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ORGANIZED RETAIL THEFT PREVENTION: FOSTERING A COMPREHENSIVE PUBLIC-PRIVATE RESPONSE

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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ORGANIZED RETAIL THEFT PREVENTION: FOSTERING A COMPREHENSIVE PUBLIC-PRIVATE RESPONSE

THURSDAY, OCTOBER 25, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Johnson, Ellison, Forbes, Gohmert, and Coble.

Staff present: Bobby Vassar, Subcommittee Chief Counsel; Gregory Barnes, Minority Counsel; Mario Dispenza, (Fellow) BATFE Detailee; Caroline Lynch, Minority Counsel; and Veronica Eligan, Professional Staff Member.

Mr. SCOTT. Good morning. The Subcommittee will come to order.

I am pleased to welcome you to today's hearing on organized retail theft prevention and the need to foster a comprehensive public-private response.

For some time now, we have been hearing about the problem of organized retail theft, ORT, from business representatives in my congressional district and the problem is growing in dimension. Estimates indicate that the problem exceeds $30 billion a year.

Theft of merchandise through shoplifting from retail outlets and through other means is not new, and it has additionally been handled through the State criminal laws. In Virginia, for example, any theft in excess of $200 is grand larceny, with a maximum penalty of 20 years in prison and a third offense of even petty larceny is, by law, treated the same as grand larceny.

With diligent enforcement efforts, such measures are ordinarily adequate to keep the problem of merchandise theft sufficiently in check. However, with organized theft rings employing numerous individuals, operating across State lines, ordinary enforcement approaches are inadequate.

These individuals can shoplift taking acceptable risks by remaining under the grand larceny threshold for each incident and still steal thousands of dollars worth of merchandise for the ring.

The types of products most frequently targeted for theft by ORT rings include over-the-counter drug products, cough and cold medi-

cines, razor blades, batteries, CDs and DVDs, infant formula and electronic items. And after ORT rings obtain such products, they often turn right around and dispose of them through fencing operations, flea markets, pawn shops, swap meets and shady storefront operations.

Now, we are seeing reports of indications that the Internet is now being used to fence stolen goods to the extent that a new term has been coined for it, "e-fencing." Attempts to sell stolen consumable products online or in the physical world expose consumers to serious safety and health risks.

In many cases, after the merchandise has been stolen, the products are not kept under ideal or required storage conditions and that can threaten the integrity of the product. For example, extreme heat or cold can affect the nutrient content or physical appearance in infant formula.

Such practices also tend to drive up consumer prices. This is primarily true because retail establishments must cover their losses by passing on the expenses to other customers. Needless to say, those most affected by such increases often come from the lower economic, socioeconomic backgrounds, or the elderly.

The size and complexity of this problem clearly suggests that the need for assistance from the Federal Government and I look forward to working with my colleagues and the industries affected to better address this problem.

I now recognize my colleague from Virginia, the Ranking Member of the Subcommittee, Randy Forbes, for his statement.

Mr. FORBES. Thank you, Mr. Chairman, and thank you for holding this hearing on the very important issue of organized retail theft.

I wish to welcome our witnesses here today and thank you for taking time out of your busy schedules to be here and help enlighten us on this issue and hopefully forge a solution that will be workable to everyone.

The problem of organized retail theft is growing and involves the theft of large quantities of retail merchandise, as the Chairman mentioned. Organized retail theft is not a high profile crime, but it is a costly one. Unlike shoplifters or small-time thieves who steal for their own personal use, organized retail thieves steal merchandise in order to sell it back into the marketplace.

These thieves typically target merchandise that can be easily concealed and easily resold. The stolen items range from low-cost products such as razor blades, baby formula or batteries, to expensive products such as electronics or appliances.

Organized retail thieves, commonly referred to as "boosters," will sell the stolen merchandise at flea markets, pawn shops, swap meets and, increasingly, on Internet Web sites.

According to the FBI, organized retail theft accounts for between $30 billion and $37 billion in losses annually. The Coalition Against Organized Retail Crime estimates that States with sales tax annually suffer over $1.5 billion in lost tax revenue due to organized retail theft.

In 2005, Congress directed the attorney general and FBI, in consultation with the retail community, to establish a task force to combat organized retail theft and create a national database or

clearinghouse to track and identify organized retail thefts across the country.

The result of this legislation is the law enforcement-retail partnership network, LERPnet, which was launched on April 9 of this year. This national database allows retailers to share information with each other and law enforcement. To date, more than 32 retailers, representing 46,000 stores, have signed on.

In addition, the FBI has created major theft task forces to identify and target multi-jurisdictional organized retail theft rings. There are currently nine FBI-led major theft task forces, staffed by FBI agents and State and local law enforcement officers located in FBI field offices across the country.

These task forces and the LERPnet, launched earlier this year, are important first steps for combating organized retail crime. However, billions of dollars are still being lost each year.

The inherent interstate nature of many of these crimes poses jurisdictional hurdles for prosecution at the State level, while limited Federal resources and low theft thresholds create a roadblock for Federal prosecution.

I look forward to hearing from today's witnesses concerning the extent of the problem, practical limitations in the investigation and prosecution of these organizations, and possible solutions.

I want to commend Congressman Goodlatte for his hard work in this area for so many years, and I also want to commit to working with Chairman Scott and Members of the Judiciary Committee, the retail community and the online marketplaces to create a common sense, practical solution to the problem.

Mr. Chairman, I yield back the balance of my time.

Mr. SCOTT. Thank you. Thank you.

I will ask unanimous consent that other statements be placed in the record.

We have the gentleman from North Carolina, Mr. Coble, with us today.

Our first witness will be introduced, by unanimous, by the gentleman from Minnesota.

Mr. ELLISON. Thank you, Mr. Chairman. Let me start by thanking you and Ranking Member Forbes for holding this hearing on organized retail theft prevention.

We have with us today Mr. Brad Brekke, the vice president of asset protection at Target, a well known general merchandise retailer headquartered in my home district of Minneapolis, Minnesota.

Target operates over 1,600 stores throughout the United States and reports more than $60 billion in sales. As vice president of asset protection, Mr. Brekke oversees all aspects of the corporate security and the team of several thousands of asset protection professionals supporting Target stores, distribution centers, and its supply chain.

Mr. Brekke also oversees Target's teams of criminal investigators, regional organized retail crime investigation centers, two forensic laboratories, and its cyber crime investigators.

Prior to joining Target as the leader of its organized retail crime investigation team, Mr. Brekke served as a special agent with the

Federal Bureau of Investigation, focusing on fraud schemes and other white-collar crimes.

Mr. Brekke is both a graduate of University of Minnesota and University of Minnesota Law School and a member of the bar in the state of Minnesota.

Thank you, Mr. Chairman.

Welcome, Mr. Brekke.

Mr. SCOTT. Thank you. Thank you for the introduction.

Our next witness we will hear from will be Mr. David Hill, who currently serves as a detective for the Montgomery County Police Department. He has 16 years of law enforcement experience in the state of Maryland, and he is a Committee member of the National Association of Property Recovery Investigators.

He also serves on the board of the Montgomery County Retail Security Loss Prevention Association. He has an associate's degree in electronic engineering from Montgomery College in Maryland.

After he speaks, we will hear from Mr. Karl Langhorst, who currently serves as the director of loss prevention at Randalls and Tom Thumb Food and Pharmacy. He has over 25 years of experience in law enforcement and retail loss prevention.

He is an author and frequent speaker on various loss prevention topics, including physical security and organized retail crime. He has a bachelor of political science from the University of Texas at Arlington.

Our final witness will be Mr. Robert Chesnut, senior vice president and head of eBay's rules, trust and safety department. In this capacity, he directs over 2,000 eBay employees around the world in the areas of fraud detection, buyer protection, Web site rules and policies, and law enforcement relations.

Prior to joining eBay, he spent 11 years working as a Federal prosecutor in the U.S. attorney's office in the eastern district of Virginia. He is a graduate of the University of Virginia and Harvard Law School.

Now, each of the witness statements will be made part of the record in its entirety. We would ask each witness to summarize his or her testimony in 5 minutes or less. To help you stay within that time, there is a timing device on your table. When you have 1 minute left, the light will switch from green to yellow and then finally to red when 5 minutes are up.

Prior to, as you have heard, we have just been called for very important, momentous situation on the floor.

We will be back in approximately 5 or 10 minutes.

[Recess.]

Mr. SCOTT. The Committee will come to order. We will now receive testimony from Mr. Brekke.

TESTIMONY OF BRAD BREKKE, VICE PRESIDENT-ASSETS PROTECTION, TARGET CORPORATION, TPS-20, MINNEAPOLIS, MN

Mr. BREKKE. Good morning, Chairman Scott, Ranking Member Forbes and Members of the Subcommittee.

On behalf of Target and the Coalition Against Organized Retail Crime, we commend the Chairman and this Committee for recognizing this evolving problem.

Organized retail crime, also known as ORC, costs the industry billions of dollars a year. Compounding this problem are an increasing number of Internet auction sites which facilitate the sale of stolen property and undermine the integrity of our interstate commerce.

Today we will offer solutions that can drastically reduce these crimes and protect consumers without expending valuable criminal justice resources on more arrests and prosecutions.

For years, retailers have vigorously worked to reduce ORC. As the problem has grown, our industry has invested more than $10 billion annually in measures including security staffing, employee background checks, secure packaging and technologies, such as video surveillance.

At Target, we have even established two forensic laboratories to assist law enforcement.

Retailers and law enforcement face an uphill battle now that the Internet marketplace has dramatically transformed the fencing of stolen property, as you will hear in this excerpt from "CNBC."

[Begin video.]

[End video.]

Mr. BREKKE. Fencing stolen goods used to be a local face-to-face process in which buyers and sellers were limited and operations were only marginally profitable.

Today, the Internet has created a worldwide market for stolen goods in which the sellers are anonymous and the buyers are unaware of the product source.

The number of sellers and lack of transparency has left law enforcement grasping at the sheer scale of the problem. The enormous profits have fueled criminal activity, hurting our communities.

The rapid growth of this issue requires a solution beyond investigating and apprehending individual criminals. To illustrate this, consider that the entire criminal case load of all U.S. attorneys is less than 60,000 a year.

Even this entire Federal criminal docket would be insufficient to address the 75,000 annual apprehensions made by Target alone. But sending more people into the criminal justice system is not the answer and not what we are proposing.

Mr. Chairman, we need to take a new approach to this challenge. We need Internet auction sites to make simple changes that deter the sale of stolen property. The simple step of requiring high volume Internet sellers to identify themselves and add a unique product identifier, such as serial numbers to their listings, would permit identification and tracing of stolen property.

It would also effectively constrain the sale of stolen property without additional law enforcement involvement. These same requirements have already proven successful in the online auction context. In fact, every vehicle listed for sale on eBay motors is now accompanied by a VIN number. This has virtually eliminated the sale of stolen vehicles on eBay.

Additionally, in the United Kingdom, eBay has identified high volume sellers for years. Seller identification and property tracings are also the foundation of traditional pawn shop regulations that deter the sale of stolen goods.

These are the same State or local regulations that criminals evade when they move online.

To protect the integrity of commerce in today's dynamic marketplace, these types of regulations must be extended to the online fencing market.

Finally, we believe that the Federal Government must act, since this cannot be resolved at the State level due to the nature of the Internet marketplace, and it is important to act now, since this issue will continue to grow.

We believe responsible Internet auction sites will support these measures, which will protect consumers and the integrity of the Internet commerce.

On behalf of the coalition, I thank you for the opportunity to address the Subcommittee and I welcome your questions.

[The prepared statement of Mr. Brekke follows:]

PREPARED STATEMENT OF BRAD BREKKE

INTRODUCTION

I am pleased to provide written testimony on behalf of Target and to represent the Coalition Against Organized Retail Crime.

By way of background, the Coalition Against Organized Retail Crime, which has been together now for six years, is comprised of national manufacturing and retail organizations as well as individual companies from both sectors. In total, there are 32 members. A roster of all Coalition members can be found at the end of this written testimony. We are also pleased to recognize the formal support of the International Association of Chiefs of Police (IACP) in our effort to control retail crime and the Internet fencing of stolen property.

The Coalition wishes to commend Chairman Scott and Ranking Member Forbes for scheduling today's hearing. This new focus on this issue is a very timely and appropriate response to the problem of Organized Retail Crime that is victimizing practically every segment of the retail community from supermarkets and retail drug stores, to mass merchandisers, department stores, specialty shops, boutiques, and convenience stores among others. We commend the Chairman, Ranking Member, and this Committee for recognizing the runaway problem of organized retail crime (ORC) and its causes.

I would like to discuss three important issues concerning this problem:

- First, I will briefly describe the nature of retail crime today and how it has evolved;
- Second, I would like to describe our substantial efforts to combat retail crime and explain how the Internet fuels its dramatic growth.
- Finally, I will explain how we can join together in encouraging on-line auctions sites to help protect our communities by preventing their sites from becoming markets for stolen goods and without expending valuable criminal justice resources on more arrests and prosecutions.

BACKGROUND ON ORC

First of all, when I refer to Organized Retail Crime, I do not intend to discuss the different phenomenon of what is commonly referred to as "shoplifting." Obviously, this type of theft is well understood and within the experience of most retailers. Organized retail crime, however, refers to the growing problem of mostly gangs but sometimes individuals who are engaging in illegally obtaining retail merchandise through both theft

and fraud in substantial quantities and as part of a commercial enterprise in which the merchandise is resold through large scale distribution networks. The tactics can vary from multi-person diversionary efforts, to abuse of emergency exit doors and employing counter measures such as foil lined bags to defeat electronic merchandise protection tags. These criminal commercial enterprises are of a different nature and a different scale from what we have come to understand as "shoplifting." As I will explain, the size of these enterprises is often a function of their ability to redistribute their stolen merchandise. And the Internet has transformed their ability to resell their stolen goods.

Yesterday, a for-profit retail theft may have focused on high-value individual items such as a watch or electronics that might garner economic return to the thief even if they had to sell it at a heavy discount. Today, commercial ORC gangs exhibit modern practices of inventory management to help them meet the growing demand for the entire range of stolen merchandise such as consumer electronics, heartburn medication, Dyson vacuum cleaners, printer cartridges, razors, DVDs, dental white strips, anti-histamines, over-the-counter painkillers, diabetes test kits, and increasingly, baby formula. The inclusion of baby formula is troubling since there is little likelihood that attention is paid to whether it is safely stored prior to resale.

Another interesting development is that some organized property rings actually use advanced "just-in-time" inventory control systems in which they first accept orders for goods and only then do they make up "shopping lists" that they direct their boosters to go out and steal.

These commercial rings are a growing problem throughout the United States affecting many sectors of the retail community from supermarkets and chain drug stores to mass merchandisers and specialty stores. Precise measurements of the true scope of this problem are impossible due to the inherently secretive nature of what is, after all, a criminal enterprise. Not surprisingly, criminal gangs do not publicly report either their sales or their thefts. Studies by different academics estimate the scope of the problem at different levels but consistently in the billions of dollars annually. The Federal Bureau of Investigation (FBI) interstate task force recently estimated that Organized Retail Crime accounted for up to $30 billion in losses annually at the store level. By any measure, it is a significant issue affecting our communities.

RETAIL INDUSTRY EFFORTS

For years, the retailing industry has vigorously worked to control organized retail crime and other forms of retail theft. According to industry studies, retailers collectively spend an estimated $12 billion annually to combat retail theft. These efforts include but are not limited to the following:

- new technologies in tamper resistant packaging,
- labeling technologies,
- merchandise protection fixtures,
- high tech surveillance camera with sophisticated computer analytics and remote monitoring,

- sophisticated background investigations for employees to identify ORC ring members,
- many thousands of dedicated loss prevention professionals and investigators,
- we at Target have even invested millions in establishing forensic laboratories with latent fingerprint and other capabilities that support not only our own ORC investigations but also other law enforcement prosecutions all at no charge to law enforcement.

Any suggestions that retailers are reducing their efforts to fight retail theft are erroneously misconstruing data by narrowing focusing on loss prevention staffing only. These estimates fail to consider the expenditures against retail theft that are part of our construction, human resources and information technology budgets. This is an enormously important and expensive effort for the retail industry. There is no question that these efforts will continue and grow. However, the continuing growth of retail crime and the damage it causes to communities must cause us all to recognize that something needs to be done to control the resale market for stolen goods.

E-FENCING

As has been recently reported in network news stories reported by both CNN and CNBC, (see attached) the explosive growth in retail crime has been fueled by the advent of technology in general and the Internet specifically.

Before the internet, the market for stolen goods was limited by several critical factors:

- First, buyers and sellers of stolen goods had to physically interact with one another face-to-face and this naturally limited the overall size of the market for stolen goods;
- Second, the face-to-face nature of stolen goods market meant buyers could usually recognize the questionable legality of the merchandise offered and were willing to pay much less for goods (generally in the range of $.30 on the dollar); this made profits lower;
- Finally, the personal nature of the stolen goods market, along with state and local pawnshop regulations, meant that sellers of stolen goods had to identify themselves and identify their goods with serial numbers.

In the "bricks and mortar" world, it was difficult to operate with anonymity.

Today, that has all changed. The Internet has created a world wide market for stolen goods in which the sellers are anonymous and there is an enormous universe of buyers who are generally unaware of the nature of the goods sold. These unwitting buyers are usually willing to pay twice (close to $0.70 on the dollar) that which was previously available to fences in the "bricks and mortar" world.

Moreover, Internet fences are routinely evading the traditional laws used by state and local governments to protect our communities by controlling sales of stolen property.

Virtually all state and local pawnshop regulations require sellers to identify themselves and identify the serial numbers of goods sold. But on the Internet, there are currently no controls. This means that there are no limits on fences operating in the Internet and no assurances that the property consumers are buying is not stolen.

Not surprisingly, the enormous new profits available to organized retail crime rings are resulting in more and more boosters in the stores.

PROPOSED REQUIREMENTS FOR ONLINE AUCTION COMPANIES

Retailers, in partnership with law enforcement, will continue to fight this problem. But the growth in organized retail crime - fueled by technology and Internet fencing - has reached such a scale that retail and law enforcement cannot successfully fight this problem one booster and one fence at a time.

Consideration of two statistics can put in perspective the scale of this problem relative to available criminal justice resources.

- In the most recent year, Target alone made approximately 75,000 theft apprehensions in its stores.
- By comparison, the total number of criminal cases in all federal district courts across the country is usually less than 60,000 cases in any one year.

What this means is that even if all of the U.S. Attorneys across the country stopped prosecuting bank robberies, fraud, drug trafficking and even terrorism, there still would not be enough capacity to prosecute even the apprehensions made by Target. Obviously, the entire industry makes hundreds of thousands of apprehensions annually. But sending even more people into the criminal justice system is not the answer and not what we are proposing. This also explains why cooperation from the Internet auction industry in individual cases and only when requested by law enforcement is also insufficient. We need to change behavior and the internet auction sites need to join us in this effort.

It was once said by some insightful observer that: "If the only tool you have is a hammer, then all of your problems begin to look like nails." Mr. Chairman, we can't keep addressing this issue by investigating and apprehending one fence at a time; we need to add a new approach to this problem.

Mr. Chairman, we need to have responsible internet auction sites make modest changes to their sites to help reduce sales of stolen property in the first place. And we can do this by applying traditional models of stolen property regulation to the Internet and inject some needed transparency to these transactions.

And, Mr. Chairman, transparency works. It is already being effectively used on other parts of the Internet. Today, every vehicle listed for sale on eBay Motors is accompanied by a Vehicle Identification Number (VIN) [the VIN itself can be verified

for accuracy through Carfax] which permits ready and automated identification of any stolen car posted for sale. This requirement of posting identifying information has virtually eliminated the sale of stolen vehicles through this service. It could have the same effect in preventing sales of stolen iPods and vacuum cleaners.

Opponents to this proposal frequently cite alleged privacy concerns to oppose these requirements but the United Kingdom has employed a similar requirement for high volume Internet sellers for years without adverse consequences. Moreover, our suggestion is to limit the required identification of sellers to only the high dollar volume sellers. This will protect the privacy of infrequent sellers while preventing high volume commercial sellers from hiding in unnecessary anonymity.

These requirements are not unorthodox. As I mentioned earlier, these requirements, identification of sellers and providing serial numbers, are the very same features that are common in almost all state and local pawnshop laws. These simple requirements have been used by virtually all communities to protect themselves from property crime problems. These are the same requirements that sellers are evading by going on-line. This means that the advent of e-fencing has taken this traditional state and local issue and made it impossible for local law enforcement to control. Every local fencing operation with access to the Internet can now operate internationally and beyond the reach of local law enforcement. A federal solution is necessary to protect our communities.

We believe that law enforcement needs new tools to prosecute irresponsible internet auction sites and marketplaces that refuse to exercise due diligence over persons using their facilities. In this regard, what we are suggesting is that Internet auction sites who fail to exercise due diligence to prevent the facilitation of stolen property sales should be treated not unlike financial institutions that fail to exercise due diligence to identify and prevent money laundering by their customers.

RETAILERS WANT TO PARTNER WITH INTERNET AUCTION SITES

I want to make clear that we are not seeking the criminal prosecution of responsible Internet auction sites. Rather, we want to encourage them to join us in protecting our communities. In fact, we would expect that responsible Internet auction sites and their customers would welcome this opportunity to reduce the sale of stolen property online.

Retailers have already formed critical partnerships that will pay important dividends under the proposed legislation, if passed. For example, certain Coalition members, such the National Retail Federation (NRF), the Retail Industry Leaders Association (RILA) and the Food Marketing Institute (FMI) have recently partnered with the Federal Bureau of Investigations (FBI) to create a national data base, the Law Enforcement Retail Partnership Network (LRPNet) that tracks where ORC crimes are being committed throughout the country. This same database could be used to house and match the serial numbers of stolen merchandise to the serial numbers posted by online

auctions sites. The partnership with the FBI could also be relied upon to ensure that the serial numbers and this database are used only to control criminal conduct and not misused for other purposes.

CONCLUSION

While retailers will continue to invest billions in trying to prevent organized retail crime and apprehend and prosecute the perpetrators, it is clear that the problem can not be solved by fighting these cases one by one and only in the shopping aisles. At the rate the Internet is growing and the constantly and rapidly escalating scale at which any criminal is now able to operate, it is clear that there is an immediate need to update the law to cover these 21st century criminal operations.

We can do this by applying proven methods such as transparency and the posting of serial numbers that permit the tracing of stolen property. These modest measures have already been proven to be effective, even in the Internet age. And these measures can reduce property crime without more arrests and incarceration.

Coalition Against Organized Retail Crime

- **Abbott Laboratories**
- **Ahold USA, Inc.**
- **Consumer Healthcare Products Association**
- **Cosmetic, Toiletry, and Fragrance Association**
- **CVS/pharmacy**
- **Duane Reade**
- **Eastman Kodak Company**
- **Eckerd Corporation**
- **Food Lion, LLC**
- **Food Marketing Institute**
- **Giant Food LLC**
- **Giant Food Stores LLC**
- **GlaxoSmithKline**
- **Grocery Manufacturers/Food Products Association**
- **International Formula Council**
- **National Association of Chain Drug Stores**
- **National Association of Convenience Stores**
- **National Community Pharmacists Association**
- **National Retail Federation**
- **Nestle**
- **Publix Super Markets, Inc.**
- **Retail Alliance**
- **Retail Industry Leaders Association**
- **Rite Aid Corporation**
- **Safeway Inc.**
- **Security Industry Association**
- **The Stop & Shop Supermarket Company**
- **Target Corporation**
- **Tops Markets, LLC**
- **Wal-Mart Stores, Inc.**
- **Walgreen Co.**

Mr. SCOTT. Thank you.

I would like to recognize the presence of the gentleman from Georgia, Mr. Johnson, who has joined the Committee.

Mr. Hill?

TESTIMONY OF DAVID HILL, DETECTIVE, MONTGOMERY COUNTY POLICE DEPARTMENT, ROCKVILLE, MD

Mr. HILL. Good morning, Chairman Scott and Ranking Member Forbes. My name is Detective David Hill, and I am pleased to be testifying before the Subcommittee today for the growing problem of organized retail crime.

By way of background, not only am I a detective with Montgomery County police, I am also a sworn special deputy of the United States Marshal Services and assigned to the metro area fraud task force of the United States Secret Service.

To put my job in perspective, industry-wide retail fraud and theft losses amount to about $40 billion a year, according to one prominent study. That is more than double the losses of robbery, burglary, larceny and auto theft combined nationwide, which is $16.9 billion.

In the metropolitan area, there are thousands of retail outlets and several major malls, with one being in Montgomery County, that being Montgomery Mall.

As we have heard, organized retail crime, which I will refer to as ORC, is a real and growing trend and accounts for a large portion of overall industry losses. The term "organized" can mean many things, from pairs of boosters who target retail stores with the intention of distracting a sales associate while the others steal merchandise from the shelves, to teams of five or more who stake out targets carefully and steal just discreetly undetected.

In these cases, a member of the team will take the merchandise to a waiting vehicle, while in still other cases, members will act as lookouts to make sure that the team is not being followed by security.

Some of the more sophisticated criminals engage in changing UPC barcodes on merchandise so that they ring up differently at checkout. This is commonly called ticket switching.

Others use stolen or counterfeit credit cards to obtain merchandise. These criminals are working for bulk buyers or ring leaders who have shopping lists with specific products in mind. These lists target luxury clothes, accessories, perfumes, baby formula and expensive over-the-counter medications. Gift cards and electronics are very popular items, and let us not forget vacuum cleaners and power tools. Whatever is new and popular, that is what the buyer wants.

We pick up on groups that travel the I-95 corridor from Maine to Miami, hitting numerous retailers along the way. They fill up trucks and vans with stolen merchandise and then drive the merchandise to their fences or have it shipped by way of plane.

In one of our big cases, we recovered over $40,000 in merchandise that we witnessed the ring steal from over 12 stores in less than 1 hour.

What we see more and more is the stolen property showing up on sale on the Internet. The reason so-called e-fencing is becoming

popular is the simple economics of risks and rewards. A typical fencing operation pays criminals $0.30 on a dollar, whereas online marketing and auction sites can bring closer to $0.70 on the dollar.

Further, pawn shops tend to be regulated, requiring the disclosure of information about both the seller and the merchandise, which creates additional risks for the criminals. In contrast, online marketplaces provide an unregulated environment in which thieves can resell stolen property to customers on a national and even on an international level, with few or no questions asked.

The Internet not only makes it easier for ORC rings to unload their merchandise at near retail price, it also enables sophisticated single operators to make huge profits off of their crimes, as well.

On Christmas Eve 2005, in Montgomery County, we apprehended a college student who was the subject of a "CNBC" piece on e-fencing earlier this year. By his own admission, the student made over $50,000 in just over 2 months auctioning off merchandise on eBay that he had switched the UPC codes on and paid a very small fraction of the retail price.

Mr. Chairman, important investigations like this one rely upon the ongoing partnership between law enforcement and the retail sector. A large portion of my cases are initiated and reported to me by loss prevention investigators employed by retail companies.

By requiring online auction sites to collect and disclose serial numbers of products being offered on a sale, when appropriate, and to provide additional seller information to retailers' loss prevention investigators will help our retail partnership build better cases that can then be turned over to detectives like myself.

Increased seller disclosure should encourage and deter criminals from e-fencing stolen products online and should have little or no impact on legitimate sellers.

Mr. Chairman, I commend the important work that you are doing to shed light on a very real problem, ORC. Too often, professional thieves are getting off with little more than a slap on the wrist because many jurisdictions are still treating ORC crimes as shoplifting cases.

Some might say that this is a victimless crime, but ORC affects society because it increases prices and can compromise the quality and safety of consumer goods.

As I have already stated, these are often multi-jurisdictional crimes where professional thieves are crossing State lines. With the added component of e-fencing on the Internet, this is a natural area for Congress to get involved.

Clearly, Federal legislation would serve as a powerful tool for law enforcement and a deterrent to would-be criminals.

Mr. Chairman, I appreciate the invitation to address you and the Subcommittee Members. I welcome any questions or comments you may have.

Thank you.

[The prepared statement of Mr. Hill follows:]

PREPARED STATEMENT OF DAVID HILL

Good Morning Chairman Scott and Ranking Member Forbes, my name is Detective David Hill and I am pleased to be testifying before the subcommittee today on the growing problem of organized retail crime.

By way of background, I am currently a detective with the Montgomery County Police Department's Retail Crimes Unit and have been in law enforcement for over 16 years. I am a sworn Deputy of the U.S. Marshall Service and assigned to the Metro Area Fraud Task Force of the United States Secret Service. I am the only detective in my department and one of the few in the region assigned exclusively to investigate retail theft and fraud.

To put my job in perspective, industry-wide retail fraud and theft losses amount to almost $40 billion a year according to one prominent study. That is more than double the losses of robbery, burglary, larceny, and auto theft combined ($16.9 billion) nationwide. As you know, the Washington Metropolitan Area is the eighth largest in the nation, with thousands of retail outlets and several major malls just in Montgomery County alone. I am a busy man. I typically handle scores of cases each year.

As we have heard, organized retail crime is a real and growing trend, and accounts for a large portion of overall retail losses. According to the National Retail Federation, 79 percent of retailers surveyed report being victims of ORC and 71 percent saw increases in ORC activity last year. The term "organized" can mean many things, from pairs of "boosters" who target retail stores with the intention of distracting a sales associate while the other sweeps merchandise from the shelf, to teams of five or more who stake out targets carefully and steal discreetly in crowded stores. In many cases, ORC teams are efficiently segmented into collectors, packers, and movers that take the stolen merchandise to a waiting car, and still others who serve as lookouts to make sure that the team is not being followed by security.

Some of the more sophisticated criminals engage in changing the UPC bar codes on merchandise so they ring up differently at check-out, this is commonly called "ticket switching." Others use stolen or cloned credit cards to obtain merchandise. Sophisticated or not, what all of these thieves have in common is that they are career criminals usually hired by bulk buyers or ring-leaders with specific products in mind. They have "shopping lists," if you will. Some target luxury clothing, accessories, and perfume while others focus on baby formula and expensive over-the-counter medications or beauty aids. Gift cards and electronics are other popular targets. Believe it or not, these criminals are even stealing vacuum cleaners and power tools. Whatever is new; whatever is hot, that's what the criminals want.

Some of these ORC groups travel important interstate corridors, like I-95, from Miami to Maine, hitting numerous retailers along the way and filling vans or trucks with stolen merchandise. In one case, we recovered $40,000 in merchandise that was stolen in one hour. The booty ends up at underground bodegas, pawn shops and flea markets, some is repackaged and warehoused for re-distribution, and, in a growing trend, more and more of it is showing up for sale on the Internet.

The reason so-called "eFencing" is becoming so popular is the simple economics of risk and reward. A typical fencing operation typically pays criminals $.30 cents on the dollar, whereas online marketplaces and auction sites can bring closer to $.70 cents on the dollar for "new in box (NIB)" merchandise, and gift cards pay even more. Further, local pawnshops tend to be regulated—requiring the disclosure of information about both sellers and the merchandise being sold—which creates additional risks for criminals. In contrast, Online marketplaces provide an unregulated environment in which thieves can re-sell stolen property to customers on an national or even international level with few or no questions asked.

The Internet not only makes it easier for ORC rings to unload merchandise at near retail prices, it also enables sophisticated single-operators to realize a huge profit off of their crimes as well. On Christmas Eve 2005 the Montgomery County PD apprehended a college student who was the subject of a CNBC piece on eFencing earlier this year. By his own admission, the student made over $50,000 auctioning off stolen merchandise on e-Bay. These items were stolen from stores such as Best Buy, Target, and Wal-Mart and included high-end computer graphic cards, GPS navigation units, books, expensive iPod accessories, and many other items

Mr. Chairman, important investigations like this one rely upon the ongoing partnership between law enforcement and the retail sector. While I work a regular investigative beat, cases are most often initiated and reported by the loss prevention investigators employed by retail companies. It is true that many companies like e-Bay will provide information to law enforcement when asked to do so, however, requiring Online auction sites to collect and disclose serial numbers of products being offered for sale when appropriate, and to provide additional seller information to retailers' loss prevention investigators will help our retail partners better understand and build cases that can then be turned over to detectives like myself.

Additionally, as noted above, increased seller disclosures should discourage criminals from even attempting eFencing. Such transparency will likely disproportion-

ately affect and deter criminals who are interested in fencing stolen product Online, with little or no impact on legitimate sellers.

Mr Chairman, I commend the important work that you are doing to shed light on the very real problem of organized retail crime. Too often professional thieves are getting off with little more than a slap on the wrist because many jurisdictions are still treating ORC crimes as shoplifting cases. Some would say that this is a "victimless" crime, but ORC affects society because it increases prices and can compromise the quality and safety of consumer goods. As I have already described, these are often multi-jurisdictional crimes where professional thieves are regularly crossing state lines. With the added component of eFencing on the Internet, this is a natural area for Congress to get involved. Clearly, federal legislation would serve as a powerful tool for law enforcement and a deterrent to would-be criminals.

Mr. Chairman, I appreciate the invitation to address you and the subcommittee members. I welcome any questions or comments you may have.

Thank you.

Mr. SCOTT. Thank you, Mr. Hill.

Mr. Langhorst?

TESTIMONY OF KARL F. LANGHORST, CPP, DIRECTOR, LOSS PREVENTION, RANDALLS/TOM THUMB FOOD AND PHARMACY, HOUSTON, TX

Mr. LANGHORST. Chairman Scott, Ranking Member Forbes and Members of the Committee, good morning. My name is Karl Langhorst, director of loss prevention for Randalls-Tom Thumb of Texas, a division of Safeway.

Safeway is a Fortune 100 company, one of the largest food and drug retailers in North America.

I have been invited here to share with you my experiences with the increasing problem of organized retail crime. Retailers have always had to deal with shoplifting as part of doing business, but let me be clear—ORC is not shoplifting. It is theft committed by professionals in large volume for resale. It is being committed against retailers of every type at an increasing rate.

Safeway estimates a loss of $100 million annually due to ORC. In a typical scenario that repeats itself hundreds of times each day, teams of boosters, or hired thieves, come into the store with a shopping list of desired product provided by the fence, the person behind the organization.

Typical items stolen from Safeway stores include over-the-counter medicines, such as Prilosec, Tylenol, Abreva, Crest White Strips, Oil of Olay, diabetic test strips, and baby formula.

Using well coordinated efforts and highly sophisticated methods to elude store security and management, they sweep the shelves clean of hundreds of dollars of product at a time. They are even out within a matter of 3 to 4 minutes.

They often leave undetected and move on to other stores. Boosters will typically hit 10 to 15 retailers a day, often crisscrossing State lines and jurisdictions before going back to the fence to get payment for the goods they have stolen and to receive their marching orders for the next day.

The fence then sells the items at traditional brick-and-mortar stores, flea markets, or increasingly online. They have great incentive to sell online because they know that they can operate anonymously and are protected.

They can move more merchandise more quickly and to a worldwide audience and they can receive the highest return for items sold online.

Safeway has taken an unprecedented step in the grocery industry of creating a whole division to combat ORC, employing special investigators across the U.S. and Canada. Because of the prevalence of ORC in our stores, special teams of ORC undercover agents have been trained and deployed into the stores.

These agents understand the difference in detecting and apprehending the boosters versus simple shoplifters. Safeway has implemented additional layers of security throughout the supply chain, from the warehouse to the shelves. State-of-the-art digital camera systems are installed in all of our stores at a cost of millions of dollars in order to aid law enforcement and our own investigators and store management teams.

In spite of our extraordinary efforts, our company continues to see a steady increase of merchandise sold online in high volume and offered below the wholesale cost to the retailers.

Fences know that the anonymity of the Internet presents an extremely low risk way to sell stolen goods. Online marketplaces, such as Internets, are being used as Internet pawn shops and are largely unregulated.

We have had some successes in fighting ORC. In 2001, the Portland Division of Safeway opened an investigation of three major fences and presented the information to the FBI. Safeway and the FBI continued the investigation and successfully broke up a multi-State ORC network operating from Oregon to Texas to Florida, that ultimately resulted in the seizure of over $3 million in product, $950,000 in cash and criminal prosecution of 49 suspects.

The suspects told investigators that they resold much of their stolen product on eBay because of the anonymity.

Last year, in cooperation with Walgreen's, Wal-Mart and other retailers, our northern California division worked a case with ICE agents that resulted in the seizure of product valued at $5 million and the arrest and prosecution of Yemeni nationals. These individuals operated a warehouse containing 12 tractor-trailers full of merchandise, approximately 850,000 items, as well as a Web site.

And just this week in Texas, agents from Department of Public Safety and Safeway ORC investigators completed a year long investigation and shut down a long time fence that was taking in an estimated $4 million annually in stolen HBC product and who employed over 100 boosters.

The product was ultimately sold through an online marketplace. In this case, many of the boosters were known drug users, and the stolen product was stored under conditions that were not approved for these items.

The need for a Federal solution to address the current free-for-all of electronic fencing is obvious. The information we are seeking from online marketplaces is no more cumbersome than is currently in place for brick-and-mortar providers of the same type operations.

Legitimate retailers, both those operated online and as brick-and-mortar businesses, as well as consumers have the right to this type of protection.

In spite of Safeway's best efforts and unprecedented alliances with other retailers to combat ORC, we continue to suffer significant losses. If we are to be successful in curtailing this enormous criminal enterprise that threatens the business of retailers across the country, millions of dollars in lost sales tax revenue and the impact to consumers through adulterated product, higher prices and lack of availability of merchandise, we must have strong Federal legislation that more clearly defines ORC and requires the same level of accountability on Internet sellers as that of traditional retail sites.

I thank you very much for your attention and welcome any questions.

[The prepared statement of Mr. Langhorst follows:]

PREPARED STATEMENT OF KARL F. LANGHORST

Chairman Conyers, Chairman Scott, Congressmen Smith and Forbes, and members of the committee, good morning. Thank you for the opportunity to testify before the Crime Subcommittee today on the growing problem of organized retail crime. My name is Karl Langhorst, Director of Loss Prevention for Randall's/Tom Thumb of Texas, a Safeway company. Safeway Inc. is a Fortune 100 company and one of the largest food and drug retailers in North America. The company operates 1,755 stores in the United States and western Canada and had annual sales of $40.2 billion in 2006.

I have been invited here to share with you our experience with the increasing problem of organized retail crime (ORC). Retailers have always had to deal with shoplifting as part of doing business, but let me be clear, ORC is not shoplifting. It is theft committed by professionals, in large volume, for resale. It is being committed against retailers of every type at an increasing rate. Safeway estimates a loss of $100 million dollars annually due to ORC. According to the FBI, the national estimate is between $15–30 billion annually.

Let me describe for you how sophisticated and organized these enterprises are. In a typical scenario that repeats itself hundreds of times each day, teams of boosters, or hired thieves, come into the store with a shopping list of desired product provided by the fence—the person behind the organization. Typical items stolen from Safeway stores include over the counter medicines such as Prilosec, Tylenol, and Abreva, razor blades, Crest White Strips, Oil of Olay and other beauty products, diabetic test strips, and baby formula. Using well coordinated efforts and highly sophisticated methods to elude store security and law enforcement, they sweep the shelves clean of hundreds of dollars of product at a time. They are in and out within a matter of 3 to 4 minutes. They often leave undetected and move on to other stores. Typically, boosters will hit 10 to 15 retailers a day, in many areas criss-crossing state lines and jurisdictions, before going back to the fence to get payment for the goods they have stolen and to receive their marching orders for the next day. Their payment usually amounts to about twenty cents on the dollar. The fence then sells the items at traditional brick and mortar stores, flea markets, or— increasingly—online. They have great incentives to sell online because they know that they can operate anonymously and are protected, they can move more merchandise more quickly and to a broader audience, and they can receive the highest return for items sold online.

You may ask what Safeway is doing to prevent ORC at the store level—why don't we just hire a few more guards? The simple answer is that guards posted at store entrances provide only so much protection. In addition, Safeway has taken a step unprecedented in the grocery industry, of creating a whole division to combat ORC, employing special investigators across the US and Canada. This is in addition to the loss prevention teams based in each of our divisions. Because of the prevalence of ORC in our stores, special teams of ORC undercover agents have been trained and deployed into the stores. These agents understand the difference in detecting and apprehending the boosters versus simple shoplifters. Additionally, store personnel are trained and spend significant time in the store performing additional steps to prevent ORC at store level. There are special markings on high theft items to help deter theft. We limit quantities of this merchandise on the shelf to try and minimize losses, and we have invested in specialized shelving and display fixtures to thwart theft within the store. Unfortunately, these measures also make it difficult for customers to shop as easily as we would like and severely restricts the sale

of these items. Safeway has implemented additional layers of security throughout the supply chain—from warehouse, to the loading dock, to the shelves. We have spent a tremendous amount of money in training and awareness campaigns among other retailers and law enforcement. Further, state of the art digital camera systems are installed in all of our stores at a cost of millions of dollars in order to aid law enforcement and our own investigators and store management teams in identifying the boosters who repeatedly steal from our stores.

In spite of our extraordinary efforts, our company continues to see a steady increase of our health, beauty and cosmetic goods sold on the internet in high volume and offered below cost of what retailers can obtain it directly from the manufacturer. Fences have quickly learned that the anonymity of the internet presents an extremely low risk way to sell stolen goods and are abandoning the previous model of brick and mortar locations and flea markets that were once used to dispose of this type product. Online marketplaces such as eBay are being used as internet pawn shops, and are largely unregulated.

We have has some successes in fighting ORC. In 2001 the Portland division of Safeway opened an investigation of three major fences and presented the information to the FBI. Over the course of the next three years Safeway and the FBI continued the investigation and successfully broke up a multistate ORC network operating from Oregon to Texas to Florida that ultimately resulted in the seizure of over $3 million in product, $950,000 in cash and federal criminal prosecution of 49 suspects. The suspects told federal investigators that they resold much of the stolen product on eBay because of the anonymity assured by the site.

Last year, in cooperation with Walgreens, Wal Mart and other retailers, our Northern California division worked a case with ICE agents that resulted in the seizure of product valued at $5 million dollars and the arrest and prosecution of Yemeni nationals. These individuals operated a warehouse containing 12 tractor trailers full of merchandise—850,000 pieces of HBC product, as well as a website for internet sales.

Just this week, state agents in Texas and Safeway ORC investigators completed an over year long investigation and shut down a long time fence that was taking in an estimated 4 million dollars in stolen HBC product and who employed over 100 boosters. The fence was selling to another individual who was marketing it over the internet on both his own web site and eBay. In this case, many of the boosters were known drug users and the stolen product was stored under conditions that were not approved for these items. Storing these items in unregulated conditions can render the products ineffective, or in the worst case actually harm unsuspecting consumers, as in the case of baby formula.

In each of these cases, we could have had quicker, more thorough investigations and clearer rules under which the suspects could be prosecuted if we had a federal law in place specifically to address ORC. Federal law enforcement and prosecutors are interested in prosecuting ORC cases, but they lack the tools and resources necessary to bring these cases to bear. Investigation of these types of cases is extremely difficult. A federal ORC bill would establish a definition of ORC in statute, help eliminate the state to state jurisdictional cherry picking by thieves, and would be especially helpful in making efencing a less attractive option for criminals to sell stolen property. Operators of sites such as eBay have historically failed to provide any meaningful information to retail investigators. Without this cooperation, we are severely hampered in securing the evidence needed by federal investigators to even open an investigation.

The need for a federal solution to address the current "free for all" of electronic fencing is obvious. The information we are seeking from online marketplaces is no more cumbersome than is currently in place for brick and mortar providers of the same type operations. In many states sellers of product such as HBC must have proof upon demand of where they acquired the product and if they are pawning it they must have valid identification and serial numbers of the product, if any, are noted. Legitimate retailers—both those operating online and as brick and mortar businesses—as well as consumers have a right to this type of protection.

As I am sure you are aware, retail is an extremely competitive environment and the grocery industry is no exception. In spite of that competitiveness, retailers understand that without cooperating with each other and working together on the investigations of boosters and fences we will not be able to effectively combat this problem. Because of the complexity of ORC cases and the many obstacles that stand in the way of investigating fences, especially internet based fences, it is not unusual for ORC investigators from several different retailers to work together to help gather evidence for law enforcement so that a fence can be shut down.

In spite of Safeway's best efforts and unprecedented alliances with other retailers to combat ORC, we continue to suffer significant losses. If we are to be successful

in curtailing this enormous criminal enterprise that threatens the businesses of retailers across the country, costs millions of dollars in lost sales tax revenue and impacts consumers through adulterated product, higher prices and lack of availability of merchandise, we must have strong federal legislation that more clearly defines ORC and requires the same level of accountability on internet sellers as that of traditional retail sites.

I thank you very much for your attention and I look forward to answering any questions you may have.

Mr. SCOTT. Thank you.

Mr. Chesnut?

TESTIMONY OF ROBERT CHESNUT, SENIOR VICE PRESIDENT, RULES, TRUST AND SAFETY, eBAY, INC., WASHINGTON, DC

Mr. CHESNUT. Chairman Scott, Ranking Member Forbes, Members of the Committee, good morning. I would like to thank the Committee for giving eBay the opportunity to discuss the important issue of fostering real and effective solutions to the problem of organized retail crime.

I ask that my full statement be entered into the Committee record.

Prior to joining eBay in 1999, I was an assistant United States attorney over in the eastern district of Virginia for 11 years. Five of those years, I served as the chief of the office's major crimes unit, prosecuted myself organized retail crime cases under Federal interstate transportation of stolen property statutes.

My career at eBay has been focused on keeping the site safe for our community by working with law enforcement, the private sector, policymakers, the consumer protection agencies, State and Federal legislators.

eBay recognizes that organized retail theft is a serious challenge that is facing many retailers. This Committee has compiled clear evidence that the problem stretches back many years and occurs at a disturbingly large scale.

We share the view that this issue deserves serious attention by lawmakers, law enforcement, and all aspects of the retail businesses impacted and eBay stands ready to work with the other stakeholders on balanced and thoughtful responses, including taking account of the Internet as one of the many ways that criminals do reach consumers.

And let me be clear that the eBay takes the problem of stolen goods and all forms of illegal activity that can impact our users very seriously. The delivery of stolen goods, counterfeit goods, or no goods at all is a horrible experience for our buyers.

In the relatively rare circumstances where this does take place, buyers who get stolen property or get property that is not as described, they don't come back to our Web site and they spread the word and say bad things about eBay. And by spreading the bad word about eBay and having a bad experience like this, it hurts our business.

So it is not only the right thing to do, but it is also good for our business by fighting fraud and keeping bad sellers off our Web site, vital to our success.

eBay has the most proactive policy to combat fraud and illegal activity of all major Internet commerce companies. We have over 2,000 employees working around the world full-time, 24 hours a

day, 7 days a week to combat all forms of online fraudulent activity, including the sale of stolen property.

Our fraud investigation team works closely with law enforcement officials at the State, Federal, local levels, including Detective Hill right here on our committee. We have worked with Detective Hill and other members of his staff.

We have got dedicated hotlines, fax numbers, e-mail addresses for law enforcement to reach us quickly and efficiently and our fraud investigation team has trained over 3,000 law enforcement officials around the United States to help combat online crime.

Our policies and commitment to fighting stolen goods are pretty straightforward. When a retailer has concrete evidence to the effect that stolen property is on our site, we work with them and we work with law enforcement to address the problem quickly and efficiently. This process exists and we believe that it works well.

What does working well mean? It means that criminals are arrested and they are put in jail. The reality is that eBay is the dumbest way for a criminal to try to sell stolen property. Our site is actually quite transparent, with detailed recordkeeping, very open privacy policy with respect to working with law enforcement and providing information quickly, and tying these sorts of records directly to financial transactions and financial institutions through our PayPal payment service.

I would like to spend a moment to comment on the broader ORC problem. This committee has done significant work developing a record of this troubling issue. Just in terms of the distribution of stolen goods, this committee's 2005 report lists the following major venues for the sale of stolen property: small shops, flea markets, pawn shops, local fences, truck stops, newspaper ads, overseas buyers, and, yes, the Internet, through all different types of Web sites and chat forums.

The committee report also describes how unscrupulous middlemen sell significant volumes of stolen goods right back to the traditional retailers, blended in with legitimate products.

My point in mentioning the breadth of the process of turning stolen goods into money is that there are many avenues. Most of them are low tech and, actually, most of them are relatively anonymous compared to a site that is very open and transparent like eBay.

And, yes, there are some tech savvy criminals that are finding ways to use Internet technologies. In terms of the Internet, if our eBay experience in working with law enforcement offers any insight, it would be that there are just as many varied schemes among Internet-enabled criminals as there are in the offline world.

Similar to their offline counterparts, Internet criminals innovate to develop methods that are the least transparent and most fluid so that they can stay hidden in the darkest corners of the Internet.

We look forward to working with the Committee on ways to effectively empower law enforcement to right the problem of organized retail crime. We supported legislation in a number of States calling for tougher penalties, mandatory sentences and higher priority prosecution of these criminals, and support the same at the Federal level.

Thank you very much. I will be happy to answer any further questions.

[The prepared statement of Mr. Chesnut follows:]

PREPARED STATEMENT OF ROBERT CHESNUT

Mr. Chairman, Ranking Member Forbes and members of the Committee,

My name is Robert Chesnut, and I am the Senior Vice President for Rules, Trust and Safety for eBay Inc. I would like to thank the committee for giving eBay this opportunity to discuss the importance of fostering real and effective solutions to the problem of Organized Retail Crime, and I ask that my full statement be entered into the committee record.

Prior to joining eBay in 1999, I was an Assistant United States Attorney in the Eastern District of Virginia for 11 years. For 5 of those years I served as Chief of the Major Crimes Unit. My career at eBay has been focused on keeping our site safe for our community by working with the law enforcement community, the private sector, policymakers, consumer protection agencies and state and federal legislatures, so I very much appreciate the opportunity to speak with you today on behalf of eBay about this important topic.

eBay recognizes that organized retail theft is a serious problem facing many retailers in this country. This Committee should be applauded for the commitment it has shown to addressing this problem, compiling clear evidence that this is a problem that stretches back many years and occurs at a disturbingly large scale. We believe that it is a problem that deserves serious attention by lawmakers, law enforcement and all aspects of the retail businesses impacted. eBay stands ready to work with all stakeholders on balanced and thoughtful responses, including responses that account for the internet as one among many and varied ways that criminals attempt to sell stolen goods to unsuspecting consumers.

Let me be clear, eBay takes the problem of stolen goods, and all forms of illegal activity that can impact our users, very seriously. We have the most pro-active policies and tools to combat fraud and illegal activity of all the major internet commerce companies. There are over 2000 eBay Inc. employees around the world working to combat all forms of on-line fraud, including the sale of stolen goods. As we have grown as a business over the last 12 years, we have dedicated more and more resources to the fight against criminal activity that harms our users.

When eBay first emerged as a dynamic way for people to buy and sell items online back in 1995, there were really no rules in place for our users to follow. We established the feedback system which gave each member a rating for each transaction that any user could see, and for the most part all of the trust between buyers and sellers was based on that system in the early years of eBay. But the company realized in those early years that in order to become a truly safe and trusted e-commerce site we needed to put policies and tools in place to make sure that illegal items and harmful sellers were quickly identified and removed from our platform. We created clear policies about what is allowed and not allowed to be listed on the site and built state-of-the art tools to enforce those policies. We developed advanced anti-fraud tools to identify suspicious behavior, remove members who engaged in harmful practices and take steps to keep them from coming back on the site. And we established a global Fraud Investigations Team to partner with law enforcement to make sure that criminals who seek to abuse our community of users get prosecuted to the fullest extent of the law. Largely as a result of these efforts, we now have trading platforms in 38 countries with over 240 million registered users. At any one time around 100 million items are listed for sale on eBay around the world. Millions of transactions take place everyday on eBay where both the buyer and seller walk away totally satisfied. Here in the United States, over 750,000 Americans make all or a large percentage of their income selling items on eBay.

Our acquisition of the online payment provider PayPal in 2002 only enhanced our ability to keep our users safe. PayPal offers our members a safe way to pay online, and in the last 5 years we have merged PayPal's anti-fraud experts with the engineers, statisticians and fraud modelists at eBay to create an industry-leading team of experts dedicated to keeping our sites and our community of users secure and safe. We dedicate significant resources toward cooperating with law enforcement agencies around the world. I am one of 8 former law enforcement officials that work at eBay and PayPal, and the fact that we have a fairly large internal contingent of folks from that community helps us understand the challenges faced by enforcement agencies and how we can help those folks do their jobs and keep our users safe.

Our Fraud Investigations Team works closely with law enforcement officials at the federal, state and local levels, and we have teams in San Jose and Salt Lake City to serve enforcement agencies throughout North America. Because we operate a truly global marketplace, we also have Fraud Investigation Teams in Dublin, Ire-

land and Dreilinden, Germany to serve law enforcement in Europe and Asia. Earlier this week, two of our law enforcement liaisons were in Romania working with officials there to combat fraudulent activity based in that country. This is the 6th time that our US-based staff has traveled to Romania in the last three years, and we have an attorney based in Eastern Europe who is dedicated full-time to working with police and prosecutors in that region. We make it easy for law enforcement officials to find us—we have dedicated hotlines, fax numbers and email addresses for law enforcement to be able to reach us quickly and efficiently. When agencies request records from us to support their enforcement actions, they receive those records in days—not weeks or months, as can be the case with other companies.

In addition to providing the records necessary to bring cases, our Fraud Investigations Team trains law enforcement officials around the United States and globally on the best way to combat crime online. My colleagues and I have spent a lot of time on the road in the last several years building relationships with enforcement agencies and teaching them how to investigate eBay and PayPal cases. In 2006 alone, we trained over 3000 law enforcement personnel in North America about online fraud in the eBay/PayPal context and how we can help them prosecute criminals who attempt to abuse our users. The assistance that our teams provide to law enforcement agencies around the world lead to an average of two arrests every single day. Our Fraud Investigations has worked on numerous cases with both law enforcement and loss prevention staff from the large retailers to make sure that thieves get prosecuted.

Our policies and commitment to combating the sale of stolen goods on eBay are straightforward. eBay is no place for the sale of stolen goods, and the transparency of our site combined with our commitment to working with law enforcement makes it an unwelcome venue for "fencing." The reality is that eBay is the riskiest way for a criminal to try to sell stolen products over the internet. We work both reactively and proactively with law enforcement, often referring cases out to the appropriate agency where we detect fraudulent behavior by one of our sellers, including the listing of stolen goods. When any retailer has concrete evidence to the effect that stolen property is on our site, we will work with them and law enforcement to address the problem, including sharing information about a targeted seller with the appropriate enforcement agency. This process already exists and we believe it works well.

In addition to our work with the law enforcement community, we have been engaging the retail industry for many years now to strengthen our relationships with retailer trade associations as well as individual companies to find ways we can work together to combat the sale of stolen property on eBay. We have held meetings with retailers all over the U.S. to hear their concerns and to explain how we can work with them on these issues. We have provided training to loss prevention teams about how to use the eBay website to investigate suspicious listings and gather information that can be used to bring a case to law enforcement. The manager of our Fraud Investigation Team in San Jose is presenting today at a joint law enforcement/retailer conference on Organized Retail Theft in Seattle, where over 400 officials from the retailer loss prevention community will be in attendance along with folks from local, state and federal law enforcement communities.

In addition to our outreach to the law enforcement and retailer communities, we have also taken additional steps internally over the last year to keep bad sellers off of eBay before they have a chance to harm our buyers. All new sellers on eBay.com must register a credit card with us and they must accept PayPal as a payment option. By requiring new sellers to take these steps we lower the chances of a criminal attempting to use our trading platform to commit fraud, as criminals don't generally like to provide financial information and use payment systems that make it easy to track them down once their illegal behavior becomes apparent. We have revamped our feedback system to allow buyers to provide much more detailed ratings of a seller's transactional performance. We have put higher standards in place for seller performance and suspend sellers who to a significant extent fail to satisfy their buyers. Sellers who fail to deliver the goods at all get referred out to law enforcement for prosecution. Let me reiterate that the delivery of stolen goods, counterfeit goods, or no goods at all is a horrible buyer experience for our customers. In the relatively rare circumstances where these activities take place, the buyer generally leaves our site and never comes back. And probably tells everyone he or she knows to never buy anything on eBay. Fighting fraud and keeping bad sellers off of our site are vital to our success as a business.

Regarding the broader ORC problem, this Committee has done significant work developing a record of this troubling issue. In terms of the distribution of stolen goods, your March 2005 Committee Report lists the following major venues: small shops (including beauty shops, gas stations, music stores, bars and gyms), flea mar-

kets, pawn shops, local fences, truck stops, newspaper ads, overseas buyers, and yes, the Internet through all types of web sites and chat forums. The Committee report also described how unscrupulous middlemen sell significant volumes of stolen goods back to traditional retailers blended in with legitimate products.

My point in mentioning the breadth of the process of turning stolen goods into money is that there are many avenues for this illicit process. Most of them are decidedly low tech in nature. While some tech savvy criminals are finding ways to use internet technologies, sensible solutions should address the entire range of distribution methods and not place disproportionate focus on less popular methods. Many large manufacturers and retailers have a negative view of the eBay marketplace because we provide an incredibly efficient secondary market for their goods. Our sellers are perceived by some as their competition, and one way to attack efficient secondary market competitors that sell goods at low prices is to suggest that there is something shady about those sales, when in reality those sales are completely legitimate.

This past summer there was a story in USA Today about the disdain that many large retailers have for individual entrepreneurs who use the Internet, usually eBay, to resell their products. A spokesperson from Gymboree, the popular children's clothing chain, explained their 5-item-per-customer limit by stating that "we need to protect our image . . . we don't want people to think we're selling things on eBay." A colleague of mine at eBay sells her kids' Gymboree clothes on eBay once they grow out of them. Those clothes are then worn by the buyer's kids, and my colleague uses the money to buy new clothes for her growing children. This is a truly efficient use of consumer goods, but Gymboree does not like it, as they seem to feel that the only place you should be able to buy Gymboree clothes is at the Gymboree store.

One approach to a legislative solution to the problem of organized retail theft is simple: increase the criminal penalties for this conduct. If these crimes are currently classified as misdemeanors, upgrade them to felonies. If the jail sentences tied to these crimes are too short, lengthen them. We have supported legislation in a number of states calling for tougher penalties, mandatory sentences and higher priority prosecutions of these criminals. We would support the same at the federal level. These steps will make these cases more attractive to law enforcement and will make judges more likely to put these criminals in jail rather than giving them probation. If these thieves make the unwise choice to use eBay to try and sell their stolen goods, we don't just want them off of eBay, we want them to see the inside of jail cell.

eBay has always been committed to providing a safe, well-lit marketplace. We believe that this commitment to our community has been key to growing eBay into the world's largest global online marketplace. Working in a cooperative relationship with business partners and law enforcement has been central to this effort, and we will continue in that manner going forward.

We look forward to working with this Committee on ways to effectively empower law enforcement to fight the problem of Organized Retail Crime. We stand ready to do our part to combat the long-term problem of retail theft in a balanced and responsible way. We believe that law enforcement is crucial to solutions regarding illegal activity, and we believe it is crucial across the board to protect the privacy and rights of the law-abiding citizens and small business people.

Mr. SCOTT. Thank you. Thank you, Mr. Chesnut.

We will now go to questions by Committee Members and I will recognize myself first for 5 minutes.

Mr. Brekke and Mr. Langhorst, how do we know how much is being lost to organized crime as opposed to regular shoplifting and other kinds of I guess what is called shrinkage?

Mr. LANGHORST. Excellent question, Mr. Scott. In the last few years, we have been driven to have to document our organized retail crime cases now. So when store management has an incident of it, they have to document it immediately.

They are able to determine to that it was an ORC incident and not a shoplift incident. In fact, we have had to alert our stores so quickly now, they fill out an online report of the loss and it is immediately broadcast to all other stores, as well as my loss prevention investigators.

So they are very, very much aware that ORC is such a large problem in their stores, they are able to determine the difference.

Additionally, we also have apprehensions in our stores by both store management and undercover agents. They fill out apprehension reports. We are able to look at those reports and immediately determine if it is an ORC case or a simple shoplifting case.

Mr. SCOTT. Thank you.

Mr. BREKKE. Just to add to that, some of the actual shoplifting, describe it that way, may be tagged to ORC. You cannot always tell at the source in the store.

You have to work it out in an investigation to determine where the goods go, how it may be fenced later. So there is always a challenge with that.

That is part of the reason the LERPnet was created, working with the FBI, so we can begin to gather data and analyze it and get a better number.

Mr. SCOTT. Thank you.

Mr. Chesnut, what do you do when someone alerts you to the fact that stolen merchandise is for sale on eBay?

Mr. CHESNUT. First, we ask what is the evidence. So in other words, why do you believe that it is stolen, because we actually find in more than half of the reports that we get, when someone says to us that we believe that a particular item is stolen, investigation turns out that it is not stolen. There is a misunderstanding.

Someone thinks that this particular guitar looks like a guitar that they lost a few months ago and, in fact, further investigation shows that it is not.

So we ask for why do you believe it is stolen. We attempt to get law enforcement involved, because we think that the fact that there is a crime involved means that law enforcement ought to know about it and investigate it.

If, from the evidence that we get, it appears that the item is stolen, we are taking the item down and we are suspending the seller, no matter what law enforcement does.

We actually would hope that law enforcement would go further and investigate and do a prosecution and if they do, we fully support the prosecution.

Mr. SCOTT. What do you do to protect from copyright infringement and sale of counterfeit goods?

Mr. CHESNUT. Well, sale of counterfeit goods is actually governed by a Federal statute, the Digital Millennium Copyright Act, and there is actually a scheme set out by law about what should be done in those circumstances.

When we are notified that a particular item is counterfeit, we are notified by the intellectual property owner, someone that actually has knowledge of that product because it is their product, and often they are able to tell just by looking at the item on our site that it is counterfeit.

When they certify to us, under penalty of perjury, that that item is counterfeit, we immediately remove the item from our Web site.

Mr. SCOTT. Mr. Chesnut, you have pointed out that the transactions on eBay are transparent and there is a paper trail, because

it is not like cash where you hand it and you don't know where it came from or where it went, there is a paper trail.

And I guess I will ask Mr. Hill. If we had enough resources, it seems to me that we could solve many of these cases, but the reason people get away with it is that we don't actually pursue the cases because of lack of resources.

If you had more resources, could you break up more of these major fence operations?

Mr. HILL. That is for Mr. Chesnut and myself?

Mr. SCOTT. Well, I am happy to get your perspective and Detective Hill may have a perspective, as well.

Mr. CHESNUT. We are probably going to be full agreement on this. I think the answer is more resources would certainly help.

Mr. SCOTT. Because you have got a paper trail that you don't usually have in theft operations. Usually, the fence will give whoever gave it to him cash.

In this case, you have to go through PayPal. If someone is running a big operation, you have got receipts. You know what they have sold, when they sold it, how many, and you can develop a pattern.

I mean, where do you get all this stuff?

Mr. CHESNUT. When you compare a site like an eBay to flea markets, pawn shops, truck stops, newspaper ads and the like, the amount of data that is available on eBay is pretty remarkable.

We have records stretching back for over 5 years. We will have frequently copies of the exact listing. We will know who the buyer is, so we can actually go to the buyer and get the item back for examination, if necessary.

Through PayPal, we have the bank account of the seller that sold the item. So we can actually trace where the money went.

So there is a lot of information that is available when something is sold through eBay that is not available through many of these other avenues, which makes it, I think, far easier in terms of an investigation to actually track something down.

The problem is we hear from law enforcement that there are too many cases for them to handle. They are busy on a whole host of fronts.

Mr. SCOTT. And if we had more resources, we could eliminate a lot of this, if we would go ahead investigate the case. It is labor intensive because there is a lot of work to be done.

We have got the same problem with identity theft, that somebody steals your credit card, the bank writes it off, law enforcement doesn't check it out, and so people feel that they can steal people's identity and make money with pretty much impunity. There is not very much at risk.

I am getting the same idea that people are selling stuff over eBay and if it is not going to be investigated, they are not much at risk.

Mr. HILL. Yes, I agree.

Mr. SCOTT. And the evidence is there. If somebody told you there was stuff being stolen, if you did all the work, you could get back to who stole it and where the money went.

Mr. HILL. Yes.

Mr. CHESNUT. Often, we get calls from the retail organizations saying that we would like to know who is selling a particular item on eBay, can we get the name and address. That is information we can provide to law enforcement.

At eBay, we provide it even without a subpoena. We just need to get a law enforcement official on the phone to give them the information and, unfortunately, frequently, law enforcement doesn't have the time to do it, because they are very stretched.

Mr. SCOTT. Thank you.

Mr. LANGHORST. Mr. Chairman, if I could address that. To Mr. Chesnut's point, we will call and typically we will get that answer and response, please contact law enforcement. Law enforcement typically won't deal with us on that type of thing because unless we bring them a completed case well laid out, they simply don't have time to address it.

That is why it would be nice to put some measures in place to try to slow down this type of activity so law enforcement can be focused on other things rather than eBay having to train 3,000 law enforcement officers across the country.

It would be nice to have some regulations in place to try to limit this activity to begin with, loss prevention rather than loss reaction.

Mr. SCOTT. Thank you.

Mr. BREKKE. Mr. Chairman, I will also comment. What you are calling out is actually the challenge in front of us in the current model. The only resolution is a case by case basis.

As the Internet continues to grow as a marketplace, which is a good thing, we see more and more bad guys taking advantage of that and shifting to us the Internet to fence.

That means the number of cases continues to grow. The only resolution at this point is to go to law enforcement, ask them to intervene and try to fix this.

We are looking for a solution that is more preventative or deterrent focused. We understand we can always investigate, but this is not a situation where we want to catch everyone. We want to prevent the loss to begin with.

Mr. SCOTT. Thank you.

Mr. Forbes?

Mr. FORBES. Thank you, Mr. Chairman.

First of all of you guys are wearing white hats. You are all doing good jobs. We appreciate you being here. We are just trying to forge a solution that is reasonable and everybody can work with to move the pile down the field.

Mr. Brekke and Mr. Langhorst, for both of you, when we are talking about resources, we are talking about $37 billion that I assume that your industry is losing in some fashion or the other.

One of the questions we oftentimes get is what are the security devices you could use that might help minimize that. I know that we look at—I have seen some big hardware warehouse operations that tell me they have lost six generators that are just pulled out and somebody walks out the door with them.

I see other operations where, when somebody goes out, there is somebody there that is checking the receipts to make sure as they are going out.

What additional things can retailers do that would help cut down the theft? I know you said some of this goes undetected, but the Chairman and I just watched this news clip where somebody is filming it and somebody is seeing it taking place.

What additional steps could be done there from a resource point of view that retailers could do to slow it down or have you tried that and it just doesn't work?

Mr. LANGHORST. Representative Forbes, we have quite a few deterrents in our stores, but at the end of the day, if someone is so inclined to come in and steal something and they are brazen and bold enough, they certainly can do so, as you saw in that video.

We obviously have cameras in our stores. We have undercover agents in our stores. We have uniformed guards in our stores. We have markings on our product, both covert and overt. We limit supplies of high theft product on the shelves.

We have all of our associates, all of our associates are aware of what organized retail crime are and retailers across the country are now very much active on that, as well, educating their associates.

But at the end of the day, if there is a demand for this product and boosters understand that and fences send them out to the stores, they are going to come in and get the product.

Mr. FORBES. When they are detected, like we saw here, will you apprehend them?

Mr. LANGHORST. Our associates will try to apprehend them, our store management, but, again, at the end of the day, they are there to sell groceries, they are not there to be police officers, and we certainly don't want to put them in harm's way.

Just this week, at one of our stores in Texas, we had an undercover agent assaulted and ended up with a broken ankle as a result of trying to stop a booster in the store.

These people are very brazen. Many of them are drug addicts and, quite frankly, they don't care who gets hurt. They are there to get their product and get their drugs.

Mr. FORBES. Lay out for me what, Mr. Brekke, you and Mr. Langhorst feels that Mr. Chesnut should advise eBay to do. What would your recommendations be that would be reasonable for him to do?

Mr. LANGHORST. Well, we would certainly like to be able, when we call eBay, to get an answer on our questions of who is selling this product. And when we say who is selling the product, we are looking for people that are selling multiple products or the same type product repeatedly, over and over and over again, below what we know that wholesalers can sell it to retailers for.

Mr. FORBES. So you would like to find out who is selling the product. What else?

Mr. LANGHORST. Absolutely. We would like to have serial numbers recorded on product that is serial number capable, tools, things such as that. That should be something that should be posted on the eBay Web site, as well.

To Mr. Brekke's point, that has worked well on the automotive side to help curtail some auto theft.

Mr. FORBES. Now, you wouldn't say that Mr. Chesnut, though, should be treated differently than newspaper or print classifieds,

should you? In others, if it is sauce for the goose, should it be sauce for the gander?

In other words, if he has to do it online, would you require that newspaper classifieds do it?

Mr. LANGHORST. The thing with the newspaper classifies, sir, is that you have a phone number to contact an individual and a place to meet that individual it they are going to sell their product, more than likely. So you have a point of contact.

And, again, this isn't—I think Mr. Brekke mentioned it, as well. This isn't just an eBay issue. This is an Internet issue.

Mr. FORBES. I understand. We just have Mr. Chesnut here and I am just trying—Mr. Chesnut, let me give you a short, although I still can't understand why you would leave beautiful Charlottesville and go to Chairman's alma mater there.

But tell us what your position is. Is that unreasonable for you to do? Why can't you do that?

Mr. CHESNUT. In terms of who is selling the product, the issue really is the privacy of the individual sellers. There are a lot of people who I think would be quite concerned that any retailer could call eBay and, without any standard of proof at all, get their name, address and phone number.

Mr. FORBES. How about if it was a high volume? And I think what Mr. Brekke would suggest, and I don't know, I don't want to put words in your mouth, but maybe you don't do this for everybody, but there is a certain threshold of volumes that gives you a higher area of suspicion, which the Chairman suggested to me, which I think is right.

Would that be more reasonable and less of an invasion of privacy? Because wouldn't it make a little bit of sense that if you got a guy that is really marketing a lot of products, that maybe that would just raise the threshold just a little bit?

Mr. CHESNUT. It might. In those situations, it is actually quite easy and they can simply buy one. Let us take razor blades, one of the issues that they have spoken about quite a bit.

They can find out that information themselves and even they can get more information than what we could give them by buying a pack of razor blades. That way, they get the name, address, phone number, all the contact information of the seller directly themselves.

Mr. FORBES. Mr. Brekke does make a good point, I mean, if we just throw out that—I don't think that we have enough resources to arrest and apprehend and prosecute everybody, because we are talking about police doing that, we are talking about judges involved and prosecutors involved, and then we are going to have a lot of people say we are apprehending too many people and putting too many people in jail.

If there is some way to be a deterrent and to prevent it, that would seem to make sense to us, I would think.

Do you feel it would be reasonable, at some tolerance level, to say this guy is such a high volume seller that we at least ought to think about what would be reasonable to require of him?

Mr. CHESNUT. It is certainly reasonable to think about different things that we could do for high volume sellers. I think that is fair. It is also there are a lot of people who are quite nervous about put-

ting their name, address and phone number on the Internet, where obviously people, spammers and the like can steal that information and take it right off and put it in other places.

Right now, it is a balance between the privacy of the individuals and concern about having that information on the Internet versus the need of the retailers.

What we have tried to do at eBay is we have—the information is available to any law enforcement official who can simply ask for it by e-mail. Any other Internet company will require a subpoena. We know how hard it is for law enforcement in these cases.

So what we have said is, look, all we have to do is get a law enforcement official involved by e-mail or a quick phone call, we will give the information directly to them. So that way we assure that there is not any abuse.

Mr. FORBES. Thank you. I don't mean to cut you off, but we have got another vote, and we want to get Mr. Johnson's questions in, and maybe we can talk a little bit later to all of you on it.

Mr. SCOTT. The gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

eBay is pretty much the largest online platform of buying and selling in the world, is that correct?

Mr. CHESNUT. We are the largest online marketplace, right.

Mr. JOHNSON. And at any one time, 100 million items are listed for sale, millions of transactions take place every day, 240 million registered users on eBay, and here in the United States, according to your written testimony, over 750,000 Americans make all or a large percentage of their incomes selling items on eBay. Is that correct?

Mr. CHESNUT. I believe that is correct.

Mr. JOHNSON. And you keep records on all of these transactions stretching back for 5 years or so.

Mr. CHESNUT. Not only do we keep the records, we share with other organizations, like LeadsOnline, so that it can go into national databases to assist in these sorts of issues.

Mr. JOHNSON. How many reports annually of stolen merchandise does eBay receive?

Mr. CHESNUT. In a typical year—by the way, this is not something that we have seen materially increase over the last several years. In a typical year, it will be approximately 1,000 inquiries form law enforcement related to stolen property.

That doesn't mean that all 1,000 are, in and of themselves, stolen property. It means that the inquiry is about stolen property.

How many of those are actually stolen property cases, we don't know. Keeping it in context, we probably have about six to seven million items placed on our site every day.

Mr. JOHNSON. How many reports from buyers do you get of stolen merchandise per year?

Mr. CHESNUT. I don't have the data on how many from buyers, but it is a very small number. It would certainly be less than the numbers from law enforcement.

Mr. JOHNSON. How many referrals does eBay make to law enforcement annually of allegations of theft?

Mr. CHESNUT. We proactively make some. I don't have the data today as to how many we proactively—where we make phone calls to law enforcement versus they make calls to us.

But, again, I think the number of law enforcement inquiries to us are in the neighborhood of 1,000 per year on the issue of the stolen property.

Mr. JOHNSON. I would ask any of the other panelists, are you aware of any data regarding the scope of the problem of resale of stolen goods online? Has anyone done any statistical analysis or gathered any data regarding the share of stolen merchandise that ends up being resold on the Internet?

Mr. BREKKE. That is part of what we are trying to get at through the LERPnet. What we do have is the FBI's number of $30 billion. We also internally know specific cases that we work with law enforcement tend to run in the million dollar ranges usually over the course of 6 months to 2 years.

The most recent here in Baltimore area was a $4 million loss to Target involving an Internet auction site where the goods were sold online. That would be one case that we worked with law enforcement.

Mr. JOHNSON. Yes, sir.

Mr. LANGHORST. Representative Johnson, just a couple things. An example of fencing on eBay would be a case that the FBI worked in the last few years in Lexington, Kentucky, Mohammed Shalash, Unity Wholesale and Trading, where he was ending up fencing formula over the Internet, ended up $78 million was sent from this country back to Ramallah that was verified by Federal agents, don't know what happened to the money after it ended up in Ramallah.

Just as recently as yesterday, I pulled off two buyers on eBay selling quantities of baby formula far below wholesale cost. I can't tell you if that formula is stolen or not. I can just simply tell you that there is no way any legitimate retailer can get it at that cost and sell it out on the market.

To your point as to how many cases are worked, to Mr. Brekke's point, as we work cases with law enforcement and we interview the fences, they are telling us that they do go to eBay or other Internet sites to fence their product.

So it is on a case-by-case basis.

Mr. CHESNUT. I would like to talk a little bit and just mention price. In a case like the one that was just recently brought up, on eBay's site, many of these are auction prices. So they will put out as a starting bid of $1, knowing that with millions of buyers, the price will actually get driven up to the market price.

And I know there is some frustration with a number of the retailers because they will go to eBay and see some of the prices.

Some are because of the auction format of eBay and some can be for a wide variety of reasons that are legitimate. We recently sat down with a major manufacturer who was concerned about ten sellers selling health and beauty aids, a particular product, at below the retail price and they were concerned that all ten of these sellers were involved in illegal activity.

We sat down and we contacted all ten sellers. We asked for proof of where they were getting the merchandise and asked for the pric-

ing information and it turned out that of the ten, four of them were actually getting the product from a different country where that manufacturer was making the goods available at a much lower price.

These were entrepreneurs who were getting that inventory from one place in the country or one place in the world and reselling it somewhere else where the goods prices were higher and there was nothing improper or illegal with that.

Three more had legitimate explanations showing where they were getting the merchandise and proving to us that there was not an issue.

Two of the individuals we had already suspended for other reasons. And the tenth individual we looked at and we weren't comfortable ourselves and we suspended the individual and reported him to law enforcement.

So when you see prices on eBay, the same thing with stolen property and with counterfeit goods, there are a number of legitimate reasons why goods are on eBay at prices that may be lower in the stores and I think that is quite appropriate.

It doesn't mean that the goods are stolen, although in some cases they may be and those are situations we take seriously and want to investigate.

Mr. LANGHORST. Could I quickly respond to that, sir?

Mr. JOHNSON. Yes.

Mr. LANGHORST. The prices that I am looking at are "buy it now" prices, those are not auction prices, and they are still far below the wholesale. And then, secondly, to Mr. Chesnut's point, product being brought in from outside the country and manufactured and brought in here for sale, for instance, diabetic test strips may not have the same standards in other countries for testing that we do here in the United States.

And certainly you would have concern in that one product and several others that we could go into of whether they meet the same regulations and qualities that we demand here in our country, if it is being brought in from other countries and sold to consumers knowing that it is coming in from another country.

Mr. SCOTT. Thank you. We are going to have to recess. We will be right back after this vote.

[Recess.]

Mr. SCOTT. The Subcommittee will come to order.

I understand that Mr. Chesnut wanted to respond to the last question.

Mr. CHESNUT. Mr. Chairman, I believe there was a question about data on how much of the problem is on the Internet and I just wanted to emphasize that there is no data that I have seen or that I believe anyone is aware of about how much of this issue is on the Internet.

We can say that over our time at eBay, we have not seen a significant increase over the last several years in terms of stolen property reports. That is not denying that some of this problem is moving on to the Internet and that there is stolen property being sold on the Internet.

From all the data, though, it appears that this is a wide ranging issue where the stolen property is being sold in a wide number of

places still, in the garage sales and the flea markets and the like, and that is primarily where most of the stolen property is still being sold.

And I think that is because, again, the Internet has a great number of advantages of transparency and a number of advantages for law enforcement.

I believe the Chairman asked a question earlier about getting data and how these companies could get data and I mentioned purchasing the property.

The retailers themselves actually have had a lot of success on eBay simply purchasing the property themselves. When they see something suspicious on eBay, by purchasing the property, they then get the name, address, phone number and all the contact information on anyone who is selling on eBay. It is widely available to them simply by making a purchase and that way we don't—none of the privacy concerns that might traditionally be available because the information is posted somewhere come into play.

Mr. BREKKE. Mr. Chairman, may I make a couple of responses?

Mr. SCOTT. Mr. Brekke, yes, sir.

Mr. BREKKE. One, the purchasing the property is, again, the one off solution, because you would have to visit many, many sites and purchase many, many products.

We are looking for a solution that is more deterrent focused. That goes to transparency. What we are asking for is more transparency with a select group of sellers and select group of information regarding that.

A parallel or an analogy is similar to—in the 1980's, I was part of the some of the task force involved in dealing with narcotic trafficking, the Colombian cartels. One of the issues was cocaine comes up, they generate a lot of cash, deposit it in U.S. banks, shipped it out of the country.

One of the solutions that Congress passed was money laundering acts, which required banking institutions to do some due diligence or have the people, not all people, but a certain group of people disclose more information when they would deposit that cash.

That became a tool for law enforcement and it also tended to deter that type of activity across the board once the bad guys realized that for those types of transactions, there would be transparency or visibility.

Mr. SCOTT. Mr. Hill?

Mr. HILL. Mr. Chairman, I would also like to agree with everyone here that we don't have stats either, but I believe I heard the number of 1,000 inquiries by law enforcement a year.

I believe that that number would increase a whole lot if the description of the items being posted on the Internet were more detailed and included serial numbers. That would allow us to make matches with the reports that we receive when stolen property is reported to us, whether it is a burglary or whether it is from a retailer.

We can match that number with the number in the report and that would allow us to do that. It would also allow them and their investigators to match up the stolen property.

Right now, we know, through informants and everyone, that this property is being sold on eBay, but we can't prove it. But that

would be one of the tools that would allow us to prove it by matching up serial numbers.

Mr. LANGHORST. Mr. Chairman, if I could, just to remark on Mr. Chesnut's comments about the majority of product being sold in flea markets and garage sales.

Again, their law enforcement officers can have a presence. They can walk out, they can see who is selling the product. Our retail investigators make those flea markets and occasionally garage sales, as well. We can see who is selling those products.

And to say that the majority of products are being sold there just isn't correct. The one case alone that I have cited, the Unity Wholesale, where $78 million was sent to Ramallah, that is a lot of garage sales and that is only one case that we have that was used with the Internet.

Mr. CHESNUT. In that particular case, I don't believe $70 million came from eBay sales.

On the serial number issue, because that has been raised a couple of times, on its own, without any prompting or any legislation, eBay made the decision to require VIN numbers on all motor vehicles sold on the site. So eBay is not against doing it where it makes sense.

The reason it makes sense in motor vehicles is really for three reasons. One, when someone gives us a VIN number, we can automatically determine whether it is a legitimate VIN number and whether it matches the car that is on the site, because there is a database we can check, whereas for serial numbers on electronics items, for example, there is no such database.

Someone could make up a serial number and the individual entering it, if they were stolen property, would simply enter an incorrect serial number and we would have no way of knowing it. There would be no database to check against.

Secondly, when someone lists a motor vehicle on eBay, we take that VIN number and we run it against a national database of stolen cars, flood damaged cars, title issue cars. And so we are able to proactively deal with the problem ourselves simply with that VIN number.

Unfortunately, there is no such national database that we could run stolen property against and make that kind of a quick decision. So because it would be so easy for a criminal to simply alter a serial number or come up with a different serial number and enter it on eBay and because there is no national database, it wouldn't really solve the problem.

And if you look at the sort of items that are being complained about here, the Crest White Strips, the health and beauty aids, the razor blades and the like, none of those things have serial numbers.

We have no issue at all with introducing something like a serial number check where it is actually going to do some good, but unfortunately, for this sort of an issue, I am afraid that it really wouldn't help.

Mr. SCOTT. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Good to have you all with us today.

Mr. Chairman, I am concerned about the scope of organized retail crime, as are most of us. The problem is growing and I feel perhaps it is ripe for legislative attention.

With that being said, I think we need to be concerned that we take a level and pragmatic approach to address the problem.

Mr. Brekke, have you experienced any difficulties working with merchants or eBay on allegations or investigations or prosecuting cases where you products have been stolen and allegedly sold on eBay?

Mr. BREKKE. We have worked numerous operations with merchants, other retailers. We have had mixed results with eBay, depending on the situation.

Mr. COBLE. Mr. Hill, when you investigate allegations of stolen merchandises being sold, how do you determine that the product is, in fact, stolen?

Mr. HILL. Either by a confession or a match of the property description and the date and time that it was posted compared to when the theft took place.

Mr. COBLE. Would a pawn shop or eBay be able to make this determination without support from law enforcement?

Mr. HILL. Can you ask the question again, please?

Mr. COBLE. Would eBay or other merchants be able to determine what you just said without support from law enforcement or input from law enforcement?

Mr. HILL. Well, when we request something, we get an answer from them. Now, how they work with the retailers, I am not sure if they give them as much information as we do.

But as Mr. Chesnut——

Mr. COBLE. I will get to Mr. Chesnut later on.

Mr. HILL. He stated earlier we send an e-mail to them, without a subpoena, they provide that information to us. So we have no problems getting that information.

Mr. COBLE. I thank you, sir.

Mr. Langhorst, what role, if any, does the FDA play in the investigation and prosecution of cases where pharmaceuticals are stolen and resold?

Mr. LANGHORST. With over-the-counter product or pharmaceuticals, we haven't dealt with the FDA directly. We have tended to deal with our local health agencies.

I can speak directly to the state of Texas and the State health department that we have dealt with.

Mr. COBLE. Mr. Chesnut, I understand that you are deeply concerned that any legislative attempt to address retail crime does not create an undue burden on eBay's operations and I share that concern.

Some feel that the reason that the seller should know a product being sold on eBay is, in fact, stolen and that eBay, therefore, should be responsible and should be held accountable.

What do you say to that?

Mr. CHESNUT. Well, if an individual seller knows that it is stolen and they are trying to sell it on eBay, they should be held accountable. If eBay is given evidence, meaningful, concrete evidence that the property is stolen, then eBay would be held responsible, as well, under existing Federal law.

If eBay had specific knowledge that something is stolen and did nothing about it, eBay would be responsible and that is fair.

Mr. COBLE. So let us assume the standard would be that eBay should have known. Do you think that is too nebulous?

Mr. CHESNUT. I think it is too nebulous. It is also not even the standard that individuals are held to under Federal law. Under Federal law, in order to be prosecuted under the interstate transportation of stolen property statute, they have to have specific knowledge. They have to actually know that the property is stolen in order to be prosecuted.

So it wouldn't make any sense to put a more nebulous or a looser standard on a marketplace like an eBay than the person that actually is selling it themselves.

Mr. COBLE. Specific knowledge, of course, would make eBay or anyone else accountable.

Mr. CHESNUT. Absolutely and that is the law today.

Mr. COBLE. I thank you gentlemen.

I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. I apologize for being late. I was over at a meeting with the majority leader, hearing him explain why we could put off SCHIP for 2 weeks, but we can't put it off for a couple of days, now with a natural disaster going on. I was having trouble, and it took me a while to absorb the brilliance.

But anyway, I do thank this panel here for being here and I know I have got a fellow Texan in Mr. Langhorst here from Randalls. And it is, obviously, a big problem.

Of course, we are all products of where we came from and what experiences we have had and having been a prosecutor, a judge and chief justice in the State system, we dealt with this constantly with pawn shops.

And so as this issue has arisen, I have tended to say, well, we do put some extra requirements on pawn shops in order to allow us to track down individuals who may take stolen goods and pawn them and we actually catch an awful lot of criminals and the pawn shops of which I am aware are always helpful back in my district and we catch a lot of folks that think they are going to get away with something.

But in this bill, it appears that in the zeal to try to bring an end to this horrible retail theft problem, that maybe the bill does further than is actually necessary, as I understand, requiring an entity like eBay to provide information directly to the retailers.

There is nothing analogous to that in what we do with pawn shops. I want law enforcement to catch the individuals who steal things, because as we know, so much of that is organized crime. But I am wondering if there isn't something short of that, whether it is developing a system that will allow us to track serial numbers or scan barcodes or whatever is being used, the radio transmitters that are coming in now, which I am not a big fan of.

But whatever it is, if we could find a way to track that, have that information available and, like we do with pawn shops, have people

routinely in law enforcement check that information and check that data.

I would be interested in anyone's response about if we could do something to help the retailers with this terrible problem, because as many people don't realize, if it is a problem for retailers, whether it is Target or Randalls or Rocher's or anywhere else, then they are not the ones that pay. They have to charge higher prices. So all of us pay for that.

Any comments or thoughts?

Yes, sir, Mr. Brekke.

Mr. BREKKE. I think there is an initial solution to what you suggested in LERPnet going on right now with the retailers and the FBI.

The idea is to create a database where you gather this information and you could include serial numbers, lot numbers, or other unique identifiers from the retail side and other areas.

The issue then is transparency from the Internet auction sites and probably, at the end of the day, using a software solution to match up that type of information. Again, it requires cooperation from both parties, from both sides.

Doing this is not that one is good and the other is bad, but working together to stop the bad guy, to share the information in the correct forum and, in this case, LERPnet is a step in that direction.

Mr. GOHMERT. Anyone else?

Mr. Langhorst?

Mr. LANGHORST. Yes, sir. Well, again, I just want to get back to the basics, and I am using baby formula as an example, because Mr. Chesnut brought up earlier that some of their sellers bring in product from outside the country.

And the nutritional value of baby formula outside of the country quite often isn't the same that we require under USDA standards here in the country and to have that place on the Internet, with no oversight whatsoever as far as quality control, where it came from, and no accountability on the part of the seller or eBay to tell the consumer where it is coming from and the unsuspecting consumers taking that and feeding it to their child, that is a significant concern.

To Mr. Brekke's point, having lot numbers on there, things like that, those are things that are required. If you are selling that product, in the state of Texas, for example, you have to be licensed by the state of Texas to sell that product.

We recently had a case in Texas where we worked with the health department, and they identified wholesalers of the product that they couldn't up with receipts for a couple million dollars worth of baby formula and that was seized.

Again, these are laws in the state of Texas, but they may not be able to be enforced, obviously, over the Internet and that product is out there. It is just a free market with no controls.

Mr. GOHMERT. I see my time has expired. Could I allow Mr. Chesnut to respond?

Mr. SCOTT. Certainly.

Mr. CHESNUT. I would just like to clarify for the record that I did not State that infant baby formula was coming in from outside the country. I was talking about another product, razor blades, coming

in from outside the country and there is not an issue with an item like that coming in and being sold, manufactured outside of the country and coming in to the United States.

I think it was probably a misunderstanding.

Mr. GOHMERT. I got nicked this morning. Maybe that came from outside.

Mr. SCOTT. Thank you. The gentleman's time has expired.

I want to thank our witnesses for their testimony. Members may have additional questions for the witnesses, which we will forward to you and ask that you respond as promptly as you can so that your answers may be made part of the record.

Without objection, the hearing record will remain open for 1 week for submission of additional materials.

Without objection, the hearing is now adjourned.

[Whereupon, at 11:43 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

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SUBCOMMITTEES:
CHAIR
TRANSPORTATION SECURITY AND INFRASTRUCTURE PROTECTION
BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

FOREIGN AFFAIRS
SUBCOMMITTEES:
AFRICA AND GLOBAL HEALTH
MIDDLE EAST AND SOUTH ASIA

SENIOR WHIP
DEMOCRATIC CAUCUS
WHIP
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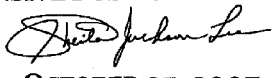
CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OVERSIGHT HEARING: "ORGANIZED RETAIL THEFT PREVENTION: FOSTERING A COMPREHENSIVE PUBLIC-PRIVATE RESPONSE"



OCTOBER 25, 2007

I thank the Chair and Ranking Member of the Crime Subcommittee, Mr. Scott and Mr. Forbes, for holding this very important oversight hearing on organized retail theft. Let me also extend a warm welcome to our panel of distinguished witnesses:

- Mr. Brad Brekke, Vice-President of Assets Protection, Target Corporation;

- Mr. David Hill, Detective, Montgomery County Police Department;
- Mr. Karl F. Langhorst, Director of Loss Prevention, Randalls/Tom Thumb Food and Pharmacy; and
- Mr. Robert Chestnut, Senior Vice-President of Rules, Trust and Safety, eBay Inc.

Organized retail theft (ORT) is theft from retail stores by professional shoplifters. Unlike conventional shoplifters, who take merchandise for personal use, organized rings sell the products at flea markets, online and, in some cases, right back to the same national retailers from which they originally stole. These groups focus on a shopping list of products, and aim at retailers that have traditionally had less security than jewelry and electronics stores. Among the most sought-after items are *Enfamil* infant formula, *Oil of Olay* skin products, Pepcid heartburn medicine and *Gillette* shaving products.

Mr. Chairman, it has been estimated that losses from organized retail theft cost retailers and consumers as much as $30 billion annually. In addition to increasing the cost passed on to consumers, organized retail crime also exposes the public to serious health and safety risks. Among the many types of consumable products stolen by ORT gangs are over the counter drug items and infant formula. In many cases after the merchandise has been stolen, these products are not stored properly, which

leads to product degradation. For example, extreme heat or cold affects the nutrient content and physical appearance of infant formula.

Additionally, when products are near the end of their expiration date, organized retail theft middlemen may falsify the expiration date, lot numbers and labels to extend the shelf-life of the product or to disguise the fact that the merchandise has been stolen. Cough and cold products are especially popular with organized retail theft rings because these medications can be sold to clandestine methamphetamine labs.

In addition to its adverse impact on the economy and the risks to the public health and safety, another reason to be concerned about organized retail theft is that this criminal activity is so lucrative that it may attracts groups or organizations seeking to fund terrorist activities or engage in illegal money laundering. This is the experience of agents in the Immigration and Customs Enforcement (ICE) Service of the Homeland Security Department.

I would like to share with the subcommittee information that has been brought to my attention by Scott Springer, a 14-year veteran of Dallas bureau of ICE. During his tenure as an ICE agent, Agent Springer worked several terrorist financing cases and organized retail theft cases, which not infrequently turned out to be one and the same thing.

According to this decorated agent, one of the biggest problems with these investigations is they are very time consuming for law enforcement to work but they yield little in terms of prison time. Another reason for the small number of cases is that shoplifting does not become a federal crime until at least $5,000 in stolen goods are shipped across state lines. In many districts busy United States Attorneys' offices are not willing to commit resources to a shoplifting case unless that figures rises to $50,000. Since the average shoplifter is unlikely to steal that much merchandise on a single trip, members of organized retail crime rings frequently slip through the system even when they are arrested.

For this reason, I understand the FBI has not identified organized retail theft as a priority. ICE is frequently involved because of international money laundering and illegal alien criminal gangs that fence or steal for the organizations.

Agent Springer ran an undercover operation for two years dealing with most of major ORT rings in the country. After he had succeeded in arresting many gang members and shutting down their operations, gang members plotted on three separate occasions to assassinate him.

Mr. Chairman, one of the things I am interested in learning today from our witnesses is how ORT victims decide which agency to contact to

launch an investigation or refer criminal intelligence. I am also interested in learning whether it is true, as has been reported, that Houston is one of the worst areas in the country for organized retail theft.

I am also interested in learning what, if any, precautions or safeguards taken by retailers such as Ebay, to ensure the safety and integrity of the products they market.

Finally, I interested in hearing the views of our witnesses as to whether there is a need for a legislative response, and if so, what the appropriate response might be. At present, there is no federal law that specifically addresses organized retail theft. The federal statute most frequently utilized in dealing with professional theft rings is the Interstate Transportation of Stolen Property Act, but this law is limited to situations involving the transporting of stolen goods. Thus, when professional thieves are apprehended for stealing large quantities of merchandise from a retail store but do not transport their ill-gotten gains across state lines, no federal statute is available.

I look forward to discussing the important issues raised by these disturbing cases with our distinguished panel of witnesses.

I thank Mr. Scott and Mr. Forbes for convening this joint oversight hearing. I yield the remainder of my time.

Senator Tom Coburn, M.D.
Statement on the Genocide Accountability Act of 2007
Subcommittee on Crime, Terrorism, and Homeland Security
House Judiciary Committee
"Genocide and the Rule of Law"
October 23, 2007

In the Senate, I serve as Ranking Member on the new Judiciary Subcommittee on Human Rights and the Law, of which Senator Dick Durbin serves as Chairman. Both Senator Durbin and I care deeply about the issue of genocide and, accordingly, the first hearing that we held in our subcommittee was titled "Genocide and the Rule of Law." That hearing allowed us to identify some changes that should be made to U.S. law to help the country better respond to the atrocious crime of genocide. Shortly after the hearing was held, Senator Durbin introduced S. 888, the *Genocide Accountability Act of 2007*, and I proudly joined as the lead Republican cosponsor. I speak today in support of this important piece of legislation. It is my hope that the bill, which passed the Senate by unanimous consent, will also quickly pass the House so that it may be signed into law as soon as possible.

This country has a long history of opposing genocide. The United States is a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, which provides that the contracting parties must "undertake to prevent and to punish" the crime of genocide. We have also passed a law implementing the Genocide Convention.

However, as our Senate hearing demonstrated, there are changes that need to be made in law and foreign policy to respond to the ongoing genocide in Sudan and to any genocide that may occur elsewhere in the future. Fortunately, one of these changes can be accomplished with passage of S. 888.

The *Genocide Accountability Act of 2007* will ensure that our justice system has the authority to prosecute an individual who has committed genocide if that person is found in or brought into the United States. Under current law, the United States can deny admission to and exclude aliens from the United States on human rights grounds. The Attorney General can also consider avenues for the prosecution of aliens who have committed certain crimes, including genocide. However, the Attorney General can only

prosecute a perpetrator of genocide if he committed his crimes within the United States or is a U.S. national.

What does this mean? It means that if a person who plans or participates in the genocide occurring right now in Darfur travels to the United States on vacation, business, or even to live here for an extended period of time (as a refugee or student, for instance), a court in the United States cannot touch him. The best our justice system can do is deport him once his crime is discovered.

Without question, it may be more appropriate in some cases to extradite someone who commits genocide to his home country or turn him over to an international tribunal. However, there are also times when a person's home country may not be willing to prosecute him, and there is no viable alternative for prosecution. In these cases, extraditing a criminal would be no different than setting him free. This bill will not force our justice system to prosecute those who commit genocide just because they are found on our soil – it simply gives us the option. Nonetheless, in America we are blessed with great resources and the most effective and just legal system in the world. With these blessings comes great responsibility. It is contrary to our system of justice to allow perpetrators of genocide to go free without fear of prosecution.

It simply makes no sense to withhold from our justice system the authority to prosecute someone who is found in the United States and who committed a crime as atrocious as genocide, just because he is not American and did not commit the crime here. We have passed tough laws that ensure that we can prosecute anyone found in the United States who has committed terrorist acts or who supports terrorism. We do not want to become a safe haven for terrorists, so I ask: do we want to be a safe haven for those who have committed genocide? The answer should be clear.

Fundamentally, we must decide if genocide is a bad enough crime, no matter where it happens, that it warrants the same treatment as terrorism-related crimes. I deeply believe that it is, and that is why I am proud to cosponsor this bill and speak on behalf of its passage today. I am encouraged by this subcommittee's interest in the matter and thank the Chairman for holding this important hearing today.

October 24, 2007

The Honorable Bobby Scott, Chair
House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
1201 Longworth HOB
Washington, DC 20515

The Honorable Randy Forbes, Ranking Member
House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
307 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Scott and Ranking Member Forbes:

Thank you for scheduling a hearing on Organized Retail Crime. We appreciate the concerns and frustrations of retailers regarding these crimes and our members stand ready to work with the Committee to develop a framework for cooperative efforts with law enforcement to address this type of illegal activity.

We believe that any meaningful solution to the problem of organized retail crime must be technologically neutral and based on the clear record compiled by the Committee. Any suggestions that this is primarily, or even significantly, an Internet problem is not necessarily backed up by evidence, and any proposals brought before the Committee that are only focused on the operators of Internet marketplace sites are misguided. Further, if the record demonstrates that the current criminal code is insufficient, and we are not sure that it is, there is no reason that any changes should not apply equally to all businesses, whether they be online or offline.

The leading Internet commerce companies are committed to addressing criminal activities and fraud against consumers. We thank you for considering our views and hope to work with you on a balanced approach to this issue that would materially curb organized retail crime without harming beneficial competition or imposing discriminatory burdens on the operators of Internet marketplaces.

Sincerely,

Jim Halpert
General Counsel

WASH1\4935921.1

Coalition Against Organized Retail Crime

TESTIMONY

COALITION AGAINST ORGANIZED RETAIL CRIME

BEFORE

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIME, TERRORISM AND HOMELAND SECURITY

OCTOBER 25, 2007

HEARING ON ORGANIZED RETAIL THEFT PREVENTION

FOSTERING A COMPREHENSIVE PUBLIC-PRIVATE RESPONSE

INTRODUCTION

The Coalition Against Organized Retail Crime is pleased to provide written testimony to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security in response to today's hearing on the subject of Organized Retail Theft, also known as Organized Retail Crime and the appropriate comprehensive response to this problem.

By way of background, the Coalition Against Organized Retail Crime, which has been together now for some six years, is comprised of national manufacturing and retail organizations as well as individual companies from both sectors. In total, there are 32 members. A roster of all Coalition members can be found at the end of this written testimony.

The Coalition wishes to commend Chairman Scott for scheduling today's hearing and for his leadership in this area. As the Chairman knows, the Coalition strongly supports the enactment of federal legislation to address the growing problem of Organized Retail Crime which is victimizing practically every segment of the retail community from supermarkets and retail drug stores, to mass merchandisers, department stores, specialty shops, boutiques, and convenience stores among others. This is the second time that the Coalition has provided testimony to the House Judiciary Crime Subcommittee regarding the need for a federal initiative that would make ORC type crimes a federal felony. That testimony was presented to the Subcommittee on March 17, 2005.

ORGANIZED RETAIL CRIME – A $30 BILLION PROBLEM

Organized Retail Crime or ORC is clearly the most pressing security problem confronting the retail industry. ORC now accounts for as much as $30 billion in losses at store level annually according to federal authorities.

What's the difference between shoplifting and Organized Retail Crime? For starters, shoplifting is mostly limited to items that are stolen by an individual for personal use or consumption, whereas criminals engaged in ORC activities work with professional rings for the purpose of stealing large amounts of merchandise with the intention of reselling these ill-gotten goods back into the marketplace through flea markets, swap meets, pawn shops, shady store-front operations, and now stolen merchandise is more frequently being sold over internet auction sites.

ORC rings are highly mobile, moving from community to community, and across state lines stealing large amounts of merchandise from retail stores. ORC rings typically target everyday consumer products. Popular items include infant formula, otc medications, teeth whitening strips, razor blades, batteries, smoking cessation products, franchise cosmetics, gift cards, video games, DVDs and CDs. High end items, such as designer clothes, flat screen televisions, I Pods, Dyson vacuum cleaners and consumer electronics are also highly prized among ORC gangs.

CONSUMER HEALTH AND SAFETY RISKS

Most disturbing is that Organized Retail Crime can put consumer's health and safety at risk. For example, consumers are potentially at risk when ORC rings steal consumable products, such as over-the-counter medications and infant formula. In these situations when these FDA regulated products are stolen and taken out of the normal channels of distribution often times they are not kept under ideal or required storage conditions, and this can threaten the integrity of the product. For example, extreme heat or cold can affect the nutrient content, stability or physical appearance of a product such as infant formula.

It is also not uncommon for ORC rings to modify the labeling of FDA regulated products. For example, when products are near the end of their expiration date, ORC middlemen, commonly called "fences" may change then expiration date or lot numbers to falsely extend the shelf-life of the product and to disguise the fact that the merchandise has been stolen.

INFANTS ARE IN HARMS WAY

Both FDA and the WIC program routinely put out warning advisories that outdated formula may not provide the nutrient levels as required under the Federal Food, Drug and Cosmetic Act. In testimony before the House Appropriations Subcommittee on Agriculture, Rural Development, FDA and Related Agencies on March 1, 2007, the Honorable Phyllis Fong, Inspector General for the Department of Agriculture stated, "When infant formula is stolen, it is taken out of the regulated retail system, there can be no guarantee the formula is safe and wholesome."

Equally insidious is switching the label on a can of infant formula to make the product appear to be a more expensive variety of baby formula. Prices at retail vary from around $10 per can to as much as $25 a can depending upon the formulation and whether the product has been enriched or fortified. ORC gangs know the economic advantages of label switching, but unsuspecting mothers will not know they are feeding their babies the wrong formula when a label has been switched.

ECONOMIC IMPACT ON CONSUMERS

ORC results in consumers having to pay higher prices for the products they purchase as retail establishments attempt to cover their losses. This is especially true in the supermarket industry which traditionally operates on the slimmest of margins. Clearly, higher prices adversely affect all consumers, and in particular the neediest in America, such as the elderly on fixed incomes and families that depend upon domestic feeding programs to augment their limited budgets.

Moreover, consumers are often times inconvenienced by this type of criminal activity. Because ORC has become so rampant in certain product categories, such as infant

formula, many retailers are taking these products off the shelves and placing them behind the counter or under lock and key. In some cases, products like razor blades and Crest White Stripes are simply unavailable in retail stores due to high pilferage rates.

ECONOMIC IMPACT ON STATE BUDGETS

Consumers and retailers are not the only ones who are being victimized by ORC rings. State budgets are also adversely affected. The Coalition Against Organized Retail Crime conservatively estimates that of the 46 states that have a state sales tax, these jurisdictions are being deprived of approximately $1.6 billion each year in lost sales tax revenue as a result ORC activity. States incurring the biggest sales tax revenue losses including California at $228 million, Texas at $153 million and Florida with $106 million. Mr. Chairman, attached to the Coalition's testimony is a chart showing these losses for all 46 states.

Aside from the actual physical theft of products from retail stores, ORC rings utilized other methods in which to illegally acquire merchandise, such as writing bad checks and using stolen credit card numbers. These professional crime rings also traffic in stolen gift cards and they will scan legitimate receipts to make fraudulent returns for either cash or gift cards. These criminal enterprises will also substitute UPC labels and bar codes from less costly items and place them on more expensive merchandise so that the products rings up or scans at the lower price.

Pilfered merchandise doesn't just go out the front entrance of a store, ORC rings use emergency exits or will walk out of a store through the garden center without paying. They'll also use detection-proof shopping bags that are lined with aluminum foil to thwart sensor machines and anti-theft or source tags.

ORC RINGS FAVOR INTERNET AUCTION SITES

While flea markets, swap meets and pawn shops were the primary venues for fencing and reselling stolen products, ORC rings are now turning to the internet to sell stolen or fraudulently obtained merchandise. It's easy, user-friendly, instantaneous and anonymous and ORC rings can reach a global audience. Such transactions, often times referred to as "e-fencing", generate approximately 70 cents on the dollar for stolen merchandise that is sold from an internet auction site. In comparison, stolen products that are sold from pawn shops or at flea markets only realize about 30 cents on the dollar of the product's retail value.

MAGNITUDE OF THE INTERNET AUCTION SITE PROBLEM

The popularity of internet auction sites is clearly evident by the fact that 700,000 individuals list E-Bay as either their primary or secondary source of income when filing their federal income returns. According to E-Bay spokesperson, Catherine England, E-Bay typically lists about 78 million items on its site at any given time and some 6 million new items are posted every day. Approximately, 1.3 transactions occur on a daily basis.

Granted, most sellers utilizing Internet auction sites are honest individuals who are not trafficking in stolen or fraudulently obtained goods, but a significant number of sellers are clearly not reputable. If just a very small percentage of sales from Internet auction sites involve stolen or fraudulently obtained merchandise, that's thousands of illicit transactions each and every day of the year which illustrates the magnitude of this problem.

Brick and mortar retailers have perused certain internet auction sites and routinely find that rather expensive products, such as electronics and home appliances, are being offered for sale at prices much lower than what a Target, Wal-Mart, Safeway or Walgreens can get directly from a manufacturer even with their substantial buying power. Clearly, these products have been either stolen or fraudulently obtained.

Some skeptics may claim that retail store losses are a result of employee theft, and retailers need to stop employee pilfering rather than complaining about ORC gangs and internet auction sites. Retailers acknowledge that stores do experience internal losses resulting from employee theft, and we are aggressively attempting to minimize this type of shrink. Nevertheless, theft whether it is internal, caused by employees, or external resulting from shoplifting and ORC gangs is STILL THEFT, and a considerable amount of these ill-gotten goods are being sold on internet auction sites.

RETAILERS WANT TO PARTNER WITH INTERNET AUCTION SITES

Retailers have sought to partner with Internet auction sites to discourage and minimize the sale of stolen merchandise, but regrettably internet auction sites have not been responsive to our requests. Coalition members know for a fact if law enforcement makes an inquiry the Internet auction site will cooperate, but they refuse to take action when a retail company makes such a request. And there in lies the problem. Ironically, law enforcement is eager to partner with the retail community. For example, certain Coalition members, such the National Retail Federation (NRF), Retail Industry Leaders Association (RILA) and the Food Marketing Institute (FMI) have recently partnered with the Federal Bureau of Investigations (FBI) to create a national data base that tracks where ORC crimes are being committed throughout the country.

COALITION SUPPORTS ENACTMENT OF A FEDERAL ORC BILL

Mr. Chairman, the Coalition Against Organized Retail Crime strongly supports the introduction and passage of a federal initiative that would provide for much needed clarity within Title 18 of the US Criminal Code as to what constitutes ORC criminal activity and to make ORC a federal felony. The Coalition further believes that legislation of this kind would allow federal law enforcement to more efficiently go after and prosecute ORC rings if they choose to do so.

The Coalition would hope that such a bill could be drafted to require for a reasonable degree of accountability and disclosure on the part of internet operators and high volume sellers in an effort to discourage the posting and sale of stolen or fraudulently obtained products on Internet auction sites. We do not see these types of provisions would be burdensome. For example, if a product has a serial number, it must be disclosed by the seller and Internet auction sites would have a rule to require sellers to post such information. E-bay already requires the posting of a bin number for the sale of motor vehicles from their internet site, so imposing a serial number requirement on other product categories such as electronics should not be problematic.

The Coalition would also support language in a federal ORC bill that would require sellers to disclose in their listings if they are offering for sale merchandise that is exclusively available only thru a certain retail source, and internet auction sites would need to have a rule requiring such a disclosure on the part of sellers. Finally, the legislation should include a definition on high volume sellers and require minimal recordkeeping of their transactions, and Internet auction sites ought to be required to maintain records on high volume sellers and their transactions. In view of the magnitude of ORC problem throughout the United States, the Coalition Against Organized Retail Crime firmly believes these types of disclosure and recordkeeping provisions would not be unreasonable and nor burdensome.

In conclusion, the Coalition Against Organized Retail Crime appreciates the opportunity to participate in this hearing and we urge Chairman Scott and the Members of the House Judiciary Crime Subcommittee to consider drafting legislation reflective of our testimony.

Coalition Against Organized Retail Crime
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Attachments:
Coalition Membership Roster
ORC: Estimated Lost Sales Tax Revenue By State

Coalition Against Organized Retail Crime

- **Abbott Laboratories**
- **Ahold USA, Inc.**
- **American Council on Regulatory Compliance**
- **Consumer Healthcare Products Association**
- **Cosmetic, Toiletry, and Fragrance Association**
- **CVS/pharmacy**
- **Duane Reade**
- **Eastman Kodak Company**
- **Eckerd Corporation**
- **Food Lion, LLC**
- **Food Marketing Institute**
- **Giant Food LLC**
- **Giant Food Stores LLC**
- **GlaxoSmithKline**
- **Grocery Manufacturers/Food Products Association**
- **International Formula Council**
- **Macy's**
- **National Association of Chain Drug Stores**
- **National Association of Convenience Stores**
- **National Community Pharmacists Association**
- **National Retail Federation**
- **Nestle**
- **Publix Super Markets, Inc.**
- **Retail Alliance**
- **Retail Industry Leaders Association**
- **Rite Aid Corporation**
- **Safeway Inc.**
- **Security Industry Association**
- **The Stop & Shop Supermarket Company**
- **Target Corporation**
- **Tops Markets, LLC**
- **Wal-Mart Stores, Inc.**
- **Walgreen Co.**

Organized Retail Crime: Estimated Lost Sales Tax Revenue by State

	All Retail Stores Sales (2004)[i]	State Percentage of All Retail Store Sales (2004)	Estimated Amount of Merchandise ORC Gangs Stole by State	State Sales Tax Rates (2004)[ii]	Estimated Lost Sales Tax Revenue by State
United States	$3,522,753,961,000	---	$30,000,000,000[iii]	---	---
Alabama	$45,858,614,000	1.30%	$390,000,000	4%	$15,600,000
Arizona	$67,908,702,000	1.93%	$579,000,000	5.60%	$32,424,000
Arkansas	$28,925,532,000	0.82%	$246,000,000	6%	$14,760,000
California	$428,851,298,000	12.17%	$3,651,000,000	6.25%	$228,187,500
Colorado	$61,285,050,000	1.74%	$522,000,000	2.90%	$15,138,000
Connecticut	$48,829,210,000	1.39%	$417,000,000	6%	$25,020,000
District of Columbia	$2,783,257,000	0.07%	$21,000,000	5.75%	$1,207,500
Florida	$209,354,732,000	5.94%	$1,782,000,000	6%	$106,920,000
Georgia	$103,516,064,000	2.94%	$882,000,000	4%	$35,280,000
Hawaii	$14,259,850,000	0.40%	$120,000,000	4%	$4,800,000
Idaho	$18,210,683,000	0.52%	$156,000,000	6%	$9,360,000
Illinois	$144,754,914,000	4.11%	$1,233,000,000	6.25%	$77,062,500
Indiana	$72,222,232,000	2.05%	$615,000,000	6%	$36,900,000
Iowa	$37,088,745,000	1.05%	$315,000,000	5%	$15,750,000
Kansas	$34,263,296,000	0.97%	$291,000,000	5.3%	$15,423,000
Kentucky	$41,325,797,000	1.17%	$351,000,000	6%	$21,060,000
Louisiana	$47,384,624,000	1.35%	$405,000,000	4%	$16,200,000
Maine	$19,000,559,000	0.54%	$162,000,000	5%	$8,100,000
Maryland	$69,072,232,000	1.96%	$588,000,000	5%	$29,400,000
Massachusetts	$83,465,275,000	2.37%	$711,000,000	5%	$35,550,000
Michigan	$123,244,027,000	3.50%	$1,050,000,000	6%	$63,000,000
Minnesota	$74,126,788,000	2.10%	$630,000,000	6.5%	$40,950,000
Mississippi	$28,191,708,000	0.80%	$240,000,000	7%	$16,800,000
Missouri	$68,686,660,000	1.95%	$585,000,000	4.225%	$24,716,250

	All Retail Stores Sales (2004)[i]	State Percentage of All Retail Store Sales (2004)	Estimated Amount of Merchandise ORC Gangs Stole by State	State Sales Tax Rates (2004)[ii]	Estimated Lost Sales Tax Revenue by State
Nebraska	$21,486,393,000	0.61%	$183,000,000	5.50%	$10,065,000
Nevada	$29,720,833,000	0.84%	$252,000,000	6.5%	$16,380,000
New Jersey	$116,146,739,000	3.30%	$990,000,000	6%	$59,400,000
New Mexico	$20,858,626,000	0.59%	$177,000,000	5%	$8,850,000
New York	$205,164,950,000	5.82%	$1,746,000,000	4.25%	$74,205,000
North Carolina	$94,048,844,000	2.67%	$801,000,000	4.50%	$36,045,000
North Dakota	$8,374,407,000	0.24%	$72,000,000	5%	$3,600,000
Ohio	$139,302,217,000	3.95%	$1,185,000,000	6%	$71,100,000
Oklahoma	$38,292,371,000	1.09%	$327,000,000	4.5%	$14,715,000
Pennsylvania	$140,302,370,000	3.98%	$1,194,000,000	6%	$71,640,000
Rhode Island	$10,989,537,000	0.31%	$93,000,000	7%	$6,510,000
South Carolina	$45,704,569,000	1.30%	$390,000,000	5%	$19,500,000
South Dakota	$15,516,268,000	0.44%	$132,000,000	4%	$5,280,000
Tennessee	$73,919,527,000	2.10%	$630,000,000	7%	$44,100,000
Texas	$288,967,307,000	8.20%	$2,460,000,000	6.25%	$153,750,000
Utah	$27,309,774,000	0.78%	$234,000,000	4.75%	$11,115,000
Vermont	$8,174,758,000	0.23%	$69,000,000	6%	$4,140,000
Virginia	$92,452,684,000	2.62%	$786,000,000	4%	$31,440,000
Washington	$74,935,339,000	2.13%	$639,000,000	6.5%	$41,535,000
West Virginia	$18,125,574,000	0.51%	$153,000,000	6%	$9,180,000
Wisconsin	$74,043,627,000	2.10%	$630,000,000	5%	$31,500,000
Wyoming	$7,109,023,000	0.20%	$60,000,000	4%	$2,400,000

Note: States with no state sales tax, AK, DE, MT, NH, and OR, were omitted.

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[i] Market Statistics, a division of Claritas Inc., Arlington, VA, The Survey of Buying Power Data Service, "Retail Trade and Food Services--Sales by Type of Store and State," 2004, http://www.census.gov/compendia/statab/tables/07s1022.xls.
[ii] Federation of Tax Administrators, "Comparison of State and Local Retail Sales Taxes," July 2004, http://www.taxadmin.org/FTA/rate/sl_sales.pdf.
[iii] Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Testimony before the House Judiciary subcommittee on crime, terrorism and homeland security, March 17, 2005, http://commdocs.house.gov/committees/judiciary/hju20018.000/hju20018_0.HTM.

Statement Submitted by Senator Richard J. Durbin for the Record
House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
Hearing on "Genocide and the Rule of Law"

October 23, 2007

The legal prohibition against genocide remains an unfulfilled promise. With far too few exceptions, we have failed to prevent and stop genocide. We have seen this most clearly recently in Darfur in western Sudan. In this region of six million people, hundreds of thousands of people have been killed and as many as 2.5 million people have been driven from their homes. For them, the commitment of "never again" rings hollow.

States have a responsibility to protect populations from genocide, crimes against humanity and war crimes. States should prevent such mass atrocities by addressing the root causes of conflicts and reacting to ongoing atrocities through sanctions, prosecutions and, in more extreme cases, military intervention. In the aftermath of such atrocities, especially where the response to mass atrocities has involved military intervention, states should assist affected populations in the process of rebuilding.

The responsibility to protect populations at risk of mass atrocities is independent of whether the crimes committed meet the definition of genocide set forth in the Genocide Convention. In too many instances, debates about the legal definition of genocide have delayed action or served as an excuse for the failure of governments to act. States should not wait until they have concluded that mass atrocities being committed amount to genocide before acting to prevent these crimes. The determination of whether someone has the specific intent required for genocide, "to destroy, in whole or in part, a national, ethnic, racial or religious group, as such" is one that should be made by courts holding perpetrators of massive atrocities accountable once they have had an opportunity to examine the evidence.

S. 888, the Genocide Accountability Act of 2007, represents an important step towards ridding the world of genocide by preventing those who commit or incite genocide from seeking refuge in our country without fear of prosecution for their actions. Under current law, genocide is only considered a crime if it is committed within the United States or by a U.S. national outside the United States. This means the United States cannot indict someone for genocide committed outside the United States, even when the victim is an American citizen, unless the perpetrator is a U.S. national. This bill will close the legal loophole that currently prevents the U.S. Justice Department from prosecuting people in the United States who have committed genocide in other countries.

There is no safe haven for the hundreds of thousands of Sudanese who have faced genocide in Darfur and yet our country could potentially provide a safe haven for their killers. The current legal loophole in our genocide laws has real-life consequences. Salah Abdallah Gosh, the head of security in the Sudanese government, has reportedly played a key role in the government's genocidal campaign in Darfur. In 2005, Gosh came to Washington to meet with senior Administration officials. Under current law, the FBI could not even interview Gosh about his involvement in the Darfur genocide, much less charge him with a crime. While genocide rages in Darfur, the United States must commit to holding those guilty of genocide accountable.

The Justice Department has identified individuals who participated in the Rwandan and Bosnian genocides and who are living in the United States under false pretenses. Under current law, these individuals cannot be arrested or prosecuted, because they are not U.S. nationals and the genocides in which they were involved did not take place in the United States. In contrast, the laws on torture, material support for terrorism, terrorist financing, hostage taking, and many other federal crimes are still considered crimes when committed outside the United States by non-U.S. nationals.

The failure to prevent and adequately respond to genocide in Darfur, Rwanda and other places results from a failure of political will and a failure of law. The Genocide Accountability Act would remedy one aspect of this failure of law by allowing for prosecution of those individuals found in the United States who have participated in horrific acts against humanity.

Creating mechanisms and tools for holding those who have committed mass atrocities accountable helps to prevent future atrocities. The recent escalation of atrocities in Darfur in the lead-up to peace talks at the end of this month reflects how little fear perpetrators of atrocities in Darfur have that they will be held accountable for their actions. By increasing the likelihood that perpetrators of atrocities will be held accountable, the Genocide Accountability Act would move the world a little bit closer to fulfilling our pledge of "never again."

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