for federal employee retirement savings in 1988. The new contract is for three years and can be extended for up to five years.

The bidding process to manage a majority of the TSP's $186 billion in assets has been underway for six months. The Federal Retirement Thrift Investment Board, which oversees the TSP, requested contract proposals for each of the four funds, hoping to encourage competition by allowing firms to bid for the right to manage one, some or all of the funds.

In a statement, *Gary A. Amelio* , the board's executive director, said he was "most impressed and gratified by the strong competition for this business by many very qualified vendors."

Kathy Taylor , managing director at BGI, said: "It was a very competitive and rigorous bidding process. We're privileged to be the manager selected and to be given the opportunity to continue our successful relationship with the TSP."

TSP spokesman *Tom Trabucco* , citing competitive considerations related to the contract award, said the board would not disclose how many firms submitted bids.

Trabucco said no estimate of the value of the contract to Barclays had been calculated. Barclays will collect fees based on the amount of assets under management and will share in income from securities lending related to the TSP, he said.

Participants in the TSP pay for the cost of the program's administration and operations, including the expense of hiring Barclays as a manager. The fees charged to participants are among the lowest, if not the lowest, in the mutual fund industry, according to TSP officials.

Last year, participants were charged 50 cents per $1,000 invested in TSP stock funds and 40 cents per $1,000 invested in the TSP bond fund.

Barclays will manage the common-stock index investment fund, the small-capitalization-stock index investment fund, the international stock index investment fund and the fixed-income index investment fund at the TSP.

The remaining TSP investment options are overseen by the board's staff. A government securities fund is jointly managed with the Treasury Department, and five life-cycle funds are administered by the retirement board.

TSP officials, at the urging of members of Congress, are looking at whether to expand the investment choices offered to civil service, postal and military personnel. The TSP has hired Ennis Knupp & Associates, an investment consulting firm, to study whether real estate investment trusts, Treasury inflation-protected securities, emerging market equities, commodities and other investment possibilities should be offered to government employees.

Several House members have called for adding a REIT fund to the TSP, and officials hope that the Ennis Knupp study can be completed by the end of October. The last comprehensive TSP review led to the addition of the small-cap and international funds in 2001.

The thrift board also announced that Watson Wyatt Worldwide, a consulting and compensation firm, will assist the TSP in conducting a survey of plan members. The survey will collect data on the attitudes and concerns of TSP participants.

Watson Wyatt will be paid up to $215,124 for its services under a procurement arranged by the Government Printing Office, the TSP said.

NARFE Convention

About 2,000 delegates, members and guests will attend the 29th biennial convention of the National Active and Retired Federal Employees Association in Albuquerque that begins Sunday, the group announced.

Speakers include *Linda M. Springer* , director of OPM; *Dale Goff* , president of the National Association of Postmasters; *Charles W. Mapa* , president of the National League of Postmasters; and *Harry Johns* , president of the Alzheimer's Association.

The NARFE will elect a new president at the five-day convention. *Dan C. Galvan* of Temple, Tex., is the only announced candidate for the office. The current president, *Charles L. Fallis* of Salem, Va., cannot seek re-election under the group's term-limit rules.

Stephen Barr's e-mail address is barrs@washpost.com.

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901 Cleveland Street, Elyria, Ohio 44035
Tel: 440.329.9000 • Fax: 440.329.9203

August 31, 2006

The Honorable George V. Voinovich
United States Senate
317 Hart Senate Building
Washington, DC 20510

Dear Senator Voinovich:

We wish to extend our sincere thanks to you for the opportunity to appear before your Committee on July 26, 2006 to discuss intellectual property rights (IPR) protection and Bendix Commercial Vehicle System's efforts to protect our designs, patents and brands. The oversight provided by your Committee of Federal agencies' intellectual property enforcement activities, as well as your personal commitment to defending the IPR of our company and other American manufacturers, is very reassuring and much appreciated.

During the hearing you requested our views regarding S. 1984, the Intellectual Property Rights Enforcement Act. As I explained in my testimony, Bendix has had limited contact with Federal agencies on intellectual property rights enforcement. However, based on our initial examination, we believe S. 1984 would improve coordination and overall effectiveness of Federal agencies with IPR enforcement responsibilities. We concur with your remarks during the hearing on the need for permanence. Provisions of your legislation codifying responsibility for enforcement with the White House will, we believe, benefit American rights holders over the long term.

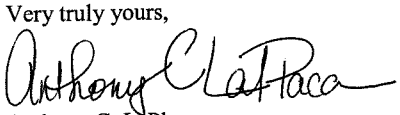
We will urge our national trade association, the Motor and Equipment Manufacturers Association (MEMA) to work within our industry, with other industries, and with the Congress for passage of your legislation.

In addition to S. 1984, we believe further legislation regarding the protection of industrial designs, that are not currently covered by patent or trade dress law relating to health and safety products, would strongly benefit American manufacturers. In our business, product designs on safety-related products can often be deemed functional, and therefore protection under current trade dress laws is not available. Even though our designs are specific to Bendix branded products, they are copied in knock-off components with the intent of positioning the merchandise as genuine. Similar legislation was passed as part of the Digital Millennium Copyright Act protecting ship hulls and architect's layouts for buildings.

Finally, we would like to extend an invitation to you to visit our headquarters in Elyria this autumn. We are very proud of our Ohio facilities, our award-winning workforce, and the job we are doing to protect our investment in the Bendix brand. We would appreciate the opportunity to showcase our facility, provide firsthand evidence of the difficulty in discerning counterfeit versus genuine product, and to share our views relating to intellectual property enforcement with you. We discussed this opportunity with Doug Dziak during his visit to our facilities on August 7th. A representative from our company will contact your scheduler to discuss this matter further.

We would, again, like to express our sincere appreciation for inviting Bendix to testify before your Committee. We look forward to working with you and your staff further in the future. If we can be of any assistance, please do not hesitate to contact us.

Very truly yours,



Anthony C. LaPlaca
Vice President and General Counsel
Bendix Commercial Vehicle Systems LLC

Answers to Post-Hearing Questions for the Record
Submitted by Dr. Loren Yager, Director, International Affairs and Trade,
U.S. Government Accountability Office

In Regards to Testimony:
STOP! A Progress Report on Protecting and Enforcing
Intellectual Property Rights Here and Abroad
July 26, 2006

Before
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Senator George V. Voinovich

1. I understand that you are working on a report on STOP! and NIPLECC now. Have you drawn any initial conclusions?

- STOP is the most recent in a number of efforts to coordinate interagency activity targeted at intellectual property (IP) protection, some of which have been effective and others less so. For example, the Special 301 process – the U.S. Trade Representative's process for identifying foreign countries that lack adequate IP protection – has been seen as effective because it compiles input from multiple agencies and serves to identify issued of concern in particular countries. Other interagency efforts, such as the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), are viewed as being less effective because little has been produced beyond summarizing agencies' actions in the IP arena.
- While STOP has energized IP protection and enforcement efforts domestically and abroad, our initial work indicates that its long-term role is uncertain. STOP has been successful in fostering coordination, such as reaching out to foreign governments and private sector groups. Private sector views on STOP were generally positive; however, some stated that it emphasizes IP protection and enforcement efforts that would have occurred regardless of STOP's existence. STOP's lack of permanent status and accountability mechanisms pose challenges for its long-term impact and Congressional oversight.
- STOP faces challenges in meeting some of its objectives, such as increasing efforts to seize counterfeit goods at the border – an effort for which the Department of Homeland Security's Customs and Border Protection (CBP) and Immigration and Customs Enforcement are responsible. CBP has certain steps underway, but our initial work indicates that resources for IP enforcement at certain ports have declined as attention has shifted to national security concerns. In addition, prior GAO work found internal control weaknesses in an import mechanism through which a significant portion of imports flow, and which has been used to smuggle counterfeit goods. GAO will be reporting in detail to this subcommittee on these issues early next year.

Senator Daniel K. Akaka

1. The STOP initiative has injected new life into efforts to combat counterfeiting. What recommendations can you make to ensure that efforts are coordinated among different agencies to reduce the trade in counterfeit goods?

- STOP has energized IP protection and enforcement efforts domestically and abroad but our initial work indicates that its long-term role is uncertain. STOP's lack of permanent status, and accountability mechanisms such as performance measures and a means for reporting on progress, pose challenges for its long-term impact and Congressional oversight. GAO will be issuing a report on STOP that will contain specific recommendations to address these issues in more detail later this calendar year.
- Given the multiple agencies that are involved in U.S. efforts to combat trade in counterfeit goods, such as the Department of Homeland Security's Customs and Border Protection and Immigration and Customs Enforcement, and the Department of Justice's U.S. Attorney Offices and the Federal Bureau of Investigation, the status of coordination among these agencies is an important question. Our work on federal intellectual property enforcement efforts at the U.S. border will examine these key agencies' roles, priorities, and working relationships and how these elements affect overall efforts to combat counterfeiting. We will report on our findings in early 2007.

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