

OFFICE OF THE U.S. INTELLECTUAL PROPERTY
ENFORCEMENT COORDINATOR

HEARING
BEFORE THE
SUBCOMMITTEE ON
INTELLECTUAL PROPERTY,
COMPETITION, AND THE INTERNET
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

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**OFFICE OF THE U.S. INTELLECTUAL
PROPERTY ENFORCEMENT COORDINATOR**

TUESDAY, MARCH 1, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTELLECTUAL PROPERTY,
COMPETITION, AND THE INTERNET,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:33 p.m., in room 2141, Rayburn Office Building, the Honorable Bob Goodlatte (Chairman of the Subcommittee) presiding.

Present: Representatives Goodlatte, Coble, Chabot, Issa, Pence, Jordan, Chaffetz, Reed, Griffin, Marino, Adams, Quayle, Watt, Conyers, Berman, Chu, Deutch, Sánchez, Wasserman Schultz, Lofgren, and Jackson Lee.

Staff present: (Majority) David Whitney, Counsel; Olivia Lee, Clerk; and Stephanie Moore, Minority Counsel.

Mr. GOODLATTE. This hearing of the Subcommittee on Intellectual Property, Competition, and the Internet will come to order.

And I will recognize myself for an opening statement.

Companies that rely upon strong intellectual property protection employ 18 million Americans, account for more than 50 percent of our exports, contribute 40 percent of our economic growth, and 6 percent of our gross domestic product.

Given these numbers, it is apparent that our continued ability to promote creativity and innovation and protect American intellectual property lie at the center of vital U.S. economic and national security interests.

But how serious are the challenges to U.S. IP leadership? What should be our priorities, and what are the appropriate roles of the public and private sectors in preserving our competitive advantages and protecting intellectual property?

I would like to note the intelligence community's analysis of one of the evolving threats posed by IP theft. Earlier this month, the Director of National Intelligence stated that in our interdependent world, economic challenges have become paramount and cannot be underestimated, from increasing debt to fluctuating growth, to China's economic and military rise. He went on to say we are seeing a rise in intellectual property theft. Industry has estimated the loss of intellectual property worldwide to cyber crime in 2008 alone cost businesses approximately \$1 trillion.

We believe this trend has gotten worse. Last year, some of our largest information technology companies discovered that through-

out much of 2009, they had been the targets of systematic efforts to penetrate their networks and acquire proprietary data. The intrusions attempted to gain access to repositories of source code, the underlying software that comprises the intellectual crown jewels of many of these companies.

Similar findings were included in the intelligence community's 2011 Annual Threat Assessment. It is clear that the challenges faced by IP holders are serious and that protecting intellectual property has important implications for our Nation's economy innovation and national security.

The U.S. Government clearly has both strategic and practical interests in ensuring our Nation's IP laws foster the continued development of innovative and creative products here at home. We also have obligations to ensure our laws are administered efficiently and enforced appropriately.

In recognition of the need to elevate IP enforcement policy on the permanent list of U.S. Government priorities, Congress passed the Prioritizing Resources and Organization for Intellectual Property Act of 2008, or PRO-IP, signed into law by President George W. Bush on October 13, 2008. The effort to enact PRO-IP was led by our then Chairman and current Chairman and current Ranking Member, Representative John Conyers, Jr., and Representative Lamar Smith, respectively. The law followed unprecedented efforts by the Bush administration to implement new strategies to assist IP owners and improve IP enforcement at home and abroad. These included the Strategy Targeting Organized Piracy, or STOP, and the formation of the Department of Justice's first intellectual property task force.

A key provision of PRO-IP is the requirement to establish the intellectual property enforcement coordinator position, or IPEC, in the Executive Office of the President. Congress determined this was needed to make certain the official charge with coordinating IP enforcement policy across all agencies had the requisite authority and independence to transcend agency boundaries.

In September of 2009, President Barack Obama nominated Victoria Espinel, the former Assistant U.S. Trade Representative for Intellectual Property and Innovation, as the first IPEC. She was confirmed in December of 2009. Since assuming office, Ms. Espinel has been responsible for fulfilling the statutory duties specified in section 301(b) of the PRO-IP.

In June of 2010, the Office of the IPEC published the inaugural Joint Strategic Plan on Intellectual Property Enforcement which identified 33 enforcement strategy action items the Federal Government will take to enhance the protection of American intellectual property rights. Several are of specific interest to the Subcommittee. These include efforts to combat the theft of intellectual property online and increase information sharing between law enforcement officials and rights holders.

In February, the office published its first annual report on IP enforcement, and the President appointed the IPEC to chair two new IP enforcement advisory committees. In addition, the office reports substantial progress on developing a white paper that will contain specific statutory recommendations for improving Federal intellectual property laws and enforcement efforts.

I am told one or two issues need to be finalized, but I am hopeful the Members of the Subcommittee may receive a brief overview of what is expected.

As you can see, we have a lot to talk about today, especially at a time when this Subcommittee is about to undertake hearings examining the ever-growing problem of online piracy and rogue websites both here in the U.S. and overseas. Ms. Espinel has assumed her duties at a historic and critical time. Today's hearing, which represents the first formal oversight hearing of the office for the IPEC, will examine the work of the office since it was established in 2008. I look forward to hearing about the progress of the office, as well as new ideas that office has for further protecting the intellectual property rights of America's authors and creators.

Now, I think we still have time before we need to depart for votes, and if the gentleman is willing, I will recognize the Ranking Member of the Subcommittee, the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman, for convening this important hearing.

The Prioritizing Resources and Organization for Intellectual Property Act, better known as PRO-IP Act, was introduced by then Chairman Conyers and Ranking Member Smith in 2007. Chairman Goodlatte and I also co-sponsored the bill which was signed into law October 13, 2008.

The PRO-IP Act followed countless studies that demonstrated the reliance of U.S. businesses and entrepreneurs on intellectual property rights to protect their investments, resources, and creativity that in turn feed and grow the U.S. economy. Patents, trademarks, and copyrights are the backbone of many American enterprises and virtually all innovation. However, we found that increasing theft, both within and beyond the U.S. borders, cost American jobs and often also threatens public health and safety.

We also recognized that there were major challenges in coordinating Federal enforcement of existing laws in support of intellectual property rights. Numerous agencies shared responsibility for interdiction, investigation, and prosecution of intellectual property offenses. To address this disjointed system of enforcement, the PRO-IP Act created the position of the Intellectual Property Enforcement Coordinator and required that it be housed in the Executive Office of the President.

Today we welcome Victoria Espinel, the Intellectual Property Enforcement Coordinator to this inaugural oversight hearing of IPEC in the House to tell us what progress has been made since her position was created. This will be our first opportunity, since the President's State of the Union and subsequent issuance of the executive order designating the strengthened Federal efforts to encourage innovation through vigorous enforcement of our intellectual property laws, to hear an Administration official on the implementation of concrete steps to ramp up our IP enforcement regime. So I look forward to hearing from our witness and yield back the balance of my time.

Mr. GOODLATTE. I thank the gentleman.

It is my understanding that the Ranking Member of the full Committee, the gentleman from Michigan, Mr. Conyers, also has a

statement. And I think maybe we can get that in before we depart for votes. Does the gentleman wish to be recognized now or when we return?

Mr. CONYERS. I would prefer when we come back, Mr. Chairman.

Mr. GOODLATTE. Okay. Well, with that in mind, then I think the Committee will stand in recess and when we return, we will start with Mr. Conyers or Mr. Smith, if he is here. And then we will turn to you, Ms. Espinel. Thank you for your patience.

[Recess.]

Mr. GOODLATTE. The Committee will come to order, and the Chair now recognizes the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Goodlatte.

The only thing I wanted to add in welcoming our witness is to, first of all, concur with the comments that I have heard from Chairman Goodlatte and Ranking Member Watt, is the following. This no doubt talented and charming member raises the question for me of is she tough enough for this job. That remains to be seen, and perhaps I can become convinced of it this afternoon.

There is something else that I would add and then put my statement in the record.

There are several other things that I would like to see happen. First of all, I would think that this office requires at least 10 full-time staff people, not detailees.

And further, I feel that the office of IPEC should be moved to the Office of Science and Technology Policy instead of where it is.

Finally, I commend the President for the executive order issued several weeks ago, and I think it is an excellent step toward combating intellectual property theft in our country and abroad. But I think this has to be seriously addressed and not just have an office in an organizational chart, and that is where I hope this Committee can be effective in making this a genuine operation.

And I welcome the witness and I yield back my time.

Mr. GOODLATTE. I thank the gentleman.

And it is now my pleasure to recognize the Vice-Chairman of the Subcommittee, the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Goodlatte. I will be very brief.

Thank you and the Ranking Member for having scheduled this very important issue involving a very important issue.

And it is good to have you, Ms. Espinel, with us today.

Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. I thank the gentleman.

We have a very distinguished and I think pretty tough, too, witness today. Your written statement will be entered into the record in its entirety, and we would ask you to summarize your testimony. To help you stay within the 5-minute time limit, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired, but you are going to have loads of questions to get any points you didn't make in your opening statement into the record.

It is our custom on this Subcommittee to swear in our witnesses. So before I introduce you, I would ask that you stand and be sworn in.

[Witness sworn.]

Mr. GOODLATTE. Thank you.

Our witness is Victoria A. Espinel, the U.S. Intellectual Property Enforcement Coordinator for IPEC. Ms. Espinel is the first person to serve in this important position which Congress, through enacting the Prioritizing Resources and Organizing for Intellectual Property Act, or PRO-IP Act, required to be created in the Executive Office of the President.

Ms. Espinel is well known to the Members of this Committee through her several appearances and earlier service as the first-ever Assistant United States Trade Representative for Intellectual Property and Innovation in the Office of the U.S. Trade Representative. In that capacity, she served as the principal U.S. trade negotiator on IP and chaired the interagency committee that conducts the annual special 301 review of international protection of IP rights.

Before confirmation as the IPEC, Ms. Espinel was a visiting professor at the George Mason University School of Law. She holds an L.L.M. from the London School of Economics, a J.D. from Georgetown University, and a bachelor of science in foreign service from Georgetown University School of Foreign Service.

We welcome her return to the House Judiciary Committee where in 2005 she first testified before Congress and look forward to receiving her testimony at the first oversight hearing that is devoted to the Office of the U.S. Intellectual Property Enforcement Coordinator. Ms. Espinel, welcome.

TESTIMONY OF THE HONORABLE VICTORIA A. ESPINEL, U.S. INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, EXECUTIVE OFFICE OF THE PRESIDENT

Ms. ESPINEL. Thank you very much.

Chairman Goodlatte, Ranking Member Watt, Members of the Subcommittee, thank you for your continued leadership on intellectual property.

As President Obama said in the State of the Union Address: “In America, innovation doesn’t just change our lives. It is how we make a living.” Protecting creativity and innovation and the jobs, exports, and economic growth that they create is what I do every day. It takes effective enforcement to ensure that a revolutionary idea can blossom into economic opportunity and create the high-paying jobs that will drive our prosperity in the future.

The PRO-IP Act of 2008 created my position, the Intellectual Property Enforcement Coordinator, and placed it within the Executive Office of the President. Members of this Subcommittee were instrumental in creating my position, and I am honored to serve as the first coordinator.

To show the importance the President places on intellectual property enforcement, 3 weeks ago he issued an executive order establishing a cabinet-level committee, which I will chair, to further focus the Administration’s IP protection efforts.

My first order of business upon taking office was to coordinate the development of the Administration’s Joint Strategic Plan. That strategy, which we issued in June, resulted from significant public input and the coordinated efforts of the Federal agencies. I want

to highlight some of the concrete steps we have taken to improve enforcement in the 8 months since we issued the strategy.

First, we will lead by example and ensure we respect intellectual property in our policies and practices. In January, we issued a statement setting out the Administration's policy to be technology neutral in our procurement and that all technology must be properly licensed. We are also reviewing our policies on the use of software by Federal contractors.

Counterfeit products that could harm our military or our national security are unacceptable. We are working intensely with DOD and NASA and others on a plan to stop counterfeit products from entering the military and critical infrastructure supply chain and will issue recommendations later this year. I look forward to working with you on this important issue.

Second, we will be transparent so the public knows what we are doing and can have input. My office has met and will continue to meet with stakeholders as we implement the strategy.

Third, we will we will improve our coordination. We now have 30 law enforcement teams in cities across the Nation working with State and local law enforcement. We have identified 17 countries where enforcement is a priority and the embassies there have formed working groups and are drafting concrete action plans to address the challenges in those countries.

Fourth, we will enforce our rights overseas. In November, USTR concluded negotiations on an enforcement agreement called ACTA with 38 countries representing over half of global trade. Since June, the U.S. has led and participated in three global law enforcement sweeps against counterfeit drugs and online piracy, each involving over 30 countries. We are working with the agencies and industry to assess China's progress under the enforcement campaign announced in October and to encourage more action. And USTR just yesterday issued a report on physical and online overseas markets that will raise awareness and aid our diplomatic efforts.

Fifth, we will secure our supply chain. That includes working to minimize infringing products coming into the United States and technology being illegally transferred out of the United States. Overall, intellectual property enforcement is up. From 2009 to 2010, ICE investigations opened are up more than 41 percent. DHS seizures are up more than 34 percent, and FBI investigations opened are up more than 44 percent.

In June and July, ICE and DOJ had two of the largest counterfeit goods cases in history, each involving over \$100 million worth of counterfeit goods.

DOJ and the FBI have made trade secret cases a priority, including two recent cases involving the theft of technology developed by our automobile industry, one of which involve hybrid car technology.

Securing our supply chain also means fighting infringement in the digital world. To do so, we need increased law enforcement, voluntary action from the private sector, and consumer education. DOJ and ICE have launched "Operation In Our Sites," targeting websites used to distribute infringing products. We are also working with the private sector to encourage voluntary actions that are

practical and effective, respect privacy and fair process, and protect legitimate uses of the Internet.

In December, we announced that a number of major Internet intermediaries agreed to come together as leaders to form a non-profit to take voluntary enforcement actions against illegal online pharmacies. By preventing criminals from gaining access to consumers and appearing legitimate through the use of payment processors, the purchase of ads or a registered domain name, these companies can play a critical role in combating illegal online pharmacies.

Voluntary cooperative solutions are a priority focus for our office, and we believe, in combination with increased law enforcement, voluntary actions by the private sector have the potential to dramatically reduce online infringement and change the enforcement paradigm. We will continue to push forward with voluntary actions on multiple fronts.

Finally, we will build a data-driven Government to ensure our policies are as well informed as possible. We are working with leading economists in the Administration on the first-ever U.S. Government economic analysis that will measure the jobs and exports created by IP industries across our entire economy.

We are committed to help American businesses, to protect American jobs, to increase exports, to protect health and safety, and to ensure that innovation continues to drive our economic growth. We know we still have much to do, and we will continue working.

Later today, we will deliver to you a strategy to fight counterfeit drugs, and in the near future, we will provide to you a white paper of legislative recommendations.

I commend the Subcommittee's leadership and I look forward to working closely with you.

[The prepared statement of Ms. Espinel follows:]

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

**Testimony of Victoria A. Espinel
Intellectual Property Enforcement Coordinator, Office of Management and Budget
Before the Subcommittee on Intellectual Property, Competition, and the Internet,
Committee on the Judiciary
United States House of Representatives
March 1, 2011**

Chairman Goodlatte, Ranking Member Watt, members of the Subcommittee on Intellectual Property, Competition, and the Internet: Thank you for your continued leadership on this important issue.

As the President said in the State of the Union Address: “In America, innovation doesn’t just change our lives. It is how we make a living.” Protecting innovation, and the jobs, exports and economic growth that innovation creates, is what I do on a daily basis. It takes effective intellectual property enforcement to ensure that a revolutionary idea can blossom into economic opportunity and to allow the American innovative spirit to create the good, high-paying jobs that will drive our prosperity in the 21st Century.

The PRO-IP Act of 2008 created my position -- the U.S. Intellectual Property Enforcement Coordinator -- and placed it within the Executive Office of the President. A number of members of this Subcommittee were instrumental in creating my position and I am honored to serve as the first U.S. Intellectual Property Enforcement Coordinator, having been nominated by the President and having been confirmed by the Senate a little more than a year ago. To demonstrate the importance the President places on intellectual property enforcement, three weeks ago, he issued an Executive Order establishing a cabinet-level intellectual property

enforcement committee which I will chair to further focus the Administration's efforts to protect intellectual property and innovation.

My first order of business upon taking office was to coordinate the development of the Administration's inaugural Joint Strategic Plan on Intellectual Property Enforcement. That Strategy was developed as a result of significant public input -- including more than 1,600 public comments -- and the coordinated efforts of the Federal agencies, including the U.S. Departments of Commerce, Health and Human Services, Homeland Security, Justice, State and the U.S. Trade Representative. The overarching goal of the Strategy is to protect the health and safety of the public, and to protect U.S. jobs, increase exports of innovative and creative products and support and protect our innovation, thereby allowing America's innovation to continue to drive our economic growth. The Strategy set out six broad principles that we would follow to meet our goals (and included 33 actions items within those broad principles that the U.S. Government would undertake to improve enforcement). I want to outline those six principles, and highlight some of the concrete steps that we have taken to support those principles and to improve enforcement in the eight months since we issued the Strategy.

First, we will lead by example and work to ensure that the U.S. Government does not purchase or use infringing products. To that end, on Jan. 7, 2011, the U.S. Chief Information Officer, the Administrator for Federal Procurement Policy and I issued a statement to Federal procurement officials reminding them of the Administration's policy to be "technology neutral" in procurement, and that all technology must be properly licensed. We are also reviewing our policies with respect to use of software by our Federal contractors.

Counterfeit products coming in to the U.S. Government supply chain is unacceptable – particularly products that could have an impact on our military and national security. We are working intensely with the Department of Defense and NASA on a plan to stop counterfeit products from entering the military and critical infrastructure supply chain, which put our military and national security at risk. We will have recommendations this year on what we can do to prevent counterfeit goods from entering that supply chain.

Second, we will be transparent in our policymaking and enforcement, so the public knows what the U.S. Government is doing to help enforce intellectual property rights and can have input in those efforts. We have made extensive efforts to solicit a wide range of views and input and to take those views and input into account, through meetings I have held with stakeholders, our website postings and updates, Federal Register notices from the U.S. Government when we are making policy decisions, and recurring newsletters from my office informing the public about significant government enforcement actions. We have and will continue to meet with stakeholders as we move forward with implementing the Strategy.

Third, we will improve the coordination of our law enforcement, our overseas personnel and our international training. We have brought together the agencies to ensure better information sharing and reduce duplicative efforts. We have supported efforts to increase Federal law enforcement coordination with state and local law enforcement, and we now have 30 law enforcement teams in cities across the nation working together with state and local law enforcement to fight intellectual property crime. On the international front, working with a new interagency task force we created, we identified 17 countries in which intellectual property enforcement is a priority. The embassies in each of those countries has now established embassy

intellectual property working groups chaired by senior embassy personnel and are drafting concrete plans setting out the actions each embassy will take to address the specific challenges in those countries.

Fourth, we will help American rightholders overseas, ensuring that we are able to effectively work with foreign governments when their citizens are infringing U.S. intellectual property rights. In November, the U.S. Trade Representative concluded negotiations on the Anti-Counterfeiting Trade Agreement with 38 countries, representing over 50% of global trade. That agreement is the first international agreement focused exclusively on intellectual property enforcement. Since June, the U.S. has led and participated in three global law enforcement sweeps, each involving more than 30 countries, with two targeting counterfeit drugs and one taking down about 300 websites used to sell counterfeit drugs. We are also working with the U.S. Trade Representative, U.S. Patent and Trademark Office, the Federal agencies and industry to assess China's progress under the campaign on intellectual property enforcement it launched in October and to encourage further action. And the U.S. Trade Representative is preparing a report on physical and online overseas markets that traffic in infringing products that will aid our diplomatic efforts to combat those markets.

Fifth, we will secure our supply chain. That includes securing the physical border, working to minimize infringing products coming into the U.S. and innovative technology from being illegally transferred out of the U.S. In June and July, Immigration and Customs Enforcement and DOJ had two of the largest counterfeit good cases in U.S. history, each involving \$100 million of counterfeit goods. DOJ and the FBI have increased their investigation and prosecution of trade secret cases. Among the examples of cases charged or prosecuted by DOJ

last year are two cases involving the theft of technology developed by our automobile industry, including trade secrets to build hybrid cars.

These significant cases are representative of our overall increased enforcement: From Fiscal Year 2009 to 2010, Immigration and Customs Enforcement intellectual property investigations opened were up more than 41% and arrests are up more than 37%, Department of Homeland Security intellectual property seizures were up more than 34%, and FBI intellectual property investigations opened were up more than 44%.

Securing our supply chain includes not only the physical border, but also combating infringement in the digital world. We have developed a three-pronged approach to do so: Increased law enforcement action, voluntary efforts by the private sector and consumer education.

Turning to the first prong, we have increased law enforcement efforts to combat online counterfeiting and piracy. In June, Immigration and Customs Enforcement and DOJ launched "Operation In Our Sites," cracking down on websites used to distribute or provide access to counterfeit and pirated products. The Operation has thus far had four different enforcement phases, has resulted in the seizure of more than 100 domain names for websites used to sell or provide access to infringing products over the Internet, and has resulted in more than 36 million people attempting to visit the websites being greeted by banners alerting them that the domain names had been seized.

We are also working with private sector participants to encourage voluntary actions that are practical and effective, respect privacy and fair process and protect legitimate uses of the Internet. In December, we announced that a number of major Internet intermediaries -- American Express, eNom, GoDaddy, Google, MasterCard, Microsoft, PayPal, Neustar, Visa, and

Yahoo! -- agreed to come together as leaders to form a nonprofit organization to educate consumers, share information and take voluntary enforcement action against illegal online pharmacies. By preventing criminals from gaining access to consumers and attaining legitimacy through the use of payment processors, the purchase of ad space or a registered domain name, these private companies can play a critical role in combating illegal online pharmacies. The nonprofit should be up and running in the next few months.

Voluntary cooperative solutions are a priority focus and we believe that, in combination with law enforcement action, voluntary actions by the private sector have the potential to dramatically reduce online infringement and change the enforcement paradigm. We will continue to push forward to encourage voluntary cooperative actions on multiple fronts. Our ultimate goal is to reduce infringement online so we will continue to assess our approach to ensure that it is as effective as possible.

The final piece of our online enforcement approach is consumer education. To give just two examples, DOJ has committed to fund public awareness campaigns on the risks to the public of purchasing counterfeiting goods and the nonprofit organization that will combat illegal online pharmacies includes education and public awareness as one of its four guiding principles.

Although I mention the physical and online environments separately here, our approach focuses on combating infringement in both at the same time. For example, in the near future, I will submit to Congress a report from the interagency pharmaceutical working group, which will describe efforts to combat counterfeit drugs sold on the Internet, smuggled into the U.S., and sold in the cities throughout the U.S.

Finally, we will build a data-driven government to ensure that our policies are as well-informed as possible. We are working with the Department of Commerce, the chief economists

of the Federal agencies and the Council of Economic Advisors on an economic analysis to measure the number of jobs and levels of exports created by intellectual property industries and their importance to their economy. This is the first time the U.S. Government has ever attempted such an analysis across all the sectors of our economy.

We are also reviewing existing laws to determine if changes are needed to make intellectual property enforcement more effective. I expect to submit to Congress in the near future a White Paper containing recommendations for legislative changes from that review.

The U.S. Government is committed to utilizing the resources at our disposal to help American businesses, to protect American jobs, to increase exports, and to ensure that innovation can continue to drive economic growth. We know we still have much to do. I commend this Subcommittee's leadership on intellectual property enforcement and I look forward to working closely with this Subcommittee on improving our protection of American intellectual property.

Mr. GOODLATTE. Thank you, Ms. Espinel.

I will start the questioning.

I mentioned in my opening remarks your work on preparing legislative recommendations for enhancing IP protections. When might we expect to receive those recommendations?

Ms. ESPINEL. I hope to have those recommendations to you very soon. I think we are very close to completion. It is a comprehensive

set of legislative recommendations and so it has gone through an intense interagency process which is not yet completed, but hopefully will be very soon. And we will have those recommendations to you as quickly as it is completed.

Mr. GOODLATTE. Thank you. We will look forward to examining those.

This Committee observed that a gap in the criminal law discourages Federal prosecutors from pursuing cases of unauthorized streaming of television programming over the Internet. In fact, we conducted a hearing on related issues just over a year ago.

What are your thoughts on whether Congress should close this loophole by providing felony penalties in appropriate circumstances?

Ms. ESPINEL. We have heard this concern about a deficiency in our law related to illegal streaming. We have heard it from the industry. We have heard it from law enforcement. It is something that we are seriously considering in the context of the white paper on legislative recommendations that I mentioned. As I said, I hope to have that to you very soon. But I think I am safe in saying that this is an issue of great concern to us. I think it is critical to helping us fight the problem of online piracy, and I hope that we have a recommendation to you on that very soon.

Mr. GOODLATTE. Thank you.

Increasingly we hear that counterfeiting and piracy represent a national security threat. Do you agree with that, and in what respects does piracy affect our national security?

Ms. ESPINEL. I do agree with that, and I am going to answer that in two different ways: one, to tell you about an initiative that we are already working on; and two, to tell you about an initiative that we are just starting. I think I will start with the latter.

There is a number of conversations that we are having with the FBI, with NSF, with certain companies that have made clear to us that there is a threat to our national security from counterfeit products or from other types of IP infringement like trade secrets being transferred overseas. So one of the things that my office is working on right now is trying to assess exactly what the scope of the problem that we are facing is and then what we need to do as a Government to address it.

There is one area of this where we have already identified a threat, and we are working intensely with DOD and NASA on how to address that. So we have identified a problem with counterfeit products coming into the military supply chain. That is, as I said, completely unacceptable. We are working very intensely with DOD, NASA, and some of the other agencies on a plan to address that. We are also working with DOJ and the FBI which have made this a priority issue for them in terms of law enforcement.

There are a number of legislative recommendations that we are considering in this area, which I hope to have to you shortly. And in terms of the overall U.S. Government procurement supply chain, we are working on recommendations that I am confident that we will have to you within the year, if not sooner.

Mr. GOODLATTE. In the plan that you set out last year, you proposed to update the executive order requiring Federal agencies to use legal software, to also require those doing business with the

Government to do so as well. Your report said in part, quote, to demonstrate the importance we place on the use of legal software and to set an example to our trading partners, the U.S. Government will review its practices and policies to promote the use of only legal software by contractors.

This is a great idea. What is the status of this new executive order?

Ms. ESPINEL. Well, we think it is enormously important that those who are doing business with the U.S. Government respect intellectual property. We are also keenly aware that what the United States does, in terms of our own policies and practices and in terms of the contractors that work with us, can serve as an example to other countries around the world. So this is an issue that we care about deeply, and I hope that we are soon in a position that we can report back to you on the steps that we are planning to take.

But it is very good for me to know that you and this Committee are interested in that issue, and I will certainly convey that back to the interagency process we have where we are discussing this.

Mr. GOODLATTE. We definitely are interested. So, in other words, an executive order has not yet been fashioned for the President to issue.

Ms. ESPINEL. There had been discussion of a number of options and updating the executive order is clearly—I think, obviously, one of the options that we have discussed, but there has been no decision yet as to what the President might do.

Mr. GOODLATTE. Administrations from both sides of the aisle and law enforcement agencies have routinely announced their intention to dedicate new resources to IP enforcement, investigations, and prosecutions. But what is meant by “dedicated” or “devoted” resources seems to be amorphous. Have you provided any guidance to agencies to ensure that such announcements are benchmarked and based on consistent criteria? If not, do you think this might be a worthwhile pursuit? We hear a lot of people talking about setting priorities, but then we do not see a lot behind that.

Ms. ESPINEL. Well, hopefully you will see a lot behind that in terms of our office. We have talked to a number of the agencies, particularly the law enforcement agencies, about dedicated IP personnel. I think it has been very clear in the conversations that we have had with the agencies that when we say dedicated IP personnel, we mean personnel that are spending virtually all of their time on intellectual property, that that is in fact what they are dedicated to full-time.

I can tell you that ICE, the Immigration and Customs Enforcement, is looking at increasing the number of dedicated IP personnel that they have. In fact, in September, they put in place their first sort of full-time IP personnel in China. I know that the FBI is also seriously considering putting a dedicated IP agent in Beijing, which we think would be enormously helpful.

Beyond that, we have also been working with DOJ on putting more overseas personnel in place. Now, I think in the case of DOJ, it would likely be personnel that had multiple responsibilities, but those personnel would be hired with an IP background and a significant amount of their responsibilities would be devoted to intellectual property.

In terms of benchmarks, one of the things that we did last year was, for the first time, actually canvass the agencies to find out exactly what they were spending on IP enforcement and where those resources were being spent. That is something that we are planning to do again this year. So I would be happy to report back to you on the data that we collect at the end of that process.

Mr. GOODLATTE. Thank you very much.

I now recognize the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

And welcome, Ms. Espinel.

Ms. ESPINEL. Espinel.

Mr. WATT. Great to have you here.

In December, your office announced the formation of a private sector nonprofit involving a number of players to try to counteract the sale of counterfeit pharmaceuticals. There are a number of other segments other than counterfeit pharmaceuticals, obviously, where the issue of piracy and copyright and other counterfeits are taking place.

I am wondering whether you see a different set of issues related to the pharmaceutical industry and the sale of pharmaceuticals as opposed to some of these other things and whether you are contemplating doing something similar in other segments. And I am also wondering how this plan has progressed to this point. So if you can kind of address both of those at the same time, it would be great.

Ms. ESPINEL. I would be happy to.

The counterfeit pharmaceuticals raise health and safety issues that also, frankly, are raised by other types of counterfeited products, although not all types of counterfeited products. So that is, I suppose, a difference with counterfeit pharmaceuticals.

That said, my office is committed, as we have said many times, to try to reduce infringement across all of our business sectors, and it is an amazingly wide array of business sectors that have come to us to say that they are suffering from infringement.

In terms of online enforcement, we feel that the types of voluntary actions that the private sector said that they would take in the context of illegal online pharmacies could also be very helpful in trying to reduce other types of online infringement. So we are actively engaged in discussions with a number of types of intermediaries, including the payment processors or credit card companies, for example, with domain name registrars, with Internet service providers, with ad brokers or the companies that provide for advertising over the Internet.

I think one of the areas that is a priority focus for us is trying to make sure that people are not using infringement as a way of making money and try to cut this off as a money-making venture. So one of the things that my office is very focused on is trying to go after the sources of money, and we feel that working with Internet intermediaries is one of the ways that we can help try to effectively cut this off as a business.

Mr. WATT. Have you made any progress since December when you formed this nonprofit?

Ms. ESPINEL. We haven't made any progress—

Mr. WATT. Any measurable progress.

Ms. ESPINEL [continuing]. That I am in a position to announce. I think we have had some discussions that are going well, but clearly—or at least as I have tried to make clear—we need to see more action by the private sector. While we have had some discussions that seem to be moving in the right direction, I think we need for those to be concluded in a positive manner. And again, this is a very important focus for us, so we will continue to push forward on it. And it is good for me to know that you are also interested in it.

Mr. WATT. How many permanent staffers does your office have? And compare that with what you believe you need, if you would.

Ms. ESPINEL. So my office has me and James Schuelke, my confidential assistant who is fabulous. Other than me and James, the office is staffed with a number, a few, temporary details who have been fantastic, very hard-working, very dedicated to the mission, but they are on loan to me from other agencies.

In terms of resources that we need, I think in this fiscal environment, obviously, everyone is trying to make do with what they have and to get as much out of their resources and to use those resources as effectively as they possibly can. We will continue to do that.

I should also note that we have had great support from the agencies, and so that has been an enormous advantage and help that my office has had in terms of level of commitment and support that we have had from the agencies. We will continue to assess our resources as we move forward.

Mr. WATT. So I assume there are some advantages to having detailees from other agencies, but when you get people detailed from an agency like the Patent and Trademark Office and they have a substantial backlog, it raises questions about the effective use of people. Can you tell us what the advantages are of having detailees and address the concern that that might raise about whether some of these other places need the employees also?

Ms. ESPINEL. I am tempted to kick that question to my detail from the Patent and Trademark Office.

I will just say that David Campos has been very generous in giving the office support and sending details to the office because I know he has a big job on his hands and likely feels that he could use all of his staff. Tom Stoll, who has been in the office for about a year now, but is unfortunately leaving soon to go back to the PTO, has been an enormous asset. PTO is sending over a detail to replace him, and I am confident that—

Mr. WATT. How is that efficient?

Ms. ESPINEL [continuing]. The detail will also be an asset.

Mr. WATT. I mean, it just seems like that would be inefficient to keep this revolving door detailee situation going.

Ms. ESPINEL. Well, I think we have accomplished a lot under the circumstances that we face.

Mr. WATT. I understand that but we are trying to make this operation more and more efficient too. And unless there is some real advantage to turning the people, the detailees, I mean, I don't know what we are gaining from that, which is why I asked the question. I was trying to see if there were some advantages to temporary detailees, but you haven't addressed that one.

Ms. ESPINEL. I think the details that have come to the office have been great, and I think the backgrounds that they have had—some of them have had IP backgrounds. Some of them, frankly, haven't. But they have all done a tremendous job of getting up to speed with the challenges of the office and the issues that we are facing and have been very, very loyal to the office and to the mission and I have to say incredibly hard-working. I suspect that some of them are eagerly anticipating returning to their home agencies and not—

Mr. WATT. That is all right. Obviously, you are not going to answer that question. [Laughter.] So I will just yield back. My time has expired.

Ms. ESPINEL. I just need time to compliment the details.

Mr. WATT. I know they have done a great job, but—okay. All right. I will let it go.

Mr. GOODLATTE. I thank the gentleman.

I now yield to the other gentleman from North Carolina, the Vice Chairman of the Subcommittee, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman, our neighbor to the north. Thank you, Mr. Goodlatte.

Ms. Espinel, good to have you with us.

A key mission of the U.S. Customs and Border Patrol is to target and seize imports of counterfeited and pirated goods. From 2005 through 2008, there was a steady and dramatic increase in both the number and yearly domestic value of seizures, with the latter rising from \$93 million to \$273 million. In 2009, however, there was a drop in the number of seizures and a 4 percent decline in the yearly domestic value of seized goods, which you probably know.

Are you concerned about these declines and what do you think accounts for them? What steps should or should have been taken to get the Customs and Border Patrol back on the upward swing?

Ms. ESPINEL. Thank you. So the value of imports did fall 4 percent in the year that you mentioned, although the value of imports overall in that year declined by 25 percent because of the economy.

Mr. COBLE. What year was this?

Ms. ESPINEL. From fiscal year 2008 to fiscal year 2009. So the proportional change in the value of IP was actually much less, which I think indicates the priority that was put on intellectual property seizures.

There have been declines in value also, though, from 2009 to 2010, even though the number of seizures has gone up. And I think in that case, the decline in value can be attributed to a change in counterfeiter tactics.

So just to explain that, two of the things the counterfeiters are doing right now is they are splitting up counterfeit goods and they are shipping them into the United States in smaller packages. So that means the individual value of seizures can fall. And they are doing this, obviously, to try to evade Customs and make it even harder for Customs to seize things.

Another thing that is happening and is happening increasingly is that counterfeiters are essentially selling direct to consumers. So instead of shipping large pallets through Customs that then go to middlemen, they are shipping small packages that go direct to con-

sumers. This is a big challenge that our Customs is facing, and not just U.S. Customs. This is a challenge European customs, for example, is facing as well.

So one of the things that we have been doing is working with Customs to see what they need in terms of technology or law enforcement tools, including legislative changes to help them address this particular problem.

The one other thing, though, I would mention is that if you look at this past year, seizures are up. In terms of the number of seizures, seizures are up 34 percent, and I would highlight that in terms of sort of critical areas that we are focusing on like health and safety and technology, seizures are up 97 percent.

Mr. COBLE. Thank you.

This Committee generally, and this Subcommittee specifically, has been a strong advocate for the need to improve the enforcement of intellectual property rights. Indeed, the original PRO-IP bill that led to the creation of your position, in fact, and required it to be placed within the Executive Office of the President was introduced by our former Chairman, Mr. Conyers, and our present Chairman, Mr. Smith. Over time, the need to ensure that IP rights are respected and enforced is only going to increase in my opinion, as is the need to ensure our agencies are working efficiently and effectively.

Let me put this question to you, Ms. Espinel. In your opinion, what is the single most important thing that we Members who care about strong IP rights can do to ensure your office is provided with the resources, certainty, and permanence needed to accomplish what we need to do for American creators and innovators?

Ms. ESPINEL. Well, I would highlight two things, if that is acceptable.

First, I would say in terms of our overall enforcement efforts, while enforcement has increased over this past year and I can assure you will continue to increase, I think are areas where our law enforcement could use more tools. And so one of the things that we would really like your help on is working with us on legislative recommendations. And I realize that we owe you the white paper on legislative recommendations that we have been preparing, but hopefully we will have it to you soon. And then we would very much like to work with you as that moves forward.

And the second thing I would say is I think it is, as I have mentioned, incredibly helpful to us to hear from Members directly what their concerns are and to have you highlighting the importance of this issue, which is very important to the Administration, but we know it is very important to Congress as well. Even though we know that, it is always helpful to hear that directly. So hearings like this or other ways of highlighting the importance of this issue are very helpful.

Mr. COBLE. Thank you.

Mr. Chairman, I see my red light has illuminated. So I yield back.

Mr. GOODLATTE. I thank the gentleman.

And the Chair now recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman, and thanks for this hearing. It is helpful to touch base on where we are.

I note that you have pledged to have transparent policymaking and enforcement. And with that in mind, I would like to understand better the recent domain name seizures by ICE, the so-called Operation In Our Sites. I want to know how ICE decided which websites to target, and I am also interested in knowing whether there is an assessment when it is a copyright case of whether there are affirmative defenses to alleged infringement, for example, fair use, and whether a site is in compliance with the Digital Millennium Copyright Act takedown provisions is considered and whether there is a consideration of whether taking down a site will involve censorship of material that is protected under the First Amendment.

For example, in the recent domain name seizures, there were two hip-hop blogs called OnSMASH and RapGodFathers. I know that from my staff, not from my own understanding of rap music. [Laughter.]

And it is my understanding that the sites had no downloads. They hosted no copyright material themselves. They were only linked to other sites. In fact, one of the sites claimed—I read this in the New York Times—that the labels themselves had asked them to link to some of the material because they were an influential fan site, and both sites claimed that they were complying with the DMCA takedown provisions.

Now, I want to know whether you think it is appropriate for ICE to seize the domain names of blogs such as this. Is that really a priority for enforcement? And do you have concerns about First Amendment implications when blogs such as this are seized?

My understanding is that the top priorities under the act are, first, health and safety, links to organized crime, large-scale commercial counterfeiting and online commercial piracy and trade secret thefts or economic espionage. How would this operation fit with those priorities and how many—well, I guess that is a lot of questions for you to answer.

Ms. ESPINEL. So, first, let me say I think copyright enforcement, online enforcement, Internet piracy is a big issue. It is a big issue for our economy, and I think it fits well within the mandate that Congress gave me in the PRO-IP Act.

I think in terms of Operation In Our Sites, as I have said repeatedly, we think increased law enforcement has to be part of what we are doing to try to battle rogue websites and the online piracy and counterfeiting problem that we face with other actions as well by the Administration and by the private sector, but increased law enforcement needs to be part of that.

Operation In Our Sites is based on our seizure authority and has the due process protections built into it that will go along with any seizures.

Ms. LOFGREN. Well, there aren't really any—I mean, they have sued the Department and they have had to go to the expense of getting lawyers to sue you. But there is no real due process provisions.

Ms. ESPINEL. Well, actually before any seizure under Operation In Our Sites is taken, the agents, working with the prosecutors

from DOJ, have to go to a magistrate judge to get a showing of probable cause before they can take any action against the website. And then, as you said, there is also the ability to challenge the seizure after the case. That is the due process that is built into our—

Ms. LOFGREN. Well, with all due respect, I mean, judges sign a lot of things. For example, the FreeDNS takedown. It wasn't a copyright enforcement. It was supposedly a child pornography enforcement. ICE took down 84,000 websites of small business people that had nothing to do with child pornography at all and put up a little banner saying this was taken down for child pornography, really smearing. If I were them, I would sue the Department. These were just small businesses. They had nothing to do with anything. And yet, a judge signed that. So if that is the protection, it is no protection.

I want to know what is the Department doing to think about the affirmative defenses, to think about—yes, there is piracy and all of us are united that we ought to do something about piracy. But there is also a First Amendment that you should be considering when you go and destroy a small business. Are you thinking about that?

Ms. ESPINEL. Yes, we are definitely thinking about that.

I will go back to your question, but just to say for a moment, I think one of the things that the United States—the United States as a government—can do very effectively in the space of online enforcement is take an approach—and we have, we believe, a very well considered approach—that will serve as an example to other countries. We are a government that really cares about due process. We are a government that really cares about the First Amendment, and I think what we do is an example to other countries but I think a very positive example. And we do consider all of those issues. We will continue to. And that is one of the reasons I think it is so important for the United States to be very active in this space.

You mentioned a case, an incident recently related to child pornography. It is not an IP case, obviously, so I am not familiar with the details, although I do know that ICE realized that there was a problem quickly and moved quickly over the weekend to rectify it. I understand, from talking to our law enforcement, that there are safeguards in place in Operation In Our Sites to avoid any similar type of mistake from happening.

And I guess I would just emphasize, as you also alluded to, what our law enforcement wants to do is go after criminals. That is what they do every day. They are incredibly dedicated to that task and I think that is where the Administration is as well.

Ms. LOFGREN. I have a lot of other questions and perhaps—I know we have an opportunity to submit them for the record.

But I will just say in closing that there is a lot of large-scale commercial piracy that is going on, and the Department is doing very little about it. I think that that is something that needs attention. And some of the people who are into copyright enforcement in Silicon Valley—Mr. Berman, there are many of them—thought that—and I can't say what they said. It was chicken poo in terms of the

report they saw. They thought it was small time and the big fish are getting away. And I think that that needs some attention.

I will submit my further questions for the record.

I yield back.

Mr. GOODLATTE. I thank the gentlewoman.

The gentleman from Utah, Mr. Chaffetz, is recognized for 5 minutes.

Mr. CHAFFETZ. Thank you.

I appreciate you being here. My understanding is part of your responsibility is regarding domestic but also international, and it is mostly that international aspect that I would appreciate focusing on.

And Mr. Coble was getting at this, but help me understand the metrics behind some of the numbers. You made a big point in your written testimony and your verbal testimony about these dramatic numbers and the increases that are happening with ICE and the seizures and the arrests are up and the Department of Homeland Security's seizures were up. Can you help me quantify what those are? I worry sometimes when I hear just percentages. I mean, are we going from 12 to 15 or are we going from 12,000 to—help me understand when you use these numbers, what actual numbers are we talking about, not just percentages.

Ms. ESPINEL. I know, with respect to the DHS seizures, for example, that are up 34 percent—well, my understanding is that we are looking at an increase from 12,000 to about 16,000. I think your overall point is are we sort of starting from zero and therefore—

Mr. CHAFFETZ. Yes.

Ms. ESPINEL [continuing]. A dramatic increase is not really an indication of that much action. But we are not. IP enforcement has been a priority for the U.S. Government for many years. I think we are starting from a solid base but trying to increase dramatically from that.

Mr. CHAFFETZ. Can you help me quantify? How much of it do you think you are actually getting to? I mean, it is like if we were taking an analogy of people speeding down the freeway and you say, well, we have been ticketing more often, but still everybody is going 90 miles an hour. What percentage do you think you are actually getting to when you are actually doing these seizures and arrests and all that? How much more is getting by us?

Ms. ESPINEL. I guess I would say this. One, we recognize that even though seizures are up and even though cases are up, there is a lot of infringement that we are not catching.

So let me give you two examples of—

Mr. CHAFFETZ. I guess the question is—because my time is so short—do you have any metrics that actually quantify the actual numbers? And if you do not have them right off the top of your head, I understand that. I guess as a written response perhaps as a follow-up that is what I would be interested in because I think we are all united, both sides of the aisle here, in making sure that we do have more enforcement. But it is hard to quantify when you use just those percentages. And they seem so dramatic. But I want to know much of it are we missing.

Ms. ESPINEL. I think they are dramatic. We will get back to you with the numbers behind the percentage increases.

I would, though, like to mention that in terms of—I mean, one of the things that we are very conscious of is law enforcement. By law enforcement, I mean DOJ and FBI and Customs, and the agencies where you are seeing those law enforcement statistics go up, that in many areas, including in the online enforcement area, it is not possible for law enforcement to, by itself, be able to deal with the scale of the problem that we are facing. And so that is one of the reasons that my office has been so focused on and why I have mentioned repeatedly in this hearing that we really need to have the private sector. We really need to have Internet intermediaries working cooperatively with us on voluntary solutions because without that, I think it is going to be much more difficult for us to effectively address it.

Mr. CHAFFETZ. Yes, and there are a lot of distinct—

Ms. ESPINEL [continuing]. Go hand in hand.

Mr. CHAFFETZ. There are a lot of distinct problems and challenges that I have with trying to make sure that these people—their being a the law enforcement agency as well. And I am very sympathetic to the challenges that that poses upon them when the Administration, the law enforcement side, is not doing their job. And I hate to put the onus on those individuals. But that is another discussion.

You mentioned verbally—somebody had put their first IP person in China. Do you recall that earlier in your testimony talking about how many personnel we actually have?

Ms. ESPINEL. We have personnel that are overseas in China. First of all, I was talking about law enforcement. For example, PTO has had people that work on IP enforcement, among other things, in China for many years. In terms of law enforcement, we of course have law enforcement personnel stationed in China who work on a variety of issues, including intellectual property, but in terms of having law enforcement that is essentially solely dedicated to intellectual property, ICE has a solely dedicated person. They made the decision to do that in September.

Mr. CHAFFETZ. One person.

Ms. ESPINEL. And the FBI is putting a person in place as well, or they are at least seriously considering doing that.

Mr. CHAFFETZ. And, Chairman, I can see my time is running up. But to think that we have one person in China who is solely dedicated to this and now we are going to get two is a 100 percent increase. Wow, look at the great dedication. That is a shockingly small number. I walked into this hearing not knowing that number. It is absolutely stunning to me that we have so little focus on that. Somehow we have 2.2 million Federal employees and we only got two working in China on this issue. I think it is laughable.

Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. I thank the gentleman.

The Chair now recognizes the gentleman from California, Mr. Berman, for 5 minutes.

Mr. BERMAN. Thank you very much, Mr. Chairman.

Good to have you here, Ms. Espinel, again.

A couple of issues I wanted to try and raise with you. I want to deal with sort of the change of distribution of piracy. If one is using a search engine and type in the words “free Beatles mp3” or “free

King Speech movie," that person will be taken to unauthorized copies of those valuable works. If they type in similar wording in blog postings, they may find links to unauthorized copies of works and sponsored advertising nearby. You have talked about the work on illegal pharmacies and on dealing with searches for kid porn.

And there was an interesting article recently in the New York Times about Google and searches involving J.C. Penney. I would like to put that article in the record, if that is all right. I ask unanimous consent to have that article from the New York Times included in the record.

Mr. GOODLATTE. Without objection.

[The information referred to follows:]

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February 12, 2011

The Dirty Little Secrets of Search

By DAVID SEGAL

PRETEND for a moment that you are Google's search engine.

Someone types the word "dresses" and hits enter. What will be the very first result?

There are, of course, a lot of possibilities. Macy's comes to mind. Maybe a specialty chain, like J. Crew or the Gap. Perhaps a Wikipedia entry on the history of hemlines.

O.K., how about the word "bedding"? Bed Bath & Beyond seems a candidate. Or Wal-Mart, or perhaps the bedding section of Amazon.com.

"Area rugs"? Crate & Barrel is a possibility. Home Depot, too, and Sears, Pier 1 or any of those Web sites with "area rug" in the name, like arearugs.com.

You could imagine a dozen contenders for each of these searches. But in the last several months, one name turned up, with uncanny regularity, in the No. 1 spot for each and every term:

J. C. Penney.

The company bested millions of sites — and not just in searches for dresses, bedding and area rugs. For months, it was consistently at or near the top in searches for "skinny jeans," "home decor," "comforter sets," "furniture" and dozens of other words and phrases, from the blandly generic ("tablecloths") to the strangely specific ("grommet top curtains").

This striking performance lasted for months, most crucially through the holiday season, when there is a huge spike in online shopping. J. C. Penney even beat out the sites of manufacturers in searches for the products of those manufacturers. Type in "Samsonite carry on luggage," for instance, and Penney for months was first on the list, ahead of Samsonite.com.

With more than 1,100 stores and \$17.8 billion in total revenue in 2010, Penney is certainly a major player in American retailing. But Google's stated goal is to sift through every corner of the Internet and find the most important, relevant Web sites.

Does the collective wisdom of the Web really say that Penney has the most essential site when it comes to dresses? *And* bedding? *And* area rugs? And dozens of other words and phrases?

The New York Times asked an expert in online search, Doug Pierce of Blue Fountain Media in New York, to study this question, as well as Penney's astoundingly strong search-term performance in recent months. What he found suggests that the digital age's most mundane act, the Google search, often represents layer upon layer of intrigue. And the intrigue starts in the sprawling, subterranean world of "black hat" optimization, the dark art of raising the profile of a Web site with methods that Google considers tantamount to cheating.

Despite the cowboy outlaw connotations, black-hat services are not illegal, but trafficking in them risks the wrath of Google. The company draws a pretty thick line between techniques it considers deceptive and "white hat" approaches, which are offered by hundreds of consulting firms and are legitimate ways to increase a site's visibility. Penney's results were derived from methods on the wrong side of that line, says Mr. Pierce. He described the optimization as the most ambitious attempt to game Google's search results that he has ever seen.

"Actually, it's the most ambitious attempt I've ever heard of," he said. "This whole thing just blew me away. Especially for such a major brand. You'd think they would have people around them that would know better."

TO understand the strategy that kept J. C. Penney in the pole position for so many searches, you need to know how Web sites rise to the top of Google's results. We're talking, to be clear, about the "organic" results — in other words, the ones that are not paid advertisements. In deriving organic results, Google's algorithm takes into account dozens of criteria, many of which the company will not discuss.

But it has described one crucial factor in detail: links from one site to another.

If you own a Web site, for instance, about Chinese cooking, your site's Google ranking will improve as other sites link to it. The more links to your site, especially those from other Chinese cooking-related sites, the higher your ranking. In a way, what Google is measuring is your site's popularity by polling the best-informed online fans of Chinese cooking and counting their links to your site as votes of approval.

But even links that have nothing to do with Chinese cooking can bolster your profile if your site is barnacled with enough of them. And here's where the strategy that aided Penney comes in. Someone paid to have

thousands of links placed on hundreds of sites scattered around the Web, all of which lead directly to JCPenney.com.

Who is that someone? A spokeswoman for J. C. Penney, Darcie Brossart, says it was not Penney.

"J. C. Penney did not authorize, and we were not involved with or aware of, the posting of the links that you sent to us, as it is against our natural search policies," Ms. Brossart wrote in an e-mail. She added, "We are working to have the links taken down."

The links do not bear any fingerprints, but nothing else about them was particularly subtle. Using an online tool called Open Site Explorer, Mr. Pierce found 2,015 pages with phrases like "casual dresses," "evening dresses," "little black dress" or "cocktail dress." Click on any of these phrases on any of these 2,015 pages, and you are bounced directly to the main page for dresses on JCPenney.com.

Some of the 2,015 pages are on sites related, at least nominally, to clothing. But most are not. The phrase "black dresses" and a Penney link were tacked to the bottom of a site called nuclear.engineeringaddict.com. "Evening dresses" appeared on a site called casino-focus.com. "Cocktail dresses" showed up on bulgariapropertyportal.com. "Casual dresses" was on a site called elistofbanks.com. "Semi-formal dresses" was pasted, rather incongruously, on uslettermen.org.

There are links to JCPenney.com's dresses page on sites about diseases, cameras, cars, dogs, aluminum sheets, travel, snoring, diamond drills, bathroom tiles, hotel furniture, online games, commodities, fishing, Adobe Flash, glass shower doors, jokes and dentists — and the list goes on.

Some of these sites seem all but abandoned, except for the links. The greeting at myflhomebuyer.com sounds like the saddest fortune cookie ever: "Sorry, but you are looking for something that isn't here."

When you read the enormous list of sites with Penney links, the landscape of the Internet acquires a whole new topography. It starts to seem like a city with a few familiar, well-kept buildings, surrounded by millions of hovels kept upright for no purpose other than the ads that are painted on their walls.

Exploiting those hovels for links is a Google no-no. The company's guidelines warn against using tricks to improve search engine rankings, including what it refers to as "link schemes." The penalty for getting caught is a pair of virtual concrete shoes: the company sinks in Google's results.

Often drastically. In 2006, Google announced that it had caught BMW using a black-hat strategy to bolster the company's German Web site, BMW.de. That site was temporarily given what the BBC at the time called

“the death penalty,” stating that it was “removed from search results.”

BMW acknowledged that it had set up “doorway pages,” which exist just to attract search engines and then redirect traffic to a different site. The company at the time said it had no intention of deceiving users, adding “if Google says all doorway pages are illegal, we have to take this into consideration.”

J. C. Penney, it seems, will not suffer the same fate. But starting Wednesday, it was the subject of what Google calls “corrective action.”

Last week, The Times sent Google the evidence it had collected about the links to JCPenney.com. Google promptly set up an interview with Matt Cutts, the head of the Webspam team at Google, and a man whose every speech, blog post and Twitter update is parsed like papal encyclicals by players in the search engine world.

“I can confirm that this violates our guidelines,” said Mr. Cutts during an hourlong interview on Wednesday, after looking at a list of paid links to JCPenney.com.

He said Google had detected previous guidelines violations related to JCPenney.com on three occasions, most recently last November. Each time, steps were taken that reduced Penney’s search results — Mr. Cutts avoids the word “punished” — but Google did not later “circle back” to the company to see if it was still breaking the rules, he said.

He and his team had missed this recent campaign of paid links, which he said had been up and running for the last three to four months.

“Do I wish our system had detected things sooner? I do,” he said. “But given the one billion queries that Google handles each day, I think we do an amazing job.”

Mr. Cutts sounded remarkably upbeat and unperturbed during this conversation, which was a surprise given that we were discussing a large, sustained effort to snooker his employer. Asked about his zenlike calm, he said the company strives not to act out of anger. You get the sense that Mr. Cutts and his colleagues are acutely aware of the singular power they wield as judge, jury and appeals panel, and they’re eager to project an air of maturity and judiciousness.

That said, he added, “I don’t think I could do my job well if in some sense I was not offended by things that were bad for Google users.”

"Am I happy this happened?" he later asked. "Absolutely not. Is Google going to take strong corrective action? We absolutely will."

And the company did. On Wednesday evening, Google began what it calls a "manual action" against Penney, essentially demotions specifically aimed at the company.

At 7 p.m. Eastern time on Wednesday, J. C. Penney was still the No. 1 result for "Samsonite carry on luggage."

Two hours later, it was at No. 71.

At 7 p.m. on Wednesday, Penney was No. 1 in searches for "living room furniture."

By 9 p.m., it had sunk to No. 68.

In other words, one moment Penney was the most visible online destination for living room furniture in the country.

The next it was essentially buried.

PENNEY reacted to this instant reversal of fortune by, among other things, firing its search engine consulting firm, SearchDex. Executives there did not return e-mail or phone calls.

Penney also issued a statement: "We are disappointed that Google has reduced our rankings due to this matter," Ms. Brossart wrote, "but we will continue to work actively to retain our high natural search position."

She added that while the collection of links surely brought in additional revenue, it was hardly a bonanza. Just 7 percent of JCPenney.com's traffic comes from clicks on organic search results, she wrote. A far bigger source of profits this holiday season, she stated, came from partnerships with companies like Yahoo and Time Warner, from new mobile applications and from in-store kiosks.

Search experts, however, say Penney likely reaped substantial rewards from the paid links. If you think of Google as the entrance to the planet's largest shopping center, the links helped Penney appear as though it was the first and most inviting spot in the mall, to millions and millions of online shoppers.

How valuable was that? A study last May by Daniel Ruby of Chitika, an online advertising network of 100,000 sites, found that, on average, 34 percent of Google's traffic went to the No. 1 result, about twice the percentage that went to No. 2.

The Keyword Estimator at Google puts the number of searches for “dresses” in the United States at 11.1 million a month, an average based on 12 months of data. So for “dresses” alone, Penney may have been attracting roughly 3.8 million visits every month it showed up as No. 1. Exactly how many of those visits translate into sales, and the size of each sale, only Penney would know.

But in January, the company was crowing about its online holiday sales. Kate Coultas, a company spokeswoman, wrote to a reporter in January, “Internet sales through jcp.com posted strong growth in December, with significant increases in traffic and orders for the key holiday shopping periods of the week after Thanksgiving and the week before Christmas.”

There was considerable pressure from investors for Penney to deliver strong holiday results. It has been struggling through one of the more trying times of its century of retailing. The \$17.8 billion in revenue it reported last year is the exact same figure it reported in 2001. It announced in January that it would close a handful of underperforming stores, as well as two of its five call centers and 19 outlets that sell excess catalog merchandise.

Adding to the company’s woes is the demise of its catalog business. Penney has phased out what it called its Big Book and poured money into its Web site. But so far, the loss of the catalog has not been offset by the expansion of the Web site. At its peak, the catalog brought in about \$4 billion in revenue. In 2009, the site brought in \$1.5 billion.

“For the last 35 years, Penney has tried to be accepted as a department store, and during unusually good times, it does very well,” said Bernard Sosnick, an analyst at Gilford Securities. “But in bad times, it gets punished by shoppers who pull back after having spent aspirationally.”

MANY owners of Web sites with Penney links seem to relish their unreachability. But there were exceptions, and they included cocaman.ch. (“Geekness — closer to the world” is the cryptic header atop the site.) It turned out to be owned and run by Corsin Camichel, a chatty 25-year-old I.T. security analyst in Switzerland.

The word “dresses” appears in a small collection of links in the middle of a largely blank Cocaman page. Asked about that link, Mr. Camichel said his records show that it turned up on his site last April, though he said it might have been earlier than that.

The link came through a Web site, TNX.net, which pays Mr. Camichel with TNX points, which he then trades for links that drive traffic to his other sites, like cookingutensils.net. He earns money when people visit that site and click on the ads. He could also, he said, get cash from TNX. Currently, Cocaman is home to 403 links,

all of them placed there by TNX on behalf of clients.

"You do pretty well," he wrote, referring to income from his links trading. "The thing is, the more you invest (time and money) the better results you get. Right now I get enough to buy myself new test devices for my Android apps (like \$150/month) with zero effort. I have to do nothing. Ads just sit there and if people click, I make money."

Efforts to reach TNX itself last week via e-mail were not successful.

Interviewing a purveyor of black-hat services face-to-face was a considerable undertaking. They are a low-profile bunch. But a link-selling specialist named Mark Stevens — who says he had nothing to do with the Penney link effort — agreed to chat. He did so on the condition that his company not be named, a precaution he justified by recounting what happened when the company apparently angered Google a few months ago.

"It was my fault," Mr. Stevens said. "I posted a job opening on a Stanford Engineering alumni mailing list, and mentioned the name of our company and a brief description of what we do. I think some Google employees saw it."

In a matter of days, the company could not be found in a Google search.

"Literally, you typed the name of the company into the search box and we did not turn up. Anywhere. You'd find us if you knew our Web address. But in terms of search, we just disappeared."

The company now operates under a new name and with a profile that is low even in the building where it claims to have an office. The landlord at the building, a gleaming, glassy midrise next to Route 101 in Redwood City, Calif., said she had never heard of the company.

Mr. Stevens agreed to meet in mid-January for a dinner paid for by The Times. Asked to pick a "fine restaurant" in his neighborhood, he rather cheekily selected a modern French bistro in Palo Alto offering an eight-course prix fixe meal for \$118. Liquid nitrogen and "fairy tale pumpkin" were two of the featured ingredients.

Mr. Stevens turned out to be a boyish-looking 31-year-old native of Singapore. (Stevens is the name he uses for work; he says he has a Chinese last name, which he did not share.) He speaks with a slight accent and in an animated hush, like a man worried about eavesdroppers. He describes his works with the delighted, mischievous grin of a sophomore who just hid a stink bomb.

“The key is to roll the campaign out slowly,” he said as he nibbled at seared duck foie gras. “A lot of companies are in a rush. They want as many links as we can get them as fast as possible. But Google will spot that. It will flag a Web site that goes from zero links to a few hundred in a week.”

The hardest part about the link-selling business, he explained, is signing up deep-pocketed mainstream clients. Lots of them, it seems, are afraid they’ll get caught. Another difficulty is finding quality sites to post links. Whoever set up the JCPenney.com campaign, he said, relied on some really low-rent, spammy sites — the kind with low PageRanks, as Google calls its patented measure of a site’s quality. The higher the PageRank, the more “Google juice” a site offers others to which it is linked.

“The sites that TNX uses mostly have low PageRanks,” Mr. Stevens said.

Mr. Stevens said that Web site owners, or publishers, as he calls them, get a small fee for each link, and the transaction is handled entirely over the Web.

Publishers can reject certain keywords and links — Mr. Stevens said some balked at a lingerie link — but for the most part the system is on a kind of autopilot. A client pays Mr. Stevens and his colleagues for links, which are then farmed out to Web sites. Payment to publishers is handled via PayPal.

You might expect Mr. Stevens to have a certain amount of contempt for Google, given that he spends his professional life finding ways to subvert it. But through the evening he mentioned a few times that he’s in awe of the company, and the quality of its search engine.

So how does he justify all his efforts to undermine that engine?

“I think we need to make a distinction between two different kinds of searches — informational and commercial,” he said. “If you search ‘cancer,’ that’s an informational search and on those, Google is amazing. But in commercial searches, Google’s results are really polluted. My own personal experience says that the guy with the biggest S.E.O. budget always ranks the highest.”

To Mr. Stevens, S.E.O. is a game, and if you’re not paying black hats, you are losing to rivals with fewer compunctions.

WHY did Google fail to catch a campaign that had been under way for months? One, no less, that benefited a company that Google had already taken action against three times? And one that relied on a collection of Web sites that were not exactly hiding their spamminess?

Mr. Cutts emphasized that there are 200 million domain names and a mere 24,000 employees at Google.

"Spammers never stop," he said. Battling those spammers is a never-ending job, and one that he believes Google keeps getting better and better at.

Here's another hypothesis, this one for the conspiracy-minded. Last year, Advertising Age obtained a Google document that listed some of its largest advertisers, including AT&T, eBay and yes, J. C. Penney. The company, this document said, spent \$2.46 million a month on paid Google search ads — the kind you see next to organic results.

Is it possible that Google was willing to countenance an extensive black-hat campaign because it helped one of its larger advertisers? It's the sort of question that European Union officials are now studying in an investigation of possible antitrust abuses by Google.

Investigators have been asking advertisers in Europe questions like this: "Please explain whether and, if yes, to what extent your advertising spending with Google has ever had an influence on your ranking in Google's natural search." And: "Has Google ever mentioned to you that increasing your advertising spending could improve your ranking in Google's natural search?"

Asked if Penney received any breaks because of the money it has spent on ads, Mr. Cutts said, "I'll give a categorical denial." He then made an impassioned case for Google's commitment to separating the money side of the business from the search side. The former has zero influence on the latter, he said.

"If you asked me for the names of five people in advertising engineering, I don't think I could give you the names," he said. "There is a very long history at Google of saying 'We are not going to worry about short-term revenue.'" He added: "We rely on the trust of our users. We realize the responsibility that we have to our users."

He noted, too, that before The Times presented evidence of the paid links to JCPenney.com, Google had just begun to roll out an algorithm change that had a negative effect on Penney's search results. (The tweak affected "how we trust links," Mr. Cutts said, declining to elaborate.)

True, JCPenney.com's showing in Google searches had declined slightly by Feb. 8, as the algorithm change began to take effect. In "comforter sets," Penney went from No. 1 to No. 7. In "sweater dresses," from No. 1 to No. 10.

But the real damage to Penney's results began when Google started that "manual action." The decline can be

charted: On Feb. 1, the average Penney position for 59 search terms was 1.3.

On Feb. 8, when the algorithm was changing, it was 4.

By Feb. 10, it was 52.

MR. CUTTS said he did not plan to write about Penney's situation, as he did with BMW in 2006. Rarely, he explained, does he single out a company publicly, because Google's goal is to preserve the integrity of results, not to embarrass people.

"But just because we don't talk about it," he said, "doesn't mean we won't take strong action."

Mr. BERMAN. Thank you.

Basically Google thought J.C. Penney was gaming the search results and took action. The article said one moment J.C. Penney was the most visible online destination for living room furniture in the country. The next, it was essentially buried. That suggests that Google can circumvent organic searches when they want to, for example, as the article suggests, take manual action. The same thing

with respect to advertising provided next to those unauthorized links.

Given your experience with the illegal pharmacies, doesn't it stand to reason that they could take similar manual action against criminal enterprises engaged in IP theft? Have you spoken to any of these search engines or advertisers about taking corrective action to prevent IP theft? And can you relay whether Google is attempting to address this problem and how and what next steps will be taken? And if you could do that in a way that gives me a minute to ask one last question, I would appreciate it.

Ms. ESPINEL. We are talking to a whole range of Internet intermediaries, including Google, both in their capacity as an advertiser, as you mentioned, as well as others that control Internet advertising. And we have raised the issue of search with them, and we will continue to do so. So I guess I would just say—

Mr. BERMAN. And what do they say?

Ms. ESPINEL. And I don't want to speak for Google in terms of what they are doing. I think it is fair to say that the companies that we have talked to, you know, legitimate companies, don't want bad actors in their systems. Different companies have taken different approaches to how exactly they address that. I feel, in the discussions that we are having with a whole range of companies, that we are making progress, but I think, frankly, it would be premature for me to tell you at this point how those conversations are going to end because they are still in process.

Mr. BERMAN. Okay.

On another point, not to respond now, but at some point I would like a briefing, if I could get it, from your office on what the Indonesian—sorry— not Indonesia—Singapore. Singapore is promulgating regulations with respect to licensing of television shows that are exclusive. I would like to know what we are doing, how those regulations would affect the rights of copyright holders to sell their product.

And my last question. In PRO-IP, we have a sense of Congress resolution focusing on criminal intellectual property enforcement and really the value of a criminal prosecution, both in terms of the justice it seeks for the illegal conduct and the people perpetuating it, but also for a tremendous deterrent value. There was recently an enormous copyright judgment where the defendant who lost the judgment, SAP, stipulated to all the facts, which constitute an intentional, willful violation of copyrights on software. This is not for your response. This seems like a classic case, but there are probably other ones as well where a criminal enforcement action, where the facts are clear and just out there, really has benefits far beyond just that particular case but to all those who might be contemplating doing that kind of stuff. And I just think that that sense of Congress provision in the PRO-IP Act is worth taking a look at and hopefully Justice is doing that because they can play a very helpful role here on this.

And I thank you very much.

Ms. ESPINEL. Thank you very much.

Mr. BERMAN. I yield back.

Mr. GRIFFIN [presiding]. I would like to just yield myself 5 minutes and ask a few questions, Ms. Espinel.

First and foremost, have you ever visited an overseas military installation? I would assume maybe you have in Afghanistan or Iraq. The reason I raise that is you will find, if you go to just about any U.S. base or post in Iraq/Afghanistan—you will see a lot of pirated materials particularly DVD's and CD's but mostly DVD's, and I don't mean five or six. I mean thousands and thousands. And I was just wondering whether—I mean, it was that way when I was in Iraq in 2006. I am wondering if you have ever had any sorts of conversations with folks at DOD about that, why we allow that, and if there is any conversation about that at all.

Ms. ESPINEL. Sure, I would be happy to. If I could just—I was going to say something in response to your question. So if I could just turn to Mr. Berman for a moment—

Mr. GRIFFIN. Sure.

Ms. ESPINEL [continuing]. To say in terms of the sense of Congress and the point you made about even a few criminal actions having a deterrent effect that goes far beyond the number of those actions, I completely agree with you.

And I would also say in terms of the level of priority that DOJ has put on this issue of IP enforcement, I know that it is a priority issue for Attorney General Holder. It is something he is very focused on. He has made that very clear to DOJ and the FBI. So I am happy to take back to them concerns about criminal copyright enforcement, but I also just want to assure you that I think he personally and his staff take this issue very seriously.

In terms of the military bases, I have only been on one military base installation in the past year. And for whatever reason, the problem that you mentioned was not actually in evidence in that particular military base, but I believe you that it exists. And in fact, we have heard concerns about this before. As I think I mentioned, one of the first sort of overarching principle we had in the strategy that we issued for the Administration is that the United States needs to protect intellectual property in what we do to serve as an example to other governments and to our citizens, and we take that very seriously. We have heard this concern and we are actually discussing with the Department of State what can be done about it.

Mr. GRIFFIN. And I would point out that there is a distinction to be made between, say, a U.S. military base in Germany, for example, where I know of nothing like this going on. I am primarily talking about Iraq and Afghanistan where on post you will have a PX where you can go in and buy all the legitimate DVD's, and then about 100 yards right down the road there will be a little office—I mean, an office or a store where you can just—even if it is a tiny storefront with just stacks of what would be illegal DVD's in the United States. If you could take a look at that, I would appreciate it.

I think I have got a little more time here. I would like to ask you about Russia. And we hear a lot about China in the context of pirated materials, but I would be interested to hear your take on Russia and whether, based on your work, you believe—what level of respect they have for the rule of law in this area, whether we are making any progress with regard to Russia or is it possible that we are sort of putting our differences with Russia on these

issues—maybe we are putting them aside and emphasizing what we may consider more important concerns. Could you comment on that?

Ms. ESPINEL. Sure, I would be happy to.

You know, I think with respect to Russia, clearly IP enforcement is a big issue there. You asked whether or not we have made any progress. I think Russia has recently passed a few pieces of legislation that I think are significant and are helpful.

But in terms of enforcement, they still have a big problem. And in my experience, in terms of Internet, in particular, they have a problem. They have become sort of a safe haven in many cases for websites that are distributing illegal products into the United States and around the world. So that is a big issue for us. That has been a priority focus for the WTO accession negotiations, and we have made clear to Russia that we need to make progress there.

I guess the only other thing that I would mention is that the Vice President is going to be traveling in March to Russia. Vice President Biden cares deeply about intellectual property enforcement. He has for many years. And I have discussed this issue and I am confident that he will raise it when he is in Russia. It is something that he cares about a great deal.

Mr. GRIFFIN. Great. Thank you.

Who do we have next? Ms. Chu, you have 5 minutes.

Ms. CHU. Thank you, Mr. Chair.

I have questions about international infringement. I know that the U.S. Government, through your work and the work of the USTR and the work of other agencies, is doing much to press our trading partners to respect intellectual property rights. To use a recent example, yesterday the Office of the United States Trade Representative released the Out-of-Cycle Review of Notorious Markets spotlighting more than 30 Internet and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. It identifies these very, very blatant sites, the physical markets that range from Argentina to Ukraine and Internet sites such as Baidu of China, the vKontakte of Russia, to Canada's IsoHunt and Sweden's ThePirateBay. And there they are identified just blatantly.

I am wondering what actions you are going to take since they are listed just right there.

Ms. ESPINEL. Thank you for raising that.

So as you mentioned, USTR just yesterday issued its report on notorious markets that includes both physical markets but also the online markets that you mentioned. I think that this report, which is part of the Administration's strategy to put out this report, essentially highlighting or naming and shaming particular websites will be useful to us partly to help guide our diplomatic efforts and make sure that our diplomatic agencies are coordinated in raising concerns with other governments. I think in terms of public awareness and raising public awareness about the dangers of counterfeiting and piracy and where those dangers might be found, this report will be very useful.

Ultimately, we need foreign law enforcement to do more, and so this report is only part of our efforts to try to get foreign law enforcement to take action against sites that are trafficking and in-

fringing products. U.S. law enforcement is obviously limited in terms of what it can do with respect to overseas markets or overseas online markets, but I think the USTR report will, hopefully, help raise awareness of that and, as I said, is part of our overall strategy to try to get foreign law enforcement to take more action here.

Ms. CHU. Now, since certain sites have been identified, should they be accessible in the U.S.? If we are asking other countries to enforce against those sites, shouldn't we be willing to cut off those sites to the U.S. market?

Ms. ESPINEL. Well, first of all, I think the question of cutting off sites to the U.S. markets with respect to any particular site is a complicated one and a tricky one. That said, I think you just sort of honed in on something that we think is very important, which is even with these foreign websites, to the extent they have access to U.S. consumers and to the extent there are things that we can do to try to limit the market, including the U.S. market, for foreign websites, we think that would be very helpful.

In other words, even if we can't ultimately eliminate a website or take a website down that is based overseas because we don't have a jurisdictional reach, if we can do things to try to reduce its ability to reach into the United States and get products to our own consumers, we think that could be enormously helpful and we are trying to work on that in a number of ways, including with respect to getting the Internet intermediaries to take more voluntary actions. So I think that is very important.

Ms. CHU. Are you talking about only voluntary actions or anything more forceful?

Ms. ESPINEL. Well, I think, again, you are talking about foreign sites. So our law enforcement is limited in terms of what they can do. And there may be legislative fixes that would give our law enforcement more additional authorities, and we would like to work closely with Congress on any ideas that they have for legislative fixes.

But I think assuming the legal regime exists as it is today, two things that we can do: one, try to encourage the private sector to take steps to reduce the reach to U.S. consumers and to try to encourage foreign law enforcement to take responsibility for its sites or for activity that is going on within their borders and to take action.

Ms. CHU. Well, let me try this question. President Hu's visit provided an opportunity for President Obama to emphasize the importance of IP protection to the U.S. He raised this concern by noting that Microsoft estimates that only 1 in 10 users of Microsoft products in China actually pay for the legal copies. If American companies are going to compete in the global marketplace, we truly have to address this problem.

So based on your experience, what more can the U.S. do to promote intellectual property enforcement in China?

Ms. ESPINEL. As you mentioned, during President Hu Jintao's visit, President Obama had the opportunity and took the opportunity to raise the need for better enforcement by China repeatedly and forcefully with China. China has also heard in recent months the level of concern from senior Administration officials across the

Administration. Secretary Geithner, Secretary Locke, Attorney General Holder, and others have all raised this.

There are a number of things that I think that we can do to try to improve the situation in China. Ultimately, though, China needs to take action for itself. Attorney General Holder and ICE Director Morton traveled to China in the last 6 months to press their counterparts for the need to do more directly. It is actually the first time an ICE director has ever gone to China.

In addition to that, while the numbers may not be impressive to everyone, trying to get IP personnel, law enforcement personnel placed in China—part of the reason that we want to do that is because having personnel there on the ground can help build the relationships with foreign law enforcement that we need in order to get them to take action.

Beyond that, the JCCP and the SED and President Hu Jintao's visit, probably most importantly, was an opportunity—and we took that opportunity—to have China make commitments with respect to the software problem that you mentioned with respect to not tying its innovation policies to procurement preferences, which is a very important issue. And so one of the things that we need to do as a Government is follow up and make sure that China follows through on those commitments.

Ms. CHU. Thank you. I yield back.

Mrs. ADAMS [presiding]. Thank you.

The gentleman from Arizona, Mr. Quayle, for 5 minutes.

Mr. QUAYLE. Thank you, Madam Chairman.

Thank you, Ms. Espinel.

I want to go back to the penalty disparity between streaming and downloading illegally. And I know that you are going to have a white paper and I really look forward to reading that. But if you could give me kind of just the bird's eye view or the Cliff Notes version of what do you think is the correct solution to solve this. Is it just simply making it so illegal streaming of copyrighted material is now a felony or is it something else that we can kind of get behind? Because it doesn't seem like that big of a—not a difficult task to actually improve that part of the enforcement provisions.

Ms. ESPINEL. Well, far be it for me to comment on what is difficult legislatively and not to accomplish.

I do think having infringement not clearly identified as a felony does hamper our enforcement efforts in terms of the types of cases that prosecutors are going to focus on in terms of the types of penalties that are going to be assessed for that activity. So I think that is a significant issue that we are considering and, again, hope to have a recommendation to you on that very soon.

Assuming that we and you are in agreement that it makes sense to fix this deficiency, then obviously we then need to have law enforcement take advantage of that and start bringing the cases. So I don't know if that is what you were alluding to. That would clearly be part of it or that clearly sort of the end result here is to get more law enforcement action. But I think one of the things we are seriously considering is whether or not this legislative fix would help our law enforcement be able to do that.

Mr. QUAYLE. And also previously in your testimony, you were talking about how the private sector has been helping you, espe-

cially with pharmaceutical infringements on the Internet. What role do you see the private sector helping you in really reducing IP Internet theft going forward?

Ms. ESPINEL. I think they could be helpful in a number of ways, and we are having discussions with, again, various types of Internet intermediaries about a whole range of IP infringement issues, including copyright issues, trademark issues. I think voluntary cooperation has the potential to dramatically change things because I think Internet intermediaries have the ability to stop infringement from taking place. Now, it is very important to us as an Administration that whatever voluntary solutions are worked out, that they work, that they be practical and efficient, that they not be unduly burdensome, and that they bear in mind policy principles, even though they are taken by the private sector, that are very important to this Administration and to Congress such as due process and privacy and other issues. But we think there is enormous potential there if the private sector, if Internet intermediaries step up and take more action to dramatically reduce on-line infringement.

Mr. QUAYLE. And this is going to be my final.

In 2008, Congress passed the PRO-IP Act which established your position, and it also authorized appropriations for the Department of Justice. Congress then provided increased appropriations to the FBI to combat counterfeiting and IP theft. In particular, the FBI created 31 IP-dedicated agents in fiscal year 2009, an additional 20 IP-dedicated agents in fiscal year 2010. The DOJ also assigned 97 assistant U.S. attorneys to work with CHIP units, with all CHIP units having two or more attorneys assigned to it.

However, a recent GAO study stated that along with reports from FBI and DOJ, pursuant to PRO-IP, indicate that there has not been a corresponding increase in IP investigations by these agents. I think this is kind of a concern because Congress was very specific and couldn't have been clearer with their mandate.

What corrective actions have you taken to address this issue?

Ms. ESPINEL. So the FBI had all of their new agents, the agents that you referred to, hired, trained, and on the ground as of the end of this year. They have been sort of coming in throughout the year, but they were all on the ground as of the end of this year. Obviously, my office doesn't get involved in specific prosecutions or specific enforcement cases, but we have been talking to the FBI and DOJ about their game plan overall to try to use those agents as effectively as possible and see increased enforcement actions coming out of them.

One of the things that they have done over the last few months is set up—and I am probably going to forget the technical term they use for them, but essentially set up sort of regional task forces or working groups with the new FBI agents that are on the ground in some of the key cities to make sure that those FBI agents are both working with the other Federal law enforcement that are already on the ground and on State and local law enforcement to try to multiply the effect that they have.

It is going to take some time, I think, to see prosecuted cases because it takes time to investigate cases and develop them. But one thing that we know has happened over the last year, which I think

is a good indicator of where this is going, is that the number of cases that have been opened by the FBI over the past year has increased dramatically. Now, those opened investigations haven't yet turned into prosecuted cases because that will take some time, and obviously, let me assure you this issue of how those resources are being spent is one that is of great importance to my office. So we will continue to work with the FBI and DOJ generally on the overall game plan for enforcement.

Mr. QUAYLE. So you think that as the FBI agents become more familiar with various counterfeiting agencies that are out there, then the actual efficiency of bringing people to prosecution, to trial will actually be increased in the next couple years?

Ms. ESPINEL. I do.

Mr. QUAYLE. Thank you.

Mrs. ADAMS. The Chair recognizes the gentleman from Florida, Mr. Deutch, for 5 minutes.

Mr. DEUTCH. Thank you, Madam Chair.

Ms. Espinel, thank you for being here, and I think the accolades you have been receiving are well deserved.

I would like to circle back to Operation In Our Sites again. I discussed the operation with John Morton when he appeared before the Foreign Affairs Committee last year, and I appreciate the way that ICE took initiative and found ways to tackle the problem within their existing authority. I believe that he and his team deserve recognition for innovative and aggressive action to stop theft and for doing so, I also believe, with appropriate caution and discretion.

Millions of people have visited the site since the seizure, have seen the seizure notices. And so I asked my staff to investigate whether Operation In Our Sites was impacting the online environment. And I learned something interesting that I would like you to address.

One well known music video website that for years had been the source of leaks, making videos available illegally before they hit the legitimate marketplace, has apparently modified its behavior since the ICE seizures. The owner had a successful advertising-based business. They did not want to see that jeopardized. So they reached out to the music industry how to figure out how to clean up his act, and they took remedial action. They continue to operate now legitimately after having consulted with industry.

I wonder if there is other evidence of the deterrent effect of increased Federal IP law enforcement like that that you are aware of.

Ms. ESPINEL. So one of the things that I would point to, which you alluded to, in terms of the overall deterrent effect is the number of visitors that have gone to the sites and have seen banners saying that the U.S. Government, the DOJ, and ICE have taken action—I think over 36 million citizens have seen those banners at this point, and I think that sends a very powerful signal and hopefully acts as a deterrent as well that this is a crime that this Administration takes seriously and that it is not activity that people should be engaging in.

Beyond that, I also understand from law enforcement that there are a number of sites that have voluntarily essentially taken themselves down because of Operation In Our Sites. And I think that

is a great example of the type of deterrent effect that you and that Mr. Berman referred to that can go beyond the enforcement actions that are taken.

Mr. DEUTCH. Thanks.

I wanted to broaden the discussion a bit. All of the discussion about online music, stolen music, and stolen film and stolen books—the discussion always seems to focus on the Internet intermediaries and what role the ISP's have in all of this. I would like us to focus specifically, though, on something else.

These entrepreneurs who deal in stolen music and deal in stolen film start these websites in other countries not because they think they are providing a great service to the youth of our country who may choose to go to their sites and partake in this stolen intellectual property. They do it to make money. And if you could speak to conversations that you may have had, your ongoing discussions, with the credit card companies whose business is crucial to the success of these sites or to either the advertisers directly or those advertising firms whose business is to get eyeballs. They know that they will get eyeballs on these sites, so this is what they pursue. Can you tell us about the interaction you have had with those groups?

Ms. ESPINEL. Sure, I would be happy to and also hope to be in a position to come back to you with more details on that soon.

So we have talked to a number of the credit card companies and other payment processors such as PayPal about steps that they can take to stop processing transactions from sites that are engaged in exactly in the kind of activity you are talking about, you know, infringement as a money-making venture, infringement as a business. I think those discussions are going well. Some of the companies in particular have sort of stepped up and said that they want to do more. I think all the credit card companies that we have talked to are seriously considering what more they can do. And we sort of very intensely engaged in those discussions and hope, in fact, to within a very short time frame be able to report on more specifics. But it is something that we are pushing very intensely.

The other source of revenue that you mentioned is ads. I think that is also a very important one and consistent with our overall approach. So we have been talking to a number of ad brokers. We have been talking to some of the companies that advertise, legitimate companies that advertise on the Internet but find their ads ending up on pirate sites where they don't want them to be. We are actually convening a meeting later this week with a number of companies that have ad networks on the Internet to see whether or not there is more that they can do. So I would be happy to come back to you on those discussions as they move forward, but it is something that we are actively working on.

Mr. DEUTCH. Thank you, Ms. Espinel.

I will yield back.

Mrs. ADAMS. Thank you.

The Chair recognizes myself for 5 minutes.

You mentioned in your testimony that part of the Joint Strategic Plan on Intellectual Property Enforcement—one of the priorities is make sure that the U.S. does not purchase or use infringing prod-

ucts. Can you elaborate on the specific steps you are taking or have taken?

Ms. ESPINEL. Yes, I would be happy to.

So in January we issued a statement that went out to all the Federal procurement officers of the U.S. Government setting out the Administration's policy in two areas: one, for us to be technology neutral in our procurement but also reminding the Federal agencies that all technology has to be properly licensed. So that is something that we already did and is publicly available.

There are at least two other issues in this area that we are actually working on. I will mention them briefly.

One is with respect to our contractors, the Federal contractors, and the software that they use. One of the things that we committed to do and will do is review our policies with respect to Federal contractors that use software. It is very important to us that those—not just the U.S. Government but those who are doing business with the U.S. Government also respect intellectual property. And we hope to have that review done shortly.

And then the second issue I would mention, which I think is one of critical importance, is we have a problem with counterfeit goods entering the U.S. supply chain across all agencies. In our view, that is a particularly critical problem when you are talking about the Department of Defense, NASA, our military, and our critical infrastructure. So we have been working very intensely with DOD and NASA on a number of recommendations to try to address that problem. I think we are still in the middle of that process but I think it is safe to say that that is probably going to be some combination of policy changes, possibly regulatory changes, and I dare say legislative changes that we would like to work with Congress on. It is an extremely complicated issue, but we hope to have a set of recommendations to you within the year certainly and hopefully as soon as we can.

Mrs. ADAMS. I am going to go back to a question you had earlier, and I want you to, if at all possible, just answer yes or no, just make it that easy. Details. Are they more efficient, more effective? Yes or no?

Ms. ESPINEL. It is a very difficult question to answer yes or no.

Mrs. ADAMS. That is what I am looking for. You prefer not to answer it?

Ms. ESPINEL. Yes. I mean, I think it is difficult to say that details are more efficient.

Mrs. ADAMS. So they would be less efficient and less effective.

Ms. ESPINEL. I think what is important, you know, at this point we have the budget we have, and we and the team of details have been tremendous in trying to work with what we have and—

Mrs. ADAMS. I understand. I listened to you earlier. I was trying to get to the core of it. As you know—and I think you understand where I am going with this. So would it be your opinion that details are less effective, less efficient. Yes or no.

Ms. ESPINEL. I think it is difficult for me to answer that question.

Mrs. ADAMS. Okay.

The Chair recognizes the gentlelady from Florida, Ms. Wasserman Schultz, for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you to the gentlelady from Florida.

Ms. Espinel, it has been really interesting and helpful to listen to your testimony and your answers to questions.

I appreciate the fact that you have been able to help work with companies like MasterCard, American Express, which is a constituent company in my district, on not enabling pirate websites by helping to make sure that those companies no longer process transactions on those sites. So I am glad to hear that some of those businesses are beginning to do their part.

But I want to go back to rogue websites that Mr. Berman talked about earlier because many of those get their primary source of revenue from advertising. I want to ask unanimous consent, Madam Chair, to admit these two screen shots to the record.

Mrs. ADAMS. Without objection.

[The information referred to follows:]

http://freeonlineulmoviestream.blogspot.com/2011/02/watch-hall-pass-online-free-stream.html

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Watch Hall Pass Online Free Stream

Hall Pass film will be out on February 25, 2011. Hall Pass movie can be watch in movie theaters and through online for free movie Hall Pass is a Comedy film. Hall Pass. This movie is about Rob and Fred who are two best buddies who have a lot in common. This includes that they were born married for many years. But the friendship shows signs of reassessment in their homes and their wives notice and they grant them a "Hall Pass" to reevaluate their marriage. "Hall Pass" is one with freedom to do whatever they want. First they took a real 2-hr film come live but their expectations were out of sync with reality. Hall Pass 2011 movie stars Owen Wilson as Rob Jason Siskels as Fred Jenna Fischer as Maggie and Christina Applegate as Grace Hall Pass free online movie

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be watch in movie theaters [nd] and through
online for free Lion Hunter

Watch The Strongs Achieved Orny
Free Stream
The Strongs attached will be released
in US and Canada on January 21

Ms. WASSERMAN SCHULTZ. Thank you very much.

Many people assume that these rogue websites are legitimate. There are blue chip companies that are advertising on them. They are advertising. Those advertisements appear right next to supposedly free content.

This screen shot right here from the website buzznet offers free downloading of the movie “Hall Pass,” which just came out this weekend and is only in theaters right now. General Electric and punchbowl are the advertisements that are right on this website. I don’t think GE or punchbowl have asked to have their ads put on websites that promote illegal content.

And then this other screen shot is from the blogspot site. It also is promoting free live streaming of “Hall Pass.” It has a series of ads by Google on it. I understand that Google owns blogspot. So perhaps there is an inference to be made that Google, by putting its own ads on a site that it owns with clearly infringing materials, is facilitating this conduct.

On the same blogspot web page, there is also an ad for Starwood Hotels, another blue chip company. I don’t think Starwood asked to have their advertisement listed on a site with illegal content.

I mean, there are two significant problems. There are more, but significant ones include that—I mean, online advertising is making piracy profitable, and that is a huge problem. And online advertising makes piracy seem falsely legitimate. Those are two huge problems.

I would like a little more detail in your answer than you gave to Mr. Berman. What can be done to make the online advertising marketplace safe for companies that want to be good corporate citizens? They are not asking to have their ads placed on these sites, and they are accidentally promoting piracy as a result.

Ms. ESPINEL. First, let me just say I think you set out the problem exactly, and we are in complete agreement. I think there are two separate problems with advertising. One is that it makes sites appear legitimate when they are not legitimate. And I have, in fact, had members of the public say, oh, well, this site—look, there are ads on it from, you know, X large, legitimate—you know, X company. Therefore it must be legal. And we all know that that is not true, but it is not surprising that the public might have that reaction. So in terms of helping these sites obtain legitimacy and confuse the public, that is an enormous problem, and it is also an enormous problem because it is a source of revenue. So it allows these sites to exist and to keep running.

In my view—just my view—I think there are sort of two different angles that we come at to try to address this problem. Part of that is working with the ad networks, so working with the companies that place these ads on the sites, and seeing if there is more that can be done to make sure that ads aren’t placed on illegal sites. And part of it is working with the advertisers. So working with the big companies that you named who I don’t believe—and certainly in our discussions that we have already started having with them don’t want their ads on these sites and seeing if there is more that they can do to make sure that their ads aren’t, in fact, placed on these sites.

So I think it is enormously important, and we are having both of those discussions in parallel because I think one of those alone might address it, but we are going to try to attack this on as many fronts as we can, and we hope to be able to make progress on that over the next few months.

Ms. WASSERMAN SCHULTZ. Thank you. And I would think that there would be a way, a mechanism that you could establish or that you could negotiate that could be established where there could be more of a review before ads are placed because it doesn't appear—there couldn't possibly be one that exists now or there wouldn't be as many legitimate ads on illegal sites or sites promoting illegal content.

Ms. ESPINEL. Yes. I mean, this is not to say we don't think something can be done. But I do want to emphasize it is technologically complicated, and just because it is technologically complicated doesn't mean it can't be accomplished. But there are, as I understand, literally billions of these ads being placed every day because of the way e-commerce works. So it is not a simple endeavor but I think there is more that can be done and we are working with the companies that we think could help us to see how we can do that in a practical and efficient way.

Ms. WASSERMAN SCHULTZ. Thank you. I know my time has expired and I won't ask the question on the record. But I would like to talk to you about the whole issue of taking down sites with illegal content and the time frame that sites like Google utilize. I mean, there is far too lengthy a period of time and a frustrating process in terms of their responsiveness, not just Google, but others. So if we could have an opportunity to talk about that, that would be helpful. Thank you.

Thank you. I yield back.

Mr. GOODLATTE [presiding]. I thank the gentlewoman.

And it is now my pleasure to recognize the Chairman of the Government Oversight and Reform Committee, the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

Ma'am, it has been helpful to wait and listen to some of these others. I came in a little late.

I have got a number of questions. Some of them will be *deja vu* because they have already been asked.

Ms. Chu of California had asked you about sort of the domestic versus overseas, and you didn't really answer the question.

So you have been on the clock for a year and 3 months. You have got a year and 11 months left until the President's term is over presumably. Unless there is an extension by him or his successor, you don't have another term. So you are getting closer to halfway through.

And if I understood correctly—and correct me if I am wrong on any of these—Congress gave you significant new resources in both FBI and U.S. attorneys and the best answer you could give was we have opened more cases but there is a delay in prosecution. So you have to wait on that.

It seems like 2 years after that new authority and the ramping up of these individuals—they didn't come like fresh out of grammar

school. They came as FBI agents with prior experience. They came as U.S. attorneys that did not just get their law degree yesterday.

First of all, why is it that you can't show us positive results after 2 years and hundreds of millions of dollars invested, if you know?

Ms. ESPINEL. So, first of all, I want to clarify something. I didn't mean to say or imply that there had been a delay in prosecutions. I don't think there has been any delay.

Mr. ISSA. No, it wasn't a question of delay though. But you had said, look, they have opened more cases, but it is going to take time to get to where that turns into prosecutions. The Congress invested 2 years ago substantially. It has ramped up. These are not brand new people. An assistant U.S. attorney is supposed to arrive day 1 as a qualified prosecutor or they don't get the job. It's not a beginner's position.

So my question to you is why is it Congress should not be impatient that not enough is happening and that it appears as though the status quo of we are forming nexuses, we are leveraging more individuals, we are trying to get more for our money, when in fact you have 2 years under your oversight—not your command, but your oversight—that we are not getting it. Do you have an answer to that question?

Ms. ESPINEL. So what I want to clarify in terms of the timing is that the FBI agents that were put in place were all in place as of the end of this year. So they have not been in place for 2 years. They have been—

Mr. ISSA. You said 31 and 20. You had 31 for more than a year, 20 as of the end of the year. 31 FBI agents on board for more than a year and you are not coming to us with tangible results.

I will move on and let you answer for the record, and if you don't mind, I will submit a detailed question for the record as to that.

Getting past opened cases, there was a question from the gentlelady from Florida, if I understood it correctly—and it is an extremely good question that we are interested on both sides of aisle. Within your oversight of what should be done, you said you don't have jurisdiction overseas, and yet if there is a legitimate U.S. ad being placed on a banner of a pirate, there is a conduit benefit. There is a benefit to that advertiser in that if they get ads, any revenue, anything at all, they have benefitted from piracy. They are a willing participant in piracy because the reason that ad got a hit is because somebody went to the pirated space.

Have you explored and/or begun any possible prosecution of people who advertise and thus make piracy profitable? It is not hard. You don't need new jurisdiction, as far as I know—new authority. There are laws on the books that would allow that prosecution at least to be attempted. Have you looked into it?

Ms. ESPINEL. I should speak to DOJ before answering that question because there may be pending investigations I would not be aware of.

Mr. ISSA. The question really was simple. Have you looked into it?

Ms. ESPINEL. But what my office has been looking into is working with the advertisers to try to have them pull those ads off of the sites so that sites are not using them as a viable—

Mr. ISSA. Ma'am, your position was created to make a difference. If you are negotiating with people who are willing participants and are gaining from criminal activity, that you agree is criminal activity but you are telling us is outside your reach, then in fact you are talking to the enablers and telling them to quit enabling. Well, you are not going after them as, in fact, criminals in that process because they are, in fact, participants and benefitting. Have you explored that theory in the 1 year and 3 months you have been on the job?

Ms. ESPINEL. Well, we think there is a great deal of potential in talking to advertisers or talking to these companies and seeing what they will do on their own. That said, our overall goal is to reduce infringement. So if that approach doesn't work, we will, of course, consider other approaches, including possible legislative approaches.

Mr. ISSA. I keep hearing about legislation, but if you don't prosecute credit card companies who are participants and knowingly participating in this, then you are missing an avenue if you are not at least trying it. If you don't go after the profits from ads, then you are not trying.

And on top of that, I will add one more for the record that I'm sure you haven't looked at. If the FCC can come out and say that they can enforce net neutrality because they have authority over the Internet, then the FCC has an absolute right to deal with whether access into our country occurs by these transmissions, if you will, of material which is illegal, unauthorized, and inappropriate. Will you please commit to at least talk to the FCC and look at whether or not their relationship with ISP's that they now have asserted control could, in fact, bring a difference to this on your remaining 1 year and 11 months?

I thank the gentleman and yield back.

Mr. GOODLATTE. I thank the gentleman.

And I now recognize the gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much.

Mr. GOODLATTE. We have 10 and a half minutes remaining in the vote.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I have a different opinion. I think it is almost night and day for the work that you have been able to do over the last, say, 8 years as we look back on a previous Administration.

So let me try and expand what you are doing. I think it is important to note I am looking at the spotlight here, and I see more a blueprint that talks about the various initiatives that you have had. So I am going just allow you to take these two questions. I don't want to recount all that you have done. I am probably going to want to have maybe a one-on-one meeting with you to be able to address some particular issues.

But there are a lot of countries in South Asia and throughout Asia, if you will, that have unfortunately been notorious on taking intellectual property, particularly software and other hard goods, if you will. Can you give me specifically what you think under your leadership and the Obama administration and the authority that we have given you in Congress that you have actually done to be

able to impact on that? And forgive me if you have said it, but I want to hear it again.

And the last point I want to ask you is the question about this whole issue of jobs. I think intellectual property theft is directly connected to American jobs, and I am ravaged about the jobs lost because of intellectual property violations and I am interested in your Administration and Mr. Obama's administration, the President's administration, being called, if you would like to say it, "wild dogs" on this issue. So my question is how many jobs would you estimate would be created in the United States in the next year if the Office of Intellectual Property Enforcement Coordinator is successful in achieve the Joint Strategic Plan and in thwarting counterfeiting activities? And do you have job creation in your mind as you do your job?

Ms. ESPINEL. I have job creation in my mind every day. I had job creation in my mind before I took this job. I think that was the issue I most want to focus on in terms of sort of my own personal success that comes out of this job. I think if I leave this job feeling like I saved someone from losing their job and hopefully create more jobs for the American people, I will feel like this was a success. That is enormously important to what we do every day.

You asked a question about data and the number of jobs that are going to be created. That is an excellent question. It is not something the U.S. Government has looked at before, but it is actually one of the things that my office is doing with the Department of Commerce and with a whole group of chief economists from across the Administration. We are working on what will be the first U.S. Government economic analysis of the number of jobs and the number of exports that are created by our IP industries across our entire economy. And I think that will be enormously helpful to us as we are moving forward with policy decisions.

But job creation is one of the absolute top priorities that we have. Increasing exports is also a big priority, but that feeds right back into job creation, as you know. In general, innovation is incredibly important to our economy. Without IP enforcement, we will lose our innovation unfairly to competitors overseas. So that is in our mind every day.

Mr. CHABOT. Would the gentlelady yield for just one moment? Just very brief.

Ms. JACKSON LEE. I will yield to the gentleman.

Mr. CHABOT. Thank you for yielding.

I would ask the Chairman if I could ask a question in writing and ask for the response in writing.

Mr. GOODLATTE. Yes. We will provide for all Members to submit questions in writing within 5 days, 5 days legislative days.

Mr. CHABOT. Thank you and I thank the gentlelady.

Ms. JACKSON LEE. My pleasure.

May I quickly just—you know that—well, let me just say I am a believer that the genius of America is founded in small businesses and minority businesses. They invent things. Do you have a focus in your office? And they are hurt the most. They have no big lawyers when their intellectual property is co-opted. Do you have a strong emphasis on protecting those little ones who don't have the resources to protect themselves who create major jobs in

the United States? Minority, small businesses, women-owned businesses.

Ms. ESPINEL. I was just going to say small businesses not only create ideas but they also create our jobs. So they are a big focus for us.

One of the concerns I have is that as we are pushing to increase exports from our small businesses in overseas markets, which is very important and we want to do that, but we also don't want our small businesses to end up in markets where they are not protected and they don't have the resources or the experience that some other companies do to try to protect them. So one of the things that we are doing with the Department of Commerce is to see if there are new and innovative ways that our Government can help our businesses so they know when they are in those overseas markets that we are 100 percent behind them and are supporting them. We don't want to put them in a position where the jobs that they create and the exports that they are trying to increase are in danger because of IP infringement.

Ms. JACKSON LEE. Let me thank the Chairman and the Ranking Member.

Your enforcement is imperative to create and save jobs in the United States of America. Let me thank you for your service.

I yield back.

Mr. GOODLATTE. I thank the gentlewoman.

And I would like to thank our witness, Ms. Espinel, for enduring a good battery of questions here, and we are going to have some more headed your way too as we will submit some to you in writing.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witness which we will forward and ask the witness to respond to as promptly as she can so that her answers may be made a part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, again I thank Ms. Espinel and the Members of the Committee, and this hearing is adjourned.

[Whereupon, at 3:52 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Rep. Tom Reed

Subcommittee on Intellectual Property, Competition, and the Internet

Hearing on

**“Oversight of the Office of the
U.S. Intellectual Property Enforcement Coordinator”**

03/01/11

Opening Statement

Chairman Goodlatte and Ranking Member Watt: thank you for holding this important hearing and the opportunity to submit this statement for the record.

I would like to thank Ms. Espinel for her testimony and for appearing here today to discuss the Administration’s efforts to strengthen intellectual property enforcement. My colleagues on this subcommittee and I are encouraged by the Administration’s initiative to combat online counterfeiting and piracy through “Operation In Our Sites.” This is a serious problem for many industries - ranging from the entertainment to pharmaceuticals to the music industry. I am confident this subcommittee remains committed to working with the Administration to combat online piracy. Specifically, what can Congress and this subcommittee do to support this effort and crack down on websites that are used to distribute illegal content or pharmaceuticals?

Mr. Chairman, one additional issue that has been brought to my attention relating to the microchip industry, which is a key creator of high-paid jobs across the United States, including many in Upstate and Western New York.

It is my understanding the counterfeiting of semiconductors has been an increasing problem. Since 2008, I am told a new policy interpretation has effectively halted the efforts of Customs and Border Protection (CBP) to interdict counterfeit semiconductors at the border.

There seems to be evidence that additional counterfeit semiconductors have infiltrated U.S. supply chains and of their use in critical applications, which include health care, vehicle safety, banking, telecommunications, utility, police, fire and even weapons systems. Some counterfeits may fail initially. Others tragically may fail at a critical point in a device’s operation.

Ms. Espinel, would you care to comment on the position of the Treasury Department on the question of restoring to CBP the ability to protect effectively the U.S. supply chain from dangerous and counterfeit microchips?



Response to Post-Hearing Questions from the Honorable Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator, Executive Office of the President

The Honorable Bob Goodlatte
U.S. House of Representatives Committee on the Judiciary
Subcommittee on Intellectual Property, Competition and the Internet
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

Questions for the Record

Q1: Coordinated efforts among agencies are key to our success on IP issues. It is essential that your office has the right resources to succeed. What kind of cooperation are you getting from other agencies? Do you have sufficient staff and resources to do the job that Congress has directed?

The agencies have demonstrated significant commitment to the goals of the Administration on enforcement of intellectual property. The Joint Strategic Plan on Intellectual Property Enforcement (the Strategy) that was delivered to Congress on June 23, 2010 is a reflection of those cooperative efforts. We have made substantial progress on implementing the Strategy, as reflected in the report sent to Congress on February 7, 2011, and that progress also demonstrates the same level of commitment and cooperation by the agencies. Working together, we have accomplished much in the short time since we issued the Strategy.

In addition to focusing agencies' mission and resources on implementation of the Strategy, agencies have graciously provided temporary detailees to staff the office. Currently, I have four detailees on my staff from the Department of Justice, the Department of Homeland Security/CBP and the Department of Commerce/USPTO- Andrew Kline from the Department of Justice, Alex Bamiagis from DHS/CBP, and Michael Lewis and Andrew Baluch from USPTO. Tom Stoll, also from USTPO, is returning to USPTO on May 6th and I would like to take this opportunity to thank Tom for his hard work and dedication.

In my role as coordinator, I am constantly looking for opportunities to better leverage the existing resources of my office and the existing resources of the agencies. I will continue to assess the needs of my office and work with OMB and Congress to ensure that my office has the necessary resources to accomplish our mission to coordinate intellectual property enforcement efforts and work with federal agencies to strengthen enforcement of U.S. intellectual property.

Q2: China remains the major piracy challenge for all American IP holders. What steps have you taken specifically to improve IP enforcement in China? What is the Administration's game plan on IP issues with regards to China?

The wide variety of issues and the tremendous scale of the problem posed by rampant intellectual property infringement in China mean that we must address enforcement there on multiple fronts. The most senior members of the Administration, including President Obama, Vice President Biden, Attorney General Holder, Secretaries Geithner and Locke, U.S. Trade Representative Ron Kirk and Department of Homeland Security ICE Director John Morton have directly and repeatedly pressed China to do much more to combat intellectual property theft. During President Hu Jintao's state visit in January 2011, President Obama raised the urgent need to improve China's intellectual property enforcement. In a joint statement released in connection with that visit, President Hu agreed that China will strengthen its efforts to protect intellectual property rights, including conducting audits to ensure that government agencies only use legitimate software, and that China will not link its innovation policies to the provision of government procurement preferences. We look forward to continuing to work with China to tackle the many intellectual property enforcement issues they face.

In addition, below is an update on the Administration's coordinated efforts on various fronts regarding intellectual property enforcement in China:

- ***China's Special Campaign:** Using the coordinated framework described in the IPEC Joint Strategic Plan section "Enforcing our Rights Internationally," we are working with the U.S. Trade Representative, the Federal agencies, and U.S. businesses to assess China's progress (and to encourage further action) under China's "Special Campaign Against Piracy and Counterfeiting," which China's State Council launched in October 2010 and extended through the end of June 2011. It is too early at this time to draw definitive conclusions about the campaign. However, we have heard reports of progress in some areas – such as a number of enforcement actions related to counterfeit pharmaceuticals and a number of actions against copyright infringing websites – but in many areas there has not been sufficient progress (e.g., software legalization). We will continue to monitor China's implementation of this campaign very closely.*
- ***Notorious Markets List:** In February 2011, as part of the IPEC Joint Strategic Plan action item "Identify Foreign Pirate Websites as Part of the Special 301 Process," USTR released the first-ever out-of-cycle Notorious Markets List—a list of physical and online overseas markets that traffic in infringing products, including several markets in China. The list helps to raise public awareness of online piracy and counterfeiting and to focus our diplomatic efforts with China. For example, Taobao.com, China's leading business-to-consumer website (and the fifth most-visited site in China), announced in response to having been listed in the Notorious Markets List, that it will launch a major campaign to stop online piracy and counterfeiting occurring on its site.*

- Building Alliances with Chinese Law Enforcement:*** *Ultimately, we need Chinese law enforcement to do more. In the last six months, both the Attorney General and DHS ICE Director Morton have traveled to China to press their counterparts for increased cooperation to fight intellectual property crime. (This is the first time an ICE director has traveled to mainland China, and Director Morton made intellectual property enforcement a major focus of his trip.) While in Beijing, Director Morton signed a Letter of Intent with the Chinese Ministry of Public Security to increase cooperation on law enforcement investigations, including intellectual property theft investigations. In addition, DOJ's Criminal Division co-chairs with the Ministry of Public Security the IP Criminal Enforcement Working Group ("IPCEWG") of the Joint Liaison Group for Law Enforcement Cooperation. The IPCEWG works to enhance law enforcement cooperation and information on the investigation and prosecution of intellectual property crime. Also, as part of the IPEC Joint Strategic Plan action item "Enhance Foreign Law Enforcement Cooperation," we are working with foreign law enforcement to do more by having U.S. law enforcement on the ground working closely with Chinese law enforcement – building relationships that will lead to increased enforcement. To do so, we have been working with DOJ, FBI and ICE to have intellectual property-focused law enforcement personnel on the ground in China. In September 2010, ICE designated an IP attaché in Guangzhou. In addition, CBP has been working with its counterpart, China Customs, to increase collaboration between the two agencies to enhance border enforcement of intellectual property.*
- Indigenous Innovation:*** *Over the last several months, as part of the IPEC Joint Strategic Plan action item "Promote Enforcement of U.S. Intellectual Property Rights through Trade Policy Tools," we have made real progress on some key issues related to China's "indigenous innovation" programs. During President Hu's visit, China committed not to link its innovation policies to government procurement preferences, which has been one of the top concerns of the business community. China also agreed, during the Joint Commission on Commerce and Trade (JCCT) held in December 2010, that China would not adopt or maintain measures that make the location of the development or ownership of intellectual property a direct or indirect condition for eligibility for government procurement preferences. China and the United States will continue to discuss whether this principle applies to other government measures. The United States worked with the EU, Japan and other trading partners in order to achieve these commitments, and we will be monitoring China's implementation very closely.*

However, we remain concerned about indigenous innovation. Many policies announced by China, including those at the sub-central level of government, appear to provide forms of government preferences to products designated as qualifying as "indigenous innovation." These industrial policy initiatives seem to be designed to support domestic companies in high-technology sectors, at the expense of foreign companies. The relevant USG agencies continue to actively consult with stakeholders, the Congress, and the EU and other countries on the impact of these policies. The Administration continues to press China to address these concerns.

- *Software legalization: The USG was successful in getting China to make several commitments to use legal software in its government agencies, which is now being monitored under the IPEC Joint Strategic Plan action item “Promote Enforcement of U.S. Intellectual Property Rights through Trade Policy Tools.” The first such commitment was part of their “Special Campaign Against Piracy and Counterfeiting” (discussed above). A second commitment was made during the JCCT, where China explicitly agreed to allocate current and future budgets for purchasing, upgrading, and replacing agency software. China also announced that thirty State Owned Enterprises (SOEs) will participate in a pilot project to ensure that these SOEs only use legitimate software. Lastly, during President Hu’s visit, China committed to conduct audits to ensure that the newly allocated budgets were being properly spent on procuring legitimate software. As an example of the USG’s coordination under the IPEC Joint Strategic Plan action item “Coordination of International Capacity Building and Training,” a team organized by USPTO and USTR, with the help of other Federal agencies, conducted a full-day seminar with Chinese authorities on the use of legal software in government systems. We continue to work with USTR and the Federal agencies to assist China to live up to its commitment to use legal software.*

Q3: Members of this Committee introduced the original PRO-IP Act and worked tirelessly to permanently raise the profile of intellectual property enforcement in the White House. You and your staff have worked constantly and with limited resources to achieve PRO-IP's mandates. To ensure you and future IPECs are provided the resources needed to fully realize the promise of PRO-IP, a number of Members of the Committee have expressed concern about an over-reliance on the use of temporary agency detailees. The most recent organization chart for the Office of Management and Budget (OMB) appears to recognize the IPEC position as an acknowledged statutory office. As such, several Members of the Subcommittee believe it appropriate to plan for a transition to supporting the office principally with permanent FTE's. Such a plan should permit the use of detailees in an appropriate supplementary role. Before taking any further action, it would assist the Subcommittee to have your input, based upon your experience, into what such a staffing plan should look like. The Subcommittee therefore requests you provide us with a detailed plan to begin principally staffing the Office of the IPEC with permanent FTEs. Will you provide us such a plan no later than April 7, 2011?

This IPEC role was created by Congress in the PRO-IP Act to coordinate intellectual property enforcement activities throughout the U.S. Government. While the Coordinator's position, as well as that of one Confidential Assistant, are funded, we rely on temporary non-reimbursable detailees to perform substantive responsibilities.

The office's success is integral to the U.S. Government's goals of creating U.S. jobs and growing our economy. Improving our enforcement of the intellectual property rights of U.S. businesses will increase revenues, help create and maintain jobs, increase exports, and protect our citizens from harmful products. It will also help eliminate waste and duplication and ensure that resources allocated to the agencies are being used as effectively as possible.

From January – June 2010, the IPEC office, in coordination with many of the federal agencies and other EOP offices, engaged in an intense effort to study the problems that led to inadequate enforcement of intellectual property and the steps that could be taken to improve our enforcement efforts. As a result of this study, the IPEC office identified 33 actions that the government should take to address these deficiencies. We submitted our first strategy to Congress in June 2010, and began the process of working with the agencies to implement the strategy immediately thereafter. Consistent with Congress' directives, and in conjunction with our basic mandates, this office subsequently produced its first annual report to Congress in February 2011. This report summarizes our progress to-date and lays out our continued objectives for moving forward with a robust strategy. Meeting those objectives will depend largely on whether and when we are fully staffed and funded to effectuate the accomplishment of our goals.

The federal government is working hard to reduce budgets and use existing resources as efficiently as possible. The recently enacted continuing resolution to fund the remainder of fiscal year 2011 includes a 1.2 percent cut to the Executive Office of the President, including OMB, and places additional strains on staffing levels. Therefore, we are making every effort to make the best possible use of our resources to implement our goals. Furthermore, given these constraints, the President's FY 2012 Budget does not request the additional funds that

would be needed to effect a transition in the short term from detailees funded by other agencies to permanent staff supplemented by detailees.

If resources were available in future years to allow for a transition from detailees to permanent staff, there are five broad categories of work that would benefit from permanent staff, including internet enforcement and technology; international trade; bilateral efforts (in particular with China); law enforcement/national security; communications, public liaison and Congressional outreach. This would be helpful to continue to move the U.S. Government's shared intellectual property enforcement goals forward effectively.

Q4: In addition to creating your office, the PRO-IP Act also authorized federal grants in support of state and local IP enforcement efforts. To date, roughly \$5.6 million has been distributed through this program. In your opinion, has this effort been effective? Can you provide specific examples of the effectiveness of these grants?

Yes, this effort has been effective on a number of important levels. First, taken together, the program grantees have seized over \$195 million worth of infringing merchandise since October of 2009. This total represents a value that is more than 30 times greater than the value of the grants. Please note that in arriving at this figure, we used an updated \$6,004,692 base provided by the Department of Justice instead of the \$5.6 million in the original question. The individual efforts by state and local law enforcement include the following:

- *By last June the Los Angeles Police Department's Anti Piracy Unit nearly doubled their number of intellectual property crime-related arrests.*
- *The Los Angeles Sheriff's Department reported seizing \$128.5 million worth of counterfeit items and arrested and prosecuted over 40 individuals.*
- *The North Carolina Secretary of State reported over \$6.6 million in IPR seizures.*
- *In June, the Virginia IP Task Force executed 77 search warrants, made 15 arrests, and seized 18,298 counterfeit items worth over \$2.5 million.*
- *The Mississippi Attorney General's Office successfully launched Operation Knock Out Knock-Offs, leading to the execution of over 30 search warrants for counterfeit prescription drugs.*
- *The Los Angeles Police Department also seized over \$46.2 million in IPR infringing merchandise.*
- *The Sacramento Valley Hi-Tech Crimes Task Force worked with the FBI and ICE to dismantle a counterfeit CD/DVD operation, seizing \$2 million in counterfeit items.*
- *The County of Fresno, California also seized over \$1.2 million worth of IPR infringing goods.*
- *Finally, the City of Houston, working in partnership with ICE, has seized over \$8.8 million worth of IPR infringing goods.*

These arrests, seizures, and other enforcement activities are indicative of the effect these funds have had, and we expect to see more of these successes in the future.

Q5: The National Intellectual Property Rights Coordination Center (Center) has been billed as an important asset. It brings federal agencies together to share information, develop initiatives, coordinate enforcement actions and conduct investigations related to IP theft. Are there federal IP enforcement agencies that are currently unrepresented that you think should affiliate? If yes, please identify them and explain your answer. How do you view the level of success the Center has achieved? Please identify any actions Congress can take to elevate the Center's success.

The IPR Center has done an excellent job of leveraging the diverse resources of the federal government into an effective force for fighting intellectual property crime working with a broad spectrum of regulatory agencies and law enforcement bodies, including U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, Federal Bureau of Investigation, Food and Drug Administration's Office of Criminal Investigations, U.S. Postal Inspection Service, U.S. Department of Commerce's International Trade Administration, U.S. Patent and Trademark Office, Naval Criminal Investigative Service, Defense Criminal Investigative Service, U.S. Army Criminal Investigative Command's Major Procurement Fraud Unit, General Services Administration's Office of Inspector General, Consumer Product Safety Commission, Defense Logistics Agency, U.S. Department of State's Office of International Intellectual Property Enforcement, INTERPOL, the Government of Mexico's Tax Administration Service, and the Royal Canadian Mounted Police. Through the Criminal Division's Computer Crime and Intellectual Property Section, DOJ also provides support to the IPR Center. We have enjoyed a close relationship with the IPR Center and we will continue to support their goals, including any interest they may have in partnering with other intellectual property rights enforcement components. As to actions that Congress can take, we urge Congress to provide law enforcement the tools they need to be as effective as possible. On March 15, 2011, we sent a number of legislative recommendations to Congress, and we encourage their consideration.

Q6: The President and the Prime Minister of Canada recently agreed to establish a "perimeter" approach to security to accelerate the flow of people, goods and services between the U.S. and Canada. This appears to mean there will be a reduction in our shared border enforcement functions and a shifting of resources towards the "perimeter". Canada is a Special 301 country that has been cited for its IPR enforcement shortcomings. How were IPR issues taken into account before this new policy was adopted? If IPR-violative goods enter Canada at its perimeter, won't this new policy facilitate the entry of such products into the United States? What should be done to address these concerns? What role do you expect to play?

One of the key elements of the Beyond the Border Initiative is to create greater cooperation and coordination between the United States and Canada at our borders which we believe will serve to enhance our enforcement efforts. For example, greater coordination could expedite data sharing that informs risk assessments on possible IPR violations from shipments and persons entering either of our countries.

The United States has consistently made clear to the Government of Canada that strengthening its enforcement of intellectual property rights, including amending its legislation to allow for increased border enforcement, is a top priority for the United States. We will continue to raise our concerns with Canada at the highest levels of the United States and Canadian Governments. In addition to Beyond the Border, USTR will continue to use the Special 301 process to press Canada to strengthen its laws and enforcement with respect to counterfeit goods crossing the border. In 2009, USTR took the unprecedented action to elevate Canada to the Priority Watch List in its Annual Special 301 Review to demonstrate the importance the United States places on the need for Canada to address border enforcement and other critical intellectual property shortcomings. In addition, Canada was a participant in the Anti-Counterfeiting Trade Agreement (ACTA). If Canada ratifies ACTA, they will be obligated as part of its ACTA commitments to provide ex officio authority for border enforcement. The Royal Canadian Mounted Police have established a partnership with the IPR Center to work closer together on intellectual property theft. Lastly, NSC, USTR and federal agencies will work to ensure that border enforcement with respect to counterfeit goods is addressed in the implementation of the Beyond the Border declaration. Our office will work with the federal agencies and the other White House offices to ensure that improved border enforcement continues to be an issue of priority between the Governments of Canada and United States.

The Honorable Steve Chabot
U.S. House of Representatives Committee on the Judiciary
Subcommittee on Intellectual Property, Competition and the Internet
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

Q7: A significant IP enforcement issue for American pharmaceutical manufacturers, in markets like India and Brazil, is ensuring legal protection for legitimate goods --- effective patent protection, data exclusivity, patent-linkage, and avoiding unjustified threats of compulsory licensing. What is the Administration's policy on these issues, which impact the ability of U.S. innovators to invest in new products and provide goods in foreign markets?

Innovation is a key driver of the economy and of jobs creation. Strong intellectual property laws are necessary to create incentives for investment in research and other efforts that lead to new innovations. The Administration is committed to promoting strong intellectual property enforcement here and throughout the world. We are also keenly aware that investments in such innovations cannot be protected if inventors cannot secure rights to prevent others from copying their inventions. Our office is working closely with the United States Trade Representative, the Department of State, the Department of Commerce and its components, stakeholders, and with others to press the governments of India and Brazil to provide comprehensive and effective intellectual property protections and to refrain from implementing policies that significantly reduce the value of the intellectual property of U.S. innovators and create barriers to those seeking to enter their markets.

**Statement submitted by the U.S. Chamber of Commerce
House Subcommittee on Intellectual Property, Competition, and the Internet
Hearing on: "Oversight of the Office of the U.S. Intellectual Property Enforcement
Coordinator" Tuesday, March 1, 2011**

The U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC) commends the Subcommittee for holding this important hearing. We would be remiss not to acknowledge and once again thank the House Judiciary Committee for working on a bipartisan basis to enact the 2008 PRO-IP Act. This legislation, supported by a diverse group of stakeholders including both business and organized labor, created the Intellectual Property Enforcement Coordinator (IPEC) position.

Congress was right to recognize the need for both strong global rules to protect intellectual property and more effective enforcement of those rules in both the physical and digital marketplaces. The GIPC urges Congress to continue to build on these efforts in three ways:

1. **Fight Intellectual Property Theft Online**—New online technologies and high-speed Internet access greatly benefit the global economy and enable consumer access to a growing range of goods and services. However, they have also fueled an explosion in IP theft, which not only poses a risk to consumer health and safety, but severely undermines sectors of our economy that have historically provided secure, high-paying jobs. Congress should examine the problem of rogue websites and consider legislation that will make it easier to cut off websites dedicated to IP theft from the U.S. market.
2. **Advance Trade Agreements with Modern Day IP Provisions**—Congress should swiftly approve the pending trade agreements and use the robust IP standards contained in the U.S.-Korea agreement as a model as we move forward with negotiations on the Trans-Pacific Partnership Agreement.
3. **Expand Government Resources Dedicated to Enforce IP rights**, Starting with the Intellectual Property Enforcement Coordinator (IPEC)—The GIPC urges Congress to expand the dedicated resources IP enforcement activities while crafting appropriations legislation for FY11. Congress should ensure that the IPEC has the requisite resources and dedicated staff to successfully carry out her duties as outlined in the PRO-IP Act and the National IP Strategy. The GIPC also urges Congress to enact legislation that expands the current IP attaché program into additional countries to enhance IP assistance to U.S. businesses operating abroad.

In the global economy of the twenty-first century, U.S. competitiveness has become even more directly and inextricably linked to our ability to effectively enforce IP rights. As President Obama said in this year's State of the Union address: "In America, innovation doesn't just change our lives. It is how we make a living." While it is well-established that innovation, technical invention and creativity are the primary drivers of U.S. global competitiveness, it is also clear that Americans' ability to compete in the global marketplace is increasingly threatened by a tidal wave of infringing activity—including counterfeiting and piracy in both the physical and online environments—that diverts the benefits of innovation and creativity from its proper beneficiaries into the coffers of criminals.

IP theft is estimated to cost the G-20 economies \$650 billion and has also led to 2.5 million jobs lost. In addition to the economic impact, IP theft poses a health and safety threat that presents a clear and increasing danger to the public. Sectors where this threat is particularly severe include automobile parts, airplane parts, food, medical supplies, electrical supplies, pharmaceuticals, and many more. IP theft has become an attractive proposition for organized crime because they can engage, with minimal risk, in high-value commerce such as manufacturing millions of bootleg DVDs, bottles of counterfeit medicine, or even chips used by our military to operate sophisticated, multi-million dollar weapon systems.

The combination of all of these factors has elevated counterfeiting and piracy to an acute and growing crisis, which significantly impacts a broad and diverse segment of the business community and the jobs they support. Today, America's business sectors invest heavily in technical and other measures to prevent and investigate intellectual property theft. But, the private sector can only do so much. Congress and the Administration must also be committed to implementing sound IP policies and sustaining strong IP enforcement efforts in the United States and abroad.

The IPEC is central to these efforts, and the GIPC believes that since her Senate confirmation in late 2009 Ms. Espinel has demonstrated a strong commitment to advancing measures that will result in more effective enforcement of IP rights.

Last June, Ms. Espinel released an ambitious Joint Strategic Plan to improve and better coordinate IP enforcement efforts across the government. Rather than playing defense, she crafted a proactive and comprehensive strategy to fight against criminal networks and others who seek to steal Americans' IP. This plan included six broad principles and included 33 specific actions items—several of which have already been achieved.

For example, in the Joint Strategic Plan the Administration committed to explore the expansion of U.S. Trade Representative's (USTR) Annual Special 301 report's Notorious Markets list to include notorious online markets. On February 28, 2011, USTR, working in coordination with the IPEC, released the expanded Notorious Markets list as an Out-of-Cycle Review. The list identified a representative list of websites and physical markets that are responsible for the most egregious infringements of intellectual property rights. This list will be a critical tool to help educate consumers about the dangers of rogue websites. It also shines a spotlight on the countries that appear to abide or attract these sites and signals USTR's intent to raise concerns over the protection of IP online with those countries.

The IPEC, working with USTR and the State Department, has also achieved another of the Joint Strategic Plan's action items—the creation of a Special 301 "Action Plan." Using the Special 301 report, among other resources, the Administration identified 17 priority countries. Over the past few months, the embassies in each of these countries has established a working group and are in the process of developing concrete plans to help improve the enforcement of intellectual property in those countries. The GIPC is hopeful that these action plans will help improve IP enforcement in some of the most critical foreign markets. The GIPC hopes that these embassy working groups will help move countries who perpetually appear on the Special 301 list off the list.

These are just two of many examples of accomplishments the Administration has achieved since the Joint Strategic Plan was issued last June. The GIPC also welcomes the personal leadership of Vice President Joe Biden and President Obama's cabinet who have become personally invested in the fight against counterfeiting and piracy.

Nowhere has this commitment been more obvious than within Immigration and Customs Enforcement (ICE) under Director John Morton's leadership. To highlight just a single illustrative example, in June 2010 ICE and the U.S. Attorney for the Southern District of New York (SDNY) announced the launch of "Operation In Our Sites." This new initiative is aimed at fighting counterfeiting and piracy over the Internet by seizing the domain names of rogue websites—websites used to sell or provide access to counterfeit and pirated products. Operation In Our Sites has led to the seizure of more than 100 rogue websites. While some of these sites have reappeared, interestingly, many more, after seeing that U.S. law enforcement was serious about combating this threat, have left the marketplace before ICE and the Department of Justice have had the opportunity to shut them down.

Additionally, on February 8, 2011, President Obama, in issuing an Executive Order establishing two White House Intellectual Property advisory committees, provided yet another example of the Administration's commitment to IP enforcement. Both of these committees will be chaired by the IPEC, including an interagency Senior Intellectual Property Enforcement Advisory Committee which will be comprised of cabinet level officials from the Departments of State, Treasury, Justice, Agriculture, Commerce, Health and Human Services, and Homeland Security, as well as the Office of Management and Budget and the United States Trade Representative. These advisory committees will play an important role in helping Ms. Espinel implement the remaining objectives of the Joint Strategic Plan and continue to evaluate the administration's commitment to IP protection and enforcement.

While there is a long way to go in the battle against counterfeiting and piracy, Ms. Espinel is off to a tremendous start, especially given the limited resources, staff, and budget she has to work with. Congress must ensure that Ms. Espinel has the personnel and resources to continue and expand her effort.

U.S. global competitiveness and economic future is dependent on the ability to protect and defend intellectual property rights. The GIPC appreciates the Subcommittee's continued leadership on this issue and we look forward to continuing to work with you to protect American workers and consumers.