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OVERSIGHT OF THE OFFICE OF THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa	2
prepared statement	75
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	1
prepared statement	81

WITNESSES

Espinel, Victoria A., U.S. Intellectual Property Enforcement Coordinator, Office of Management and Budget	3

QUESTIONS AND ANSWERS

Responses of Victoria A. Espinel to questions submitted by Senators Grassley, Coburn, Klobuchar, Franken, Lee and Cornyn	20

SUBMISSIONS FOR THE RECORD

Espinel, Victoria A., U.S. Intellectual Property Enforcement Coordinator, Office of Management and Budget, statement	60

VerDate Nov 24 2008 09:19 Sep 18, 2012 Jkt 075919 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\75775.TXT CMORC

OVERSIGHT OF THE OFFICE OF THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

WEDNESDAY, MAY 9, 2012

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:13 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Whitehouse, Franken, Coons, Grassley, and Coburn.

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

Chairman LEAHY. I apologize for being late. I try not to be to one of these hearings—unfortunately, I got into an unavoidable situation—especially when we have our Intellectual Property Enforcement Coordinator Victoria Espinel back here in the Committee. Thank you for being here. It is good to see you.

As we move into the 21st century, intellectual property becomes one of America's most important assets. In fact, we had a report released by the Department of Commerce that shows that IP-intensive industries directly accounted for over 27 million jobs in 2010. That is one in five jobs across the country. They indirectly support another 12.9 million jobs. So if you want to protect American industry, that is not a Republican or Democratic idea or issue. It is a priority that benefits all of us.

This is the third oversight hearing this Committee has held to discuss intellectual property enforcement since the establishment of the Intellectual Property Enforcement Coordinator. She knows that one of the primary roles of this position is to coordinate the work being done across Government agencies to combat intellectual property theft. So I am pleased to have Ms. Espinel here not only to talk about the efforts being made by her office, but by the numerous departments and agencies with which she works on a daily basis: the Department of Justice, the FBI, the Department of Homeland Security, and the U.S. Trade Representative.

In fact, the IP Enforcement Coordinator, in collaboration with those agencies and others, gave us a set of legislative recommendations designed to strengthen our intellectual property laws. We have taken action on several of these. Last December, Senator Whitehouse and other members of this Committee worked to pass

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important legislation that will protect our military supply chain by increasing the penalties for those who sell counterfeit goods for use by the military or in connection with national security.

Congress has passed legislation, originally part of the PROTECT IP Act, that will make it easier for Customs and Border Protection to determine whether products stopped at the border are counterfeits. This has been a particularly serious concern as the counterfeiting of microprocessors has become extremely sophisticated, and I will be glad to hear more about the administration's enforcement. I am glad that Congress acted on that.

In March, the Senate passed the Counterfeit Drug Penalty Enhancement Act. That is a bill that I introduced along with Senator Grassley to strengthen the penalties for trafficking in counterfeit drugs. We passed it here, and I hope the House will soon vote on that bill so that it can become law.

Now, these are practical measures which remind us that effective intellectual property enforcement benefits all in this country. Law enforcement has seized shipments of counterfeit smoke detectors and electronics. There is an example of something that the counterfeit products can endanger the lives of Americans. It is just one example. We have a lot more we can talk about.

We are all committed to an open Internet, but that does not mean giving a free pass to rogue foreign websites, many from organized crime, that serve no purpose but to steal the hard work of American writers, musicians, and creators.

So I appreciate the work that Ms. Espinel is doing. I will put my full statement in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. In view of the time, I will yield to Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. And I will put my full statement in the record, too, and thank you for holding the hearing, and I thank Ms. Espinel for coming.

And I will not repeat some of the statistics that you gave about the importance of intellectual property on our economy, but that data demonstrates the importance of intellectual property to our economy and why intellectual property should be protected. So it is really unfortunate that intellectual property theft has increased dramatically, adversely impacting American businesses that innovate and generate new products and jobs for Americans.

In addition to the loss of jobs and adverse impact on our economy, intellectual property theft is a serious consumer protection issue. I cannot imagine that anyone intentionally sets out to buy unsafe or defective counterfeit goods, especially counterfeit pharmaceuticals. Yet unsuspecting consumers are scammed all the time into purchasing these dangerous and potentially life-threatening products. Even the Federal Government, including our military, is duped into buying harmful and sub-par counterfeit products, putting people at risk, and that is not acceptable. If you do not remem-

ber anything else in my remarks, I hope you will remember these last few statements.

So it is very important for our Judiciary Committee to examine how industry and the Federal Government are addressing intellectual property crimes, what is being done to enforce intellectual property rights, and how the word is getting out that intellectual property theft hurts the U.S. economy, threatens our jobs, and puts people at risk. It is also important for us to ensure that efforts to combat counterfeiting and piracy do not limit freedom of expression, inhibit innovation, impair privacy and security, and undermine the Internet.

In those statements, you have the extreme of people who think nothing should be done about theft because it might interfere with some rights of people to use certain methods of communication, and yet we all ought to agree, at least the Chairman and I agree, that we cannot tolerate theft. And we have had a bipartisan approach to that, and if we understand that theft is wrong, we ought to be able to find a way of accomplishing our goals to prevent that theft because nobody benefits when the rule of law is not respected and when theft is allowed and not tolerated—and tolerated, I should say. Thank you very much.

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

Chairman LEAHY. Thank you, Senator Grassley.

Victoria Espinel is the Nation's first Intellectual Property Enforcement Coordinator. That is a position she has held since she was confirmed by the Senate in 2009, and I would note confirmed unanimously. She is well qualified for this position. She previously served as Assistant U.S. Trade Representative for Intellectual Property Innovation. She is the Chief Trade Negotiator for the U.S. on intellectual property issues. She was a professor at George Mason University School of Law, an adviser to several committees of Congress, including this one. She received her undergraduate and law degrees from Georgetown—always delighted to see somebody else who has a law degree from Georgetown—and a Master of Law degree from the London School of Economics.

Ms. Espinel, please go ahead, and then we will take turns asking questions.

STATEMENT OF THE HONORABLE VICTORIA A. ESPINEL, U.S. INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, OFFICE OF MANAGEMENT AND BUDGET

Ms. ESPINEL. Chairman Leahy, Ranking Member Grassley, members of the Committee, thank you for your continued leadership on this important issue.

In June 2010, I issued the administration's first strategy for intellectual property enforcement, the Joint Strategic Plan, and just over a month ago, on March 30th, I sent to you and to the President the 2011 annual report. The good news is that we are making some progress, but I know that we still have an enormous challenge on our hands.

As President Obama said in this year's State of the Union, "It is not right when another country lets our movies, music, and software be pirated" He knows that protecting our innovative tech-

nology is critical to our future, and we know that our workers are the most productive on Earth and that, if the playing field is level, American will always win. A level field means protecting the value of American intellectual property around the world.

Last year, I told you that we were working with the Department of Commerce on an economic report to identify the sectors of the U.S. economy that produce intellectual property and the number of jobs and exports from those sectors. And last month, I was joined by Commerce Secretary John Bryson, U.S. Chamber of Commerce President Thomas Donohue, and President of the AFL–CIO Richard Trumka to announce the issuance of that report.

As Chairman Leahy and Senator Grassley noted, the report makes clear that intellectual property is a key driver of our economy, and in 2010 alone, the IP-intensive industries accounted for $5 trillion in value-added, or nearly 35 percent of our GDP.

U.S. law enforcement continues to aggressively fight those who seek to steal American creativity and innovation. There have been dramatic increases in law enforcement in key areas, including FBI investigations of trade secret cases, up 29 percent; seizures of counterfeit safety and critical technology goods are up 44 percent; FBI investigations of health and safety cases are up almost 90 percent; and DHS seizures of counterfeit drugs are up almost 200 percent. The number of cases prosecuted by the Department of Justice in which defendants received a prison sentence of more than 5 years has doubled.

My office continues to be focused on making sure that we are using taxpayer dollars as efficiently as we can, and to that end, last year Federal law enforcement took a very modest 5-percent increase in spending and turned that into a 33-percent increase in law enforcement operations.

DOJ has awarded nearly $11 million in grants to State and local law enforcement agencies. That $11 million yielded seizures of infringing goods that were valued in excess of $200 million, so a roughly 18 times return on investment of the original grants.

As you know, in March of last year, I submitted to you a white paper with 20 legislative recommendations. Since then, several bills have been introduced that incorporated recommendations from our white paper, and two of those recommendations have become law. A bill introduced by Senator Whitehouse and cosponsored by Senators Coons, Graham, McCain, Blumenthal, Klobuchar, Hatch, Kyl, Schumer, and Chairman Leahy enhanced penalties for selling counterfeit goods to our military and became the basis for an amendment to the NDAA. Also included in the NDAA was an amendment that I know is of concern to many on this Committee, including Chairman Leahy, giving Customs the authority to share information with right holders. Moving forward, I will continue to work with Congress on the remaining recommendations that we made.

As we said in the Joint Strategic Plan, we will vigorously investigate and prosecute criminal activity. However, we know that we cannot do it alone. We need to have the private sector working cooperatively with us.

Since this strategy was issued, I have engaged with Internet service providers, credit card companies, domain name registrars,

online advertisers, and others on a voluntary, non-regulatory approach to reduce infringement. We need to quarantine the bad actors and make the business of infringement as difficult as possible. We believe that legitimate companies do not want to support illegal activity. It is critical that any voluntary agreements or best practices be practical, that they be effective, that they be consistent with protecting legitimate uses of the Internet, and with our commitment to the principles of due process, competition, free speech, fair use, and privacy.

Dialogue with stakeholders has led to several sets of voluntary best practices. As I reported to you last year, in December 2010 several prominent payment processors and Internet intermediaries announced that they would form a nonprofit group to combat fake online pharmacies. In June 2011, American Express, Discover, MasterCard, PayPal, and Visa developed voluntary best practices to withdraw payment services from sites that are selling counterfeit and pirated goods. And in July 2011, a voluntary agreement was finalized among several Internet service providers and music labels and movie studios to reduce online piracy.

I told you last year that we were working with advertisers to develop a voluntary pledge that ads not support infringing sites. Last week, the Association of National Advertisers and the American Association of Advertising Agencies issued a statement of best practices to address online infringement. I appreciate the efforts of those groups and the efforts of Senators Whitehouse and Hatch who sent letters to these groups requesting that they cut off advertising revenue from rogue websites.

I believe that, together with law enforcement efforts, private sector voluntary actions can reduce online infringement and change the enforcement paradigm. However, we know that there is no single approach that will solve the problem, so we will continue to simultaneously pursue a variety of tactics, including increased law enforcement, supporting the development of voluntary best practices by other industry sectors, encouraging other countries to increase their enforcement, educating the public on the dangers of infringement, and supporting the development of authentic alternatives for consumers.

Last year's accomplishments were the collective effort of people working across the Government, including the leadership of Attorney General Holder, Secretary Napolitano, FBI Director Robert Mueller, and ICE Director John Morton. As the world's leader for innovation, we must set an example for citizens and for the international community and make clear that the U.S. Government will be vigorous in protecting intellectual property and will do so in a manner that respects due process, privacy, fair use, and transparency. The future of America's economic condition rests squarely on the shoulders of our ability to protect the American worker, creator, and innovator.

I look forward to working closely with this Committee on improving our protection of American intellectual property, and I would be happy to take any questions that you have.

Thank you.

[The prepared statement of Ms. Espinel appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

I would also welcome a member of your family here to this hearing. I recall him being here for your confirmation hearing, too.

Last year, the Justice Department secured the conviction of a Chinese national, a man who had sold counterfeit versions of the weight loss drug Alli through a website based in the United States. Now, it is one thing selling these, but in this case, this counterfeit version caused at least one victim to have a stroke. Because the website was based in the United States, we could do something about it. Law enforcement could move in. The defendant was sentenced to 7 years in prison, and the website was shut down. Now, that is a good result, but I think you and I are both concerned about those people who evade the law because their domain names are registered overseas. In fact, somebody could look for that same weight loss drug, go on a website, find one that looks very accurate, takes credit cards from here, but it is operating outside the U.S. so it falls into a loophole. And the danger to the health of Americans is still the same.

Will you continue not only to work with Congress but with a lot of the parties involved to try to address this problem? And it is not just weight loss things. It is heart medications. It is somebody on a fixed income looking for a way to save money and finding what looks like a legitimate website, and they buy the medication, and then they end up either very ill or even dying as a result of it.

Ms. ESPINEL. Absolutely. Clearly, for sites that are based overseas, our law enforcement jurisdiction is limited. There are a few things that we can do and that we are doing. One of those is to press foreign law enforcement to do more, and we are doing that in a variety of ways, including trying to ensure that we have more U.S. personnel on the ground to build relationships with law enforcement overseas and using very high level diplomatic pressure to encourage countries to do more. But we know realistically that there are certain countries where it is going to be very difficult to have robust law enforcement cooperation for many, many years. So we will continue to press on that, but we are aware of the limitations of that as well.

We believe that the private sector can do a lot to help us here. When U.S. companies are interacting with sites that are based overseas, they will work cooperatively with us to try to—to not be engaging with those sites and not lending their legitimate services to their sites. We think that can go a long way in helping address the problem. But it is a very, very serious problem, and we would, of course, want to work very closely with you, Mr. Chairman, and with this Committee as a whole on how to address it.

Chairman LEAHY. Let me go into an area, some would call it the area of "patent trolls" When we passed the Leahy-Smith America Invents Act last year, we wanted to greatly improve—and I believe we did—patent quality in the coming years. But there are many patents still in the system, and people who own them greatly exaggerate how broadly the patent applies, and this is stifling innovation, whether it is in Delaware or Minnesota or Wisconsin, Vermont, or anywhere else.

Have you considered whether the assertion of a monopoly right that is broader than the patent right is anticompetitive?

Ms. ESPINEL. Well, we have certainly been hearing concerns. First, I should say I think the America Invents Act was a great step forward in terms of reforming our patent system. That said, we are continuing to hear concerns about patents and about the ways that patents are being used in certain circumstances.

Clearly, the point of the patent system is to support innovation, to reward innovation, and to motivate innovation, so that is key to the system, and we need to make sure that we have a system that does that well, and we would work closely with you on looking to see if there are ways that our system needs to be adjusted to try to address it.

Chairman LEAHY. Let us work on that because I am afraid just because somebody wants to make some money on something that really does not apply, they end up stifling innovation. In fact, another area on the escalating tech patent wars where patents are issued essential to technology that might make different kinds of products interoperable, Senator Kohl and I wrote to the Justice Department about this issue. Senator Kohl and I noted that when patent holders agree to license standard essential patents on reasonable terms to any interested party, it may be anticompetitive for them to then use the International Trade Commission to enjoin competitors from using that standardized technology.

Now, if there is infringement, of course, you pay royalties, but if you are doing it to prevent even the use of the technology, well, that can harm consumers and can stifle innovation and so on.

So are you working with antitrust authorities to ensure that patents on these technologies where owners agree to license any willing company are not being misused for anticompetitive purposes?

Ms. ESPINEL. I would be happy to reach out to the Department of Justice on that and would look forward to working with you closely on that as well.

Chairman LEAHY. Thank you.

Senator Kohl.

Senator KOHL. Thank you.

Ms. Espinel, many of us were troubled, as I am sure you were, too, when the Second Circuit Court of Appeals overturned the conviction of a former Goldman Sachs programmer who stole valuable computer code worth many millions of dollars from the company. The court ruled that he did not violate the Economic Espionage Act because the stolen computer code was not a product intended for sale, as required by the statute.

Is this ruling a major setback for prosecutors' ability to go after the theft of trade secrets under the Economic Espionage Act? Does it give a free pass to anyone out there who wants to steal a company's proprietary and highly valuable computer codes? How urgent is it for the Congress to try to fix this problematic decision?

Ms. ESPINEL. So, first, I would say yes, we are concerned about the decision and the implications of that decision. DOJ, the Department of Justice, is right now actively considering that decision and what our next steps are from here. And if we determine that a legislative fix is what would be most helpful there, we would very much want to work with you on that.

Senator KOHL. As you know, we are looking into ways to address this problem, and we would appreciate your continued cooperation.

Ms. Espinel, nearly 2 years ago, we raised concerns about the small number of prosecutions and investigations conducted in the 15 years since the Economic Espionage Act was passed. Now, to its credit, the Justice Department has increased outreach to the community, resulting in a 29-percent increase in investigations, and has pursued many more prosecutions. When you appeared before the Committee last year, you assured us that DOJ had sufficient resources to increase enforcement of the Economic Espionage Act.

Given the influx of investigations and the ever-growing threat to American businesses, jobs, and the economy, of course, we need to be sure that there is a cop on the beat in every case. Do you still have the needed resources to continue to increase investigations and prosecutions? I think you addressed this to some extent in your statement.

Ms. ESPINEL. Well, I can certainly tell you that the Department of Justice and the FBI have made this a top priority, so they have been putting resources and that is reflected in the fact that you are seeing increases in investigations and increases in prosecutions.

As to whether or not they feel they have additional resources, I know one of the things the Department of Justice is interested in—and it has been in the President's budget—is to try to have more Department of Justice personnel stationed overseas to try to increase foreign law enforcement cooperation.

As you know, one of the big problems we have with trade secret theft is trade secrets that are being taken from U.S. companies and then are being transferred overseas. So having law enforcement personnel overseas that can work with foreign law enforcement to help try to increase the prosecutions and investigations of those cases I think would be very valuable.

Senator KOHL. As you know, many of us on the Committee share a concern about enforcement of the Act, and we will be paying close attention to the progress that you will be making.

Finally, recently, high-level U.S. and Chinese officials met to discuss economic issues important to both countries, including protection of intellectual property. China agreed to increase enforcement against criminals who steal trade secrets from foreign countries, including the U.S. This is a step in the right direction, but as we all know, the problem continues to grow. Intellectual property theft by China poses a serious threat to our economy and to the global competitiveness of American businesses.

What specific commitments are you hoping to receive from China?

Ms. ESPINEL. So, first, I want to note that last week at the Strategic and Economic Dialogue in Beijing, China did make the commitments that you referred to to increase enforcement of trade secret theft. That is the first time that they have made that commitment that forcefully, so I think that is a significant positive step.

However, as we all know, commitments are commitments. Commitments need to be followed through if they are going to be effective. So I think it is—I am very pleased that China has now publicly committed to increase enforcement of trade secret theft, has now publicly acknowledged that this is a problem that we are facing, but we will be working vigilantly—with great dedication and commitment to ensure that China follows through. And I can also

tell you that this issue of trade secret theft has been raised with the Chinese Government by President Obama himself repeatedly, by Vice President Biden, by Secretary Clinton, by Attorney General Holder, by the most senior levels of our administration, and we will continue to press on that.

If I may, I would like to mention one other commitment that came out of last week's Strategic and Economic Dialogue which I think is of interest, which is that China committed to create an environment to increase the sales of legitimate IP-intensive products in line with its status as a global player in the world economy. That is, again, the first time they have ever agreed to a commitment along those lines, and we will be working to make sure that we follow through on that.

Senator KOHL. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Kohl.

Senator Coons.

Senator COONS. Thank you. I had expected Senator Franken next in order. Forgive me.

If I might, Ms. Espinel, first, just thank you for your very strong leadership and the compelling report and what I think is a renewed and needed focus on coordination of IP enforcement across so many different activities in our Federal Government.

Let me followup first, if I could, on the Commerce report you referenced in your opening statement, which I think is an important way to sort of frame and focus our conversations on it. It did not use trade secrets as one of the elements to appraise the total value of IP-intensive products in the United States. How might it have been a different report and what conclusions might it have reached differently if it had included trade secrets as a vital part of our IP ecosystem?

Ms. ESPINEL. That is a great question. The report was an ambitious report. It was the first time we have ever even attempted to do this type of analysis. It is the first time I am aware of that anyone has attempted to analyze the importance of trademarks to our economy, and the report demonstrates that the brands and trademarks are incredibly important to the U.S. economy. But it is true that we did not attempt to measure trade secrets.

I can tell you, as I hope the report and the discussion so far has made clear, trade secret theft is an enormous priority for us, and I think it is clear that the contribution that trade secrets make and, perhaps said another way, the negative economic implications for our ability to compete globally when we lose trade secrets, either through trade secret theft, through forced tech transfer, for economic espionage, when our trade secrets of our innovative companies walk out the door, the consequences of that for our economy and for our future are very significant.

I would be happy to go back and talk to the economists at the Department of Commerce and at USTR and the President's Council of Economic Advisers and the other agencies that we worked with to see whether or not it is possible to gather some data on trade secret theft. But I can tell you sitting here today that we know how important trade secrets are, and that is reflected—that is why you

have seen us putting such a big priority on this issue over the past year.

Senator COONS. And I look forward to working with Senator Kohl and with your office on strengthening our trade secret protections, the Economic Espionage Act issues that he referred to and you discussed, whether there is a legislative fix there or in other areas, and would welcome a more sort of robust assessment of its total contribution.

Cyber crime is something that has been a real topic of discussion on this Committee and other committees in the House and the Senate, and I am just wondering if you think we have the right cops on the beat, the right structure in terms of protection and enforcement, and if you have got any advice or input for us as we stand at the edge of potentially legislating on cyber protection. How big a threat do you see in terms of the loss of IP through cyber threat? And how seriously do you take the Chinese commitment to be actively engaged, not just in public acknowledgment but in action to reduce the extent of trade secret and other theft of IP?

Ms. ESPINEL. So I think the threat of cyber crime is a very real one and one that our company should take very, very seriously. I think if you look at where we are losing trade secrets and where we are losing data, cyber, cyber hacking, is only part of that at this point. So a lot of trade secret theft is lost—or a lot of trade secrets are being lost or compromised either through human assets or through forced technology transfer coming from China. That said, the threat from cyber crime I think is an enormous one and is likely to grow.

In terms of ways that we can address it, again, I would say I think having additional law enforcement personnel on the ground overseas, in particular in China, I think will be helpful in doing that. But, you know, what you said about the commitments that the Chinese Government has made, I think what is really key here and what I can assure you will happen is that the Chinese Government is made keenly aware of how important this issue is to the United States and how much importance we attach to them following through on greater enforcement of trade secret theft.

Senator COONS. Good. That is something I look forward to working with the Chairman and with you on.

Two of the things you mentioned that have already moved forward out of the report and previous testimony was allowing CBP to communicate explicitly with rights holders, but the rule, if I understand it right, does not address copyright and circumvention devices, and I wondered if that was an area you thought that rule might be strengthened or expanded to include copyright infringement.

Ms. ESPINEL. So our original recommendation has applied it to all intellectual property rights, including copyright and circumvention devices. I think the rule that is in place now is an interim rule, as you may or may not be aware. So there will be a process during which, if anyone, any stakeholder that is interested in this, feels like there is a problem with how it is being implemented or the actual practice on the ground or the scope of the rule, there will be a process through which they can make recommendations for how it should be changed.

Senator COONS. The last question. You opened by referencing the President's comments in the State of the Union about the importance of protecting IP, and he cited pirated movies, music, and software, which are a very large part of our IP-intensive exports. But I am also, just to echo the Chairman's first question, concerned about pharmaceuticals. You have had great success working in voluntary collaboration with a lot of private sector partners in shutting down websites and in strengthening our protections against counterfeit drugs. I think it is important for the average American to realize that that is a vital part of what we are talking about here, is keeping our pharmaceutical supply safe and free of the very widespread counterfeiting that is occurring in other parts of the world where it can be as much as 20 or 30 percent of the drug supply, particularly in the developing world.

What next steps do you expect, what more resources might your office need to be more successful in this ongoing fight against counterfeiting in drugs in particular?

Ms. ESPINEL. Well, with respect to our overall efforts, the President also said in the State of the Union that there would be more inspections at our border to keep out counterfeit and unsafe products, and counterfeit drugs will be a big focus of that.

There are other things that we are doing as well. Part of that is working foreign law enforcement. Counterfeit pharmaceuticals is actually an area where we have had pretty good cooperation with foreign law enforcement, and there was recently an enormous sort of global coordinated sweep focused on counterfeit drugs, which 81 countries participated in. So there has been good movement, I think, in terms of foreign law enforcement cooperation on counterfeit drugs. This is not to say we do not still have a problem, but that is an area where there has been more receptivity.

I think the voluntary efforts that you referred to are absolutely critical. I think there is a big education gap here. I think consumers are unaware of some of the dangers that they are facing when they are buying from sites that are not pharmacies in a sense, that are criminal enterprises that are masquerading as pharmacies. So I think that there is more that we can do and will be doing in terms of consumer education. And in terms of capacity building, the State Department is now putting a third of all of its training funds toward counterfeit drugs, which is a demonstration of the importance they place on it. And I should say that in this regard Under Secretary Robert Hormats has been a tremendous ally here. Counterfeit drugs is something he is very concerned about, and he has been putting his energy and the resources of the State Department behind that.

Senator COONS. Thank you.

Chairman LEAHY. Unfortunately, organized crime used to think they could just do small scams or protection rackets. Now it is a lot easier to do much, much bigger ones through these.

Senator Franken, I want to thank you for your courtesy in letting Senator Coons go ahead of you, and I would call on you now. I know this is an issue that you have expressed a great deal of concern in these hearings. Go ahead.

Senator FRANKEN. Well, thank you.

Chairman LEAHY. And, Senator Coons, thank you. When I think of all the corporations that are registered in your State of Delaware that are being hit by some of these things, there is a lot of attention here, Ms. Espinel, from—it goes way beyond parochialism on this Committee.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. Espinel, before I begin, I want to thank you for all your work over the last 3 years to bring greater attention to the problem of intellectual property, or IP, theft in this country.

When people think of intellectual property or copyright, they rarely think of what IP issues mean to jobs, but they should. Minnesota is one of those States with the highest patent-intensive employment in the country, and that is why I have been encouraging the U.S. Patent and Trademark Office to open a satellite office in the Twin Cities.

The Minnesota companies that create and build medical devices, electric circuits, industrial coatings and films, and advanced microprocessors all provide thousands of great jobs to Minnesotans, but those companies are only able to hire more people to help them innovate if we are successful at protecting the products that they develop.

According to an FBI agent in Minnesota, trade secret theft costs Minnesota businesses hundreds of millions of dollars. We need to be doing everything we can to stop this, and I am pleased at your efforts to increase prosecution of these crimes.

I have been impressed with your ability to push companies to voluntarily adopt policies to reduce online theft of intellectual property. I remain convinced that this is a serious problem and think we need to be doing as much as possible to encourage companies to be aggressive about monitoring their systems to stop this type of theft.

Now that Internet service providers, the advertising community, and payment processors have all stepped up, what other industries do you think need to step up and adopt voluntary best practices?

Ms. ESPINEL. Well, let me mention three areas where I think it would be helpful, and there are more than this, but I will just highlight a few.

First, as I mentioned, the advertisers—the ANA, so the online advertisers and the ad agencies, issued a statement of best practices last week, and we very much welcome that. We would like us to continue working with the ad brokers, the technology companies that actually place the ads online, to develop a set of voluntary best practices there that are as effective as they possibly can be. Those companies know how their systems work. If they are committed to working with us, I think we can make some real headway there.

I would also note, you know, the domain name registrars with whom we have had some very good cooperation, I think there is much that they can do. Cyber lockers, in fact, and in the wake of the Megaupload case, we have seen cyber lockers voluntarily taking steps to try to address infringement that was going on in their sites. So I think that is another area.

But beyond specific industry sectors, two other things that I would like to mention are the following:

First, we think this is a very good model for other countries, so we would really like to see other governments start talking to their companies to try to encourage similar things, and we have been already talking to the U.K., to France, and to the European Commission about how they could—in fact, some of those governments have come to us expressing interest and asking what our advice would be on how they could move this forward. And I think this is a global problem, I think it goes without saying. So it would be much more effective if it was not just U.S. companies that were involved in this but also companies that are based overseas. So that will be a focus for this year, and I really hope we see some progress there.

The second thing or the last thing I would mention is we think voluntary best practices could be very helpful in the physical supply chain as well, so most of our efforts have been focused—or up to this point, they have been focused on the online world. I think in the physical world, there is a lot of progress that could be made here, too. I think with respect to the issue of trade secret theft, I think working with companies on voluntary best practices to try to tighten their supply chains to keep counterfeit and pirated goods from getting into their supply chains, to keep trade secrets from leaking out of their supply chains, I think there is a lot of progress that could be made there.

There are groups like Create.org that are starting to work on this, but, again, we really need to be working very closely with the companies. They know how their distribution chain works. They know how their supplier contracts work. They, I think, if they are committed to working with us, can do a lot to try to ensure that the supply chains stay as clean as possible.

Senator FRANKEN. Thank you for that answer.

As you may know, I am concerned that ICANN, or the Internet Corporation for Assigned Names and Numbers, plans to expand top-level domains, and those plans may make it even harder for law enforcement to halt online piracy and cyber squatting.

Is this an issue that you are monitoring? And what do you think we should be doing to make sure that these new top-level domains do not become a breeding ground for rogue sites?

Ms. ESPINEL. So we have also heard those concerns. My office has heard those concerns directly and has been talking to right holders about them. Larry Strickling, who is the head of the NTIA, the National Telecommunications Information Administration, has also been talking to right holders about those concerns. So those concerns are being heard.

You know, I think this is an area where domain name registrars could do a lot. That was actually what was in my mind when I mentioned them a few moments ago. But I think it is critical that it be not just domain name registrars in the United States, but domain name registrars around the world. I think there are things that they could do to try to reduce infringement and try to alleviate some of the concerns that are being raised by this.

The last thing I would note is that when the application process is closed, NTIA will run a process of review of the new top-level domain names that have been applied for, and so there will be an opportunity during that review to raise objections to certain names

if they exist. But moving beyond, you know, or speaking beyond just sort of the particular application process that is going on now, I do think it is very important to have the domain name registrar community actively engaged on and thinking cooperatively with us on what they can do on a voluntary basis to try to reduce infringement.

Senator FRANKEN. Well, I hope they.

Mr. Chairman, my time is up. Thank you.

Chairman LEAHY. I thank you and Senator Coons and Senator Kohl and Senator Whitehouse for the attention you have given to this.

Senator Whitehouse, before you came in, I mentioned your legislation to go after counterfeit equipment sold to our military. Thank you for that. I am going to have to step out for a minute, but I will yield to Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman, and thank you for your attention to this important effort. And thank you, Ms. Espinel, for being here and for your hard work on this.

We obviously had a significant legislative failure recently trying to help protect the intellectual property on which so many American businesses rely. It is frustrating for many of us that this is a crime that is being conducted in plain view. Anybody can go to the websites and see the criminals in action selling American products without paying the American creators of the product.

It is frustrating to see American-owned search engines taking people to the criminal websites. It is frustrating to see American credit card companies having their facilities used to pay for the criminal websites. And it is frustrating, as Senator Franken noted, to see American corporations advertising on criminal websites. So I think it is really important that we continue to push back. Our economy really cannot withstand this kind of persistent criminal degradation.

When you go beyond the question of what is being done in plain view, there is also massive intellectual property theft out of our tech, pharmaceutical, manufacturing, and other industries, usually by or on behalf of Chinese interests. And it has been described not just by me but by General Alexander and by private sector security experts like the folks at McAfee as the largest transfer of wealth in the history of humankind through theft and piracy, and we are on the losing end of it.

So I think we really need to be very energetic about this, and one area in which I think we are doing good work but where we are, I think, way underresourced for a threat of this magnitude is in law enforcement. And I think we need to be thinking about how our law enforcement resources should be structured to deal with this threat, how we should be resourced in law enforcement to deal with this threat. I know that there was a very considerable role by American law enforcement in the takedown of the Rustock and the Coreflood botnets.

But when you look at the amount of botnet activity that is out there and the extent to which computers across this country and across the world have been slave to different botnets, frankly two is not very many. We could be doing two a month. So, again, it took

a lot of talent and initiative to get those two things done, but we should be resourced to be able to do a lot of that.

My information is that the U.S. Government, its law enforcement authorities have yet to make a single case, criminal case, based on intellectual property theft through cyber. We have made intellectual property theft cases, but they have always involved the traditional human taking a disk or there has been a human link. But the pure hack, starting in China, going through a company's cyber guards into their precious intellectual property, extracting and expropriating that intellectual property, not one case has yet been made. And yet here we have other elements of the Government saying it is the biggest transfer of wealth in history and we are on the losing end.

So I would urge you—and I am trying to work with OMB and with the Department of Justice to sort out how we do this. In the draft legislation, there are provisions we are working on for putting together a group to sort of brainstorm this and figure out where should we be. I think that if there is an analogy for this, it is when airplanes started flying and the American military had to figure out what to do about airplanes, and the senior military commanders who had never been on an airplane, were probably born in 1880 at that point, did not really think of this as a significant thing. But now we have a U.S. Air Force, and it is a pretty important part of our defense establishment. And it took some thinking to get us to where we needed to be structurally.

I do not think we are there in law enforcement. I would like to have your reaction. I have used all my time on this, but I would like to have your reaction, and I would like to work with you to try to make sure we do this right. The business community I think would be much advantaged by being able to call up and say, "We think we have a problem here" and have law enforcement come in and take over. And right now their experience is that they cannot do that. The law enforcement folks who they talk to are good. There are just far too few of them to get their attention, considering the amount of crime, pilferage, and intellectual property theft that is going on.

Ms. ESPINEL. So if I may, I want to start by responding to something that you said at the beginning of your remarks with respect to what companies in the private sector are doing, and I did want to make sure you are aware that the credit card companies that you mentioned, at least the five U.S. major payment processors, have stepped up and have developed a set of voluntary best practices that have been in operation for almost a year now. And my understanding, both from talking to them and from talking to the right holders, is that that process is going very well.

I think the right holder community—and I would sort of call out in particular the IACC, the International Anti- Counterfeiting Coalition—has been working on their end to try to create portals and other mechanisms to make sure that things are going into the credit card companies in ways that are as efficient and streamlined as possible. So I think there has been some good collaboration there and some real progress there, and I commend those companies for that.

On the advertiser side, in fact, just last week the online advertisers, the companies that advertise online and their ad agents, issued a statement of voluntary best practices saying that they would not be supporting rogue websites. There is still a piece of the advertising world, which is the ad brokers that place those ads, that we are continuing to work with on the voluntary best practices, and we would like to see something come out of that. But I think there has been some real progress on both the credit card and the ad side.

To your comments on cyber crime and the——

Senator WHITEHOUSE. Although on that, I would have no trouble finding a website right now that sold pirated goods and had both advertisements and credit cards operating on that website, correct? It is a process that has begun, but it is certainly still a problem out there.

Ms. ESPINEL. It is absolutely still a problem. I will say that my understanding is to the extent there are sites that are using U.S. payment processors and the U.S. payment processors are being made aware of those sites, they are working expeditiously and effectively to try to cut that off. I think those companies have told me—and I believe them—that they truly do not want to be engaged with this type of activity, and they do not want these types of sites using their services. And at least in the U.S., I think they have stepped up.

As I said before, I think we need to get other countries to adopt the same thing. I would say in particular—and this may be overly ambitious—if we could get Russian payment processors to step up and cut off services to those sites, that would be, I think, a step of tremendous progress. That is, I think, a long-term goal, but we really need it to be a global effort if it is going to be effective.

In terms of your comments on cyber crime and the significance of that problem, I would just say that I agree with you fully. In terms of the resources and how they are structured, I can also tell you that the Department of Justice and the FBI, as they have made this a priority, have been looking to use the resources that they do have as effectively and as efficiently as they can. But I will also commit to you that I will go back to my colleagues at OMB and the Department of Justice and discuss this with them.

Senator WHITEHOUSE. Yes, I think, Mr. Chairman, this is an issue that we should be sort of talking through, and I think right now the deadlock is that nobody in the Department of Justice wants to talk about anything that creates a demand for new resources because that violates their budget rules with OMB, and this is not a big priority for OMB. And so you really have to get OMB and the Department and somebody from the White House in the room and say, all right, let's have a process here for how we sort through what our law enforcement posture should look like. What should a private company that is being hacked be able to expect when it picks up the phone and calls the FBI? What do we want to do here? And I do not see that discussion taking place, and I would very much like to be a part of it and have this Committee be a part of it.

Chairman LEAHY. And I think Ms. Espinel has been very open to requests from this Committee for information, and we will continue that.

I agree with what Senator Whitehouse says. We are in a sometimes rapidly changing world, but the incentives for criminals are always out there. And, unfortunately, it is in an area that can hurt Americans greatly, can hurt our national security, can hurt individuals, and can have a crushing effect on job creation in this country. So we have to keep working on this. It is not as exciting as some of these bumper sticker kinds of things we see that some in Congress want to talk about, usually have very little effect on anything. This is a more serious area. It has a great deal of effect on our country and on our safety. One, I am glad you are there. But, second, I think that we do have to work very closely with the various parts of our Government, some of which are having a little bit of a difficult time adjusting to the modern world. If we have to find more resources, we will. There are a lot of resources spent on crimes that probably should—that do not really do much for us. We should be spending resources on those crimes that do.

Do either of you gentlemen have any further questions?

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. Espinel, when you were last here before the Committee, I spent a considerable amount of time talking about IP infringement in China. I am still convinced that we are not doing enough to stop this enormous problem and that U.S. companies are losing billions of dollars as a result of this theft.

According to the U.S. Trade Representative, 99 percent of all music downloads in China are illegal. We certainly have not totally, entirely solved our music piracy problem here in the U.S. But in 2010, the music industry only collected a mere $64.3 million from China. This is when their population is four times the size of the United States' and revenues in the United States were more than $4 billion last year.

I understand that China's lead search engine, Baidu—I think that is the name of it—signed a leasing agreement with Universal, Warner Music, and Sony BMG to ensure its online music platform does not sell pirated music. While this deal marks a step in the right direction, there is clearly still a large gap to fill in this regard.

What are you doing to address this problem both online and with physical sales of DVDs and CDs?

Ms. ESPINEL. So as we discussed earlier, when there is infringement taking place overseas, that is obviously a particular set of challenges for us because our law enforcement jurisdiction is limited there. But there are a number of things that we are doing. I do not mean to say that—in fact, I would say that we still have an enormous challenge on our hands, and we are aware of that. But I will mention a few of the things that we are doing and then would welcome having more discussion on this and more collaboration with this Committee on other things that we could do.

One thing, which you alluded to, is last year for the first time USTR issued what we call the Notorious Markets List, basically issued a stand-alone report that was just highlighting Internet

sites and physical marketplaces that were havens for counterfeiting and piracy. This is the first time they have done it. Baidu was one of the sites that was on the list. I think it got a lot of attention in a positive way as it sort of shone a spotlight on some of the problems that we are having. And after being placed on the list—and I would like to think at least in part because of being placed on the list—Baidu did sign the licensing agreement that you mentioned with our music industry.

USTR has now issued the second Notorious Markets List, and there are still many, many sites on that list, including Taobao, which is another large Chinese site.

So we will continue to use tools like the special 301 process, which is where the Notorious Markets List comes from and where its authority comes from, to try to both encourage other governments to do more, but also put pressure on some of the companies that we feel—international companies that we feel are not stepping up.

In addition to that, I think, as I have said before, we need to have foreign law enforcement doing more. There is only so much U.S. law enforcement can do, particularly when we are overseas. So there are things that we can do to press foreign law enforcement to do more, including trying to have more personnel, more U.S. personnel overseas working with them. But I think key to that will be having other governments—and the Chinese Government is the focus of our concern here—understand how great a priority this is for the U.S. Government at this point. And I think, you know, in the past year the Chinese have heard this directly from President Obama on several occasions. They have heard this repeatedly and forcefully from Vice President Biden. They have heard from Secretary Clinton, from Attorney General Holder, from Secretary Geithner, from FBI Director Mueller, from ICE Director John Morton. They have heard from the most senior levels of our administration in a very coordinated and very clear way, and I think that is—we are starting to see some progress. I talked earlier about some of the progress that we are seeing, but we know that we need to continue to press, and press very, very hard, because this is an area that is so important to our country and where even where there may have been small steps of progress, there is so much more that needs to be done.

Senator FRANKEN. I have one more question, and this is about China as well. I am alarmed about cases of American companies have to disclose trade secrets in order to do business in China. For example, it was recently reported that Ford is considering giving China the intellectual property that supports its electric vehicle technology. And in 2007, Westinghouse Electric shared thousands of pages of technology secrets with China in exchange for the opportunity to build nuclear power plants there.

What is especially alarming is that these technologies were developed with U.S. Government support through the Department of Energy.

Are you aware of this problem? And is your office working with the Departments of Energy, Commerce, and other Federal agencies to limit when and how trade secrets are turned over to China, particularly where the technology was developed by U.S. taxpayers?

Ms. ESPINEL. I am aware of the problem, and we are very concerned about it. We are concerned about it for all technology, frankly, and then where technology has been developed with U.S. taxpayer dollars, I think we have a particular interest. But this issue of forced technology transfer in various ways is one that we are concerned about for a number of our sectors. And I have spoken to and have been working with the Department of Energy and others inside the Federal Government on what we can do to try to address this. It can be a difficult issue in some ways because we do not want to hinder our companies' ability to compete in the global marketplace. On the other hand, we have a responsibility to the U.S. citizens as a whole and to our economy as a whole to try to do everything that we can to make sure that we are not losing technology, we are not losing innovation, we are not losing trade secrets.

So it is something that we are engaged in a very active discussion on right now, in fact, and I would be happy to followup with you and have discussions about both our concern about this issue and some of the possibilities that we might be able to engage in in the future to try to address it. But I can tell you it is something that we are very aware of and very concerned about.

Senator FRANKEN. I would like to do that because this is a problem that I know Senator Webb has been taking a lead on, and if you could get back to me with information, maybe in writing, along with recommendations on what we could do to stop this from happening, I would really appreciate it. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Franken.

Senator Whitehouse.

Senator WHITEHOUSE. Let me just ask, I do not know, Ms. Espinel, if you are in a position to comment on the cybersecurity legislation that we are looking at, if that is an issue that you are prepared to take any questions on. If so, I will proceed. If not, then——

Ms. ESPINEL. I would be happy to put you in touch with my colleague, Howard Schmidt, or others who could answer your questions on that.

Senator WHITEHOUSE. OK. I will take that advice.

Chairman LEAHY. With that, we thank you very, very much and will stand in recess.

[Whereupon, at 11:15 a.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follows.]

QUESTIONS AND ANSWERS

The Honorable Senator Chuck Grassley
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1) Ms. Espinel, we've heard about the various industry sector working groups that have gotten together to work on voluntary best practices to combat intellectual property theft.

A) Can you tell us what you think is working and what is not? Can these guidelines and best practices be improved? In your opinion, what more can be done to encourage voluntary best practices?

No single approach will solve the problem of intellectual property infringement, and we are committed to pursuing a variety of tactics simultaneously, including using tools of law enforcement, voluntary agreements, public awareness, foreign partnership, and supporting the development of authentic alternatives for consumers. We know that effective enforcement must involve private sector stakeholders, so voluntary agreements are a big priority for the Administration. We will continue to encourage and work with the private sector to do more to fight counterfeit and pirated goods.

My office has worked closely with Internet service providers (ISPs), advertisers, industry associations, credit card companies, payment processors, search engines, domain name registrars and registries to encourage voluntary action against illegal activity.

Here are some examples of recent voluntary actions taken by the private section:

- In May 2012, the Association of National Advertisers and the American Association of Advertising Agencies issued a leadership pledge to address online piracy and counterfeiting. In their joint statement, they recognized that Internet advertising may unintentionally provide financial support to or otherwise legitimize Internet sites whose primary and apparent purpose is to infringe on intellectual property.

- In June 2011, American Express, Discover, MasterCard, PayPal and Visa—major credit card companies and payment processors—developed voluntary best practices to withdraw payment services for sites selling counterfeit and pirated goods.

- In July 2011, a voluntary agreement was finalized among several ISPs – AT&T, Comcast, Cablevision, Verizon, and Time Warner Cable – and major and independent music labels and movie studios to reduce online piracy. Under the agreement, ISPs will notify subscribers, through a series of alerts, when their Internet service account appears to be misused for infringement on peer-to-peer networks. The Center for Copyright Information (CCI) was formed as a part of that collaborative effort. CCI hired an executive director and announced its Board of Directors in April 2012.

- Finally, in December 2010, as a result of the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and Internet intermediaries

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announced that they would form a non-profit group to combat illegal online "pharmacies" – criminals masquerading as legitimate pharmacies. In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions. CSIP officially launched on July 23, 2012.

Some of the voluntary agreements are currently operational, such as the agreement between payment processors and CSIP. Other agreements have been concluded, but are not yet operational, for example, CCI. With all of these voluntary measures, we will be vigilant and revisit them to make sure that they are working and that they are effective. This highlights a key benefit of best practices initiatives – that the parties, if willing, can change the terms of the agreement to better adapt to changing threats and to improve efficiency. We remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement while respecting the principles of due process, free speech, fair use, privacy, and competition.

Looking forward, we believe that Congressional focus on voluntary agreements will be beneficial, as continued oversight by and support from Congress will encourage parties to commit to doing more to fight counterfeits and piracy. Furthermore, we want to encourage our trading partners to pursue voluntary agreements, too, and Congress's interest in this area will emphasize the value and importance of best practices as a tactic against infringers.

B) Are all industry sectors participating in this effort to craft voluntary best practices?

We are pleased that a number of different private sector entities that make the Internet function have participated in voluntary agreements. This includes a variety of actors such as payment processors, Internet service providers, advertisers, search engines, and domain name registrars and registries. We look forward to continued work with other parts of the Internet economy, including ad networks and search engines, as well as interested stakeholders, to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

2.) As you know, I've been particularly interested in combating counterfeit drugs.

A) Could you elaborate on what is being done to address counterfeit pharmaceuticals? How successful has law enforcement been in cracking down on these counterfeits?

Like you, the Administration recognizes the significant threat of dangerous counterfeit, unapproved, or illegally prescribed pharmaceuticals. For this reason, we have employed a wide range of responses to tackle this problem.

Federal law enforcement has met with great success in fighting counterfeit pharmaceuticals, as the number of counterfeit pharmaceuticals seizures by U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) has risen steadily in the past few years, increasing from 181 in FY 2009 to 433 in FY 2010 and 1,239 in FY 2011. That trend represents an almost 200 percent increase in counterfeit pharmaceutical seizures between FY

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2010 and FY 2011 and a nearly 600 percent increase from FY 2009 to FY 2011. Specifically, as part of this increase, there was an almost 200 percent increase in counterfeit drugs seized from China between FY 2010 and FY 2011.

We continue to increase law enforcement efforts against counterfeit pharmaceuticals. In FY 2011, CBP instituted a pilot program on pharmaceuticals, the Center of Excellence and Expertise (CEE), which ran from November 2010 through September 2011. In 2011, the CEE focused on developing the infrastructure at CBP to better understand the pharmaceutical industry's practices, segment risk for different shipments of medication, and leverage this information into more efficient and effective enforcement. The CEE's work includes developing closer partnerships with legitimate pharmaceutical companies, comprehensive reviews of their pharmaceutical importation practices, and pharmaceutical enforcement blitzes. This effort has been successful, leading to a nearly 200 percent increase in seizures between FY 2010 and FY 2011. As part of this increase in counterfeit pharmaceutical seizures, CEE contributed to the 200 percent increase in counterfeit pharmaceuticals seized from China between FY 2010 and FY 2011. To build upon these successes, CBP permanently established the Pharmaceutical CEE in Newark, New Jersey in November 2011.

We have examined the vulnerability in international mail facilities posed by the thousands of small packages being shipped from illegal pharmacies worldwide. In 2011, CBP and the Food and Drug Administration (FDA) worked together to develop a pilot compliance measurement program in which they select packages entering the United States through mail facilities for random inspection and collected data on the results of these random inspections. This CBP/FDA pilot has generated data on importations of pharmaceuticals through international mail, and the data will provide CBP and FDA with a better understanding of the importation trends and methods for pharmaceuticals and the rate at which imported pharmaceuticals comply with the laws enforced by CBP and FDA. On August 6, 2012, CBP expanded the compliance measurement pilot to include packages sent through express carriers.

We have collaborated with foreign law enforcement partners to disrupt and dismantle illicit networks trading in these harmful counterfeits. The Administration has taken an active role in establishing and developing strong working relationships with foreign law enforcement to fight counterfeit pharmaceuticals, including in APEC where the U.S. implemented three initiatives (a High Level Dialogue, a Seminar on Illicit Trade and Corruption and a program on Detection Technology for Counterfeit Medicines) all in 2012. These efforts often lead to joint global operations and multilateral international investigations such as *Operation Pangea*, which focused on websites supplying illegal and dangerous medicines to consumers in the U.S. and abroad. According to INTERPOL, as a result of *Operation Pangea IV* in 2011, 2.4 million potentially harmful medicines worldwide worth $6.3 million were confiscated, 13,495 websites were shut down, and 55 individuals are currently under investigation or under arrest.

We have increased training and public awareness efforts, both domestically and internationally. The Department of Justice (DOJ), under the auspices of the IP Task Force Outreach and Education Working Group, developed a public awareness campaign to educate the public about the risks associated with piracy and counterfeiting, including counterfeit pharmaceuticals. DOJ's Office of Justice Programs, through the Bureau of Justice Assistance, engaged the National

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Crime Prevention Council (NCPC) to research public perceptions of IP crime and develop the advertising campaign. In November 2011, DOJ, IPEC, the Department of Commerce, ICE, and the National Crime Prevention Council unveiled a comprehensive public awareness campaign that educates the public on different aspects of intellectual property theft, including the health and safety dangers involved with counterfeit pharmaceuticals. And in 2011, the State Department renewed its focus on combating counterfeit pharmaceuticals and devoted one-third third of its international intellectual property training funds to help other countries build capacity to combat counterfeit drugs through training and technical assistance conducted by DOJ, the Department of Homeland Security, and the U.S. Patent and Trademark Office. Training provided to foreign customs authorities, law enforcement, prosecutorial, and judicial personnel has been complemented by funding for related public diplomacy initiatives. These have been conducted in concert with host governments, NGO's, and the private sector to better educate foreign public opinion on the importance of intellectual property protections.

We have encouraged the private sector to voluntarily participate in the effort to address fake online pharmacies responsible for distributing illegal pharmaceuticals. As mentioned above, in December 2010, as a result of the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and Internet intermediaries announced that they would form a non-profit group to combat fake online "pharmacies" – criminals masquerading as legitimate pharmacies. These companies included American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft (Bing), Neustar, PayPal, Visa, and Yahoo!. In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions, and on July 23, 2012, it announced that it would begin functioning. CSIP is also actively adding new partners. For example, we understand that Facebook is giving serious consideration to joining CSIP.

B) Have foreign law enforcement been cooperative in these efforts to stop counterfeit drugs? What more can be done?

Yes, foreign law enforcement has been cooperative in the fight against counterfeit drugs, and the results have been encouraging. Please refer to my response to Question 2A above, which details the cooperative work we encourage with foreign law enforcement, including the success of *Operation Pangea*. *Operation Pangea*'s success and the cooperation with foreign law enforcement are perhaps best demonstrated by the growing level of international participation, which has increased dramatically from 24 countries in 2009 to 45 countries in 2010 and ultimately 81 countries in 2011.

As another example of successful cooperation with foreign law enforcement, CBP led a 10 day law enforcement operation in 2011 with the Asia Pacific Economic Cooperation (APEC) targeting counterfeit pharmaceuticals shipped via international mail and express couriers. The initiative led to enforcement action against over 1,200 shipments in the Asia Pacific region and seizures of $231,136 worth of counterfeit pharmaceuticals. We will continue to reach out to foreign law enforcement officials to expand international partnerships, provide investigative and prosecutorial training on counterfeit pharmaceutical cases, and help other countries build capacity to combat counterfeit drugs.

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Additionally, we want to encourage our trading partners to pursue voluntary steps by the private sector to combat counterfeit drugs. This year, the G8 Leaders released a Joint Statement firmly declaring the pressing need for diligent protection and enforcement of intellectual property rights. The statement contains a strong expression of support for voluntary best practices and action against counterfeit pharmaceuticals.

Congressional focus on voluntary agreements will also be beneficial, as continued oversight by and support from Congress will demonstrate to our trading partners the value and importance of best practices as an effective tactic against infringers.

3.) Congress passed and the President signed legislation to protect against military counterfeits. This law authorized the U.S. Customs and Border Protection (CBP) to share information and samples of suspected counterfeits with intellectual property rights holders to help determine whether goods being imported into the U.S. are counterfeit. Treasury/CBP recently issued an interim rule, but some are concerned that the rule is inadequate. Specifically, some are concerned that holding back un-redacted pictures from the rights holder until after seven days makes for an ineffective process. They argue that a criminal importer will be able to lie in the authentication process, whereby the rights holder is the best resource available with the capability of making a rapid assessment on whether a product is counterfeit. How do you respond to these concerns?

The submission of false information is an issue CBP has tackled in a number of contexts, including attempts to submit fraudulent information during the importation process. The Agency is well-situated to address any such efforts through a variety of methods.

To minimize this risk, CBP has experienced Import Specialists and CBP Officers trained to weed out counterfeits, including those who specialize in sophisticated hi-tech products such as computer chips. CBP personnel work to analyze the risks associated with different shipments and to further investigate suspect shipments and suspicious supporting documentation. Any information received from the importer in response to a notice of detention is just one of many pieces of information that CBP officers will use to make their infringement determinations.

We believe the likelihood of a bad actor responding to CBP's request for additional information once an illegal shipment has been detained is fairly limited. As a practical matter, a bad actor would typically view the interdiction of smuggled goods as a cost of doing business, and are unlikely to risk continued engagement with law enforcement in connection with a shipment that they know CBP considers suspicious.

Additionally, CBP engages in a number of industry partnership programs, which further enhance the information and expertise CBP officers have available to make infringement determinations.

4.) How is the federal government ensuring that all interested parties and the public are able to provide input on intellectual property enforcement policies? How is your office specifically helping to make sure that processes are transparent and the public can participate?

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My office strongly believes in the importance of public input and participation in shaping the Administration's intellectual property enforcement strategy and efforts. The IPEC utilizes a variety of formal and informal approaches to ensure for a transparent policy environment and to garner public participation in the development of intellectual property enforcement policy.

For example, one of the formal methods IPEC has used to solicit public input is through use of *Federal Register* Notices during the preparation of significant strategy items. In 2011, the Administration sought public input on a range of intellectual property enforcement issues through eight *Federal Register* Notices listed below:

- On February 3, 2010, IPEC issued a *Federal Register* Notice seeking public input as part of the Administration's development of the first Joint Strategic Plan on Intellectual Property Enforcement.
- On December 30, 2010, USTR issued a *Federal Register* Notice and held a public hearing on March 2, 2011, to identify countries that deny adequate and effective protection of intellectual property rights as part of USTR's annual Special 301 review.
- On August 9, 2011, IPEC issued a *Federal Register* Notice soliciting public comments on ways to prevent counterfeit products from entering the U.S. Government supply chain.
- On August 12, 2011, USTR issued a *Federal Register* Notice requesting public comments regarding China's compliance with World Trade Organization ("WTO") commitments, including China's commitments to protect and enforce intellectual property rights.
- On September 22, 2011, USTR issued a *Federal Register* Notice to identify online and physical foreign markets that deal in infringing goods as part of USTR's Out-of-Cycle Review of Notorious Markets.
- On October 7, 2011, USPTO issued a *Federal Register* Notice seeking input on how the USPTO, in coordination with other agencies, can best help small businesses obtain international patent protection.
- On October 17, 2011, USPTO issued a *Federal Register* Notice requesting public comments on the state of China's patent enforcement system, including any challenges companies have faced when attempting to enforce patents in China.
- On June 25, 2012, IPEC issued a *Federal Register* Notice seeking strategy recommendations and public input as part of the Administration's development of a new Joint Strategic Plan on Intellectual Property Enforcement.

Moreover, throughout the year, IPEC regularly meets with hundreds of stakeholders, large and small, across a broad range of sectors in developing and implementing the Administration's strategy for intellectual property enforcement. Stakeholders participating in IPEC meetings include: software developers, pharmaceutical manufacturers, the biotech industry, green technology innovators, Internet service providers, Internet search companies, Internet auction companies, online advertisers, ad brokers, credit card companies, payment processors, think tanks, consumer advocacy groups, labor unions, students, academics, chemical manufacturers, the fragrance industry, video game companies, biofuel companies, authors, song writers, toy manufacturers, defense contractors, movie studios, aerospace companies, automobile companies, industrial equipment manufacturers, book publishers, electronic component manufacturers, apparel companies, music labels, telecommunications companies, textile manufacturers,

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jewelers, semi-conductor companies, farm equipment manufacturers, artists, independent inventors, and public interest groups.

IPEC also communicates with the public regularly through White House blog posts and through the office's bi-monthly report to the public, called the Intellectual Property Spotlight, which is also available on the IPEC website.

5.) As I indicated in my hearing statement, a recent report issued by the Commerce Department found that intellectual property intensive industries generate approximately 40 million jobs, 60% of exports, and $5 trillion in GDP for the United States. In light of the report's findings on the importance of intellectual property intensive industries to American jobs, economic development and competitiveness, can you describe how this Administration will secure meaningful intellectual property protections, including in our trade agreements?

Securing meaningful intellectual property protection in overseas markets is a top priority, and that commitment is demonstrated at the highest levels of the Administration. Trade policy is an effective way to accomplish these goals and 2011 was a banner year for the promotion of intellectual property rights through trade policy tools. On October 1, 2011, the Anti-Counterfeiting Trade Agreement (ACTA) was signed by the United States and seven other countries. ACTA represents a considerable improvement in international trade norms for effectively combating the global proliferation of commercial-scale counterfeiting and piracy in the 21st Century. Further, Free Trade Agreements (FTAs) with Colombia, Panama, and South Korea were overwhelmingly approved by Congress on October 12, 2011 and signed by President Obama on October 21, 2011. Each of these trade agreements contains a chapter dedicated to intellectual property rights, with state-of-the-art protections spanning all types of intellectual property, and requirements to join key multilateral intellectual property rights agreements. They also contain strong provisions to ensure that intellectual property rights are efficiently and effectively protected in those countries. Negotiations aimed at concluding the Trans-Pacific Partnership (TPP) among Australia, Brunei, Canada, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam are another important arena where IPR figures prominently. The prospect of Mexico and Japan possibly joining this cross-cutting 21st Century multilateral FTA underscores the TPP's potential to secure enhanced IPR protection and enforcement.

6.) What is the greatest challenge that the IPEC faces with respect to intellectual property crimes? What do you believe is the most important thing that needs to be done to stop intellectual property crime?

There are a number of challenges that must be overcome in order to enforce laws prohibiting intellectual property infringement.

First, advancement in technology, particularly the critical role the Internet plays in our society and economy, has created a more complex environment for enforcement efforts. It is extremely important that our laws continue to keep pace with advances in technology to ensure that

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infringing activity, whether done physically or over the Internet, can continue to be addressed by our laws.

Second, there is a substantial amount of infringement that originates beyond the jurisdictional reach of U.S. law. For example, sites engaged in infringement, including cyber-lockers - online file storage sites often located in foreign countries - are a particular problem that we need foreign law enforcement to do more. Moreover, in order to increase foreign law enforcement cooperation, it would be useful to have personnel stationed overseas to assist in building relationships with their counterparts. Therefore, the President's FY2013 budget request seeks funding for placement of six International Computer Hacking and Intellectual Property (ICHIP) coordinators to be placed in key locations overseas. These ICHIP positions could be very effective in strengthening law enforcement relationships and enhancing cooperation so that the Department of Justice and law enforcement can build stronger cases in the U.S. and encourage capacity building abroad.

Third, piracy and the methods of infringers have become more sophisticated, further complicating the job of enforcement officials. Infringers have been using various methods to conceal their counterfeit goods including resorting to high volume, low value shipments sent via international mail or express carrier to evade border enforcement.

There are a number of important measures which would enhance efforts to combat violations of intellectual property rights. We will continue to improve agency coordination and information sharing to increase the efficiency and effectiveness of law enforcement efforts at the Federal, state and local level. By minimizing duplication and waste, we will continue to spend our limited resources for intellectual property enforcement wisely.

Enhanced international law enforcement cooperation is another critical part to combating the global nature of piracy and counterfeiting. Federal law enforcement agencies will encourage cooperation with their foreign counterparts to: (1) enhance efforts to pursue domestic investigations of foreign intellectual property infringers; (2) encourage foreign law enforcement to pursue those targets themselves; and (3) increase the number of criminal enforcement actions against intellectual property infringers in foreign countries in general. Federal law enforcement agencies will also use, as appropriate, formal cooperative agreements with foreign governments as a tool to strengthen cross-border intellectual property enforcement efforts. The deployment of U.S. Government personnel abroad cultivates foreign law enforcement cooperation and expands the capabilities of foreign partners to enforce intellectual property rights, and serves to further signal the commitment of the U.S. Government to protecting U.S. intellectual property rights abroad.

Further, it is clear that government action alone will not solve the problem of intellectual property infringement and, as such, continued private sector involvement and collaboration will be emphasized. Over the past year, voluntary agreements for private sector best practices have proven a successful tool in complementing U.S. law enforcement and regulatory efforts. This approach is a priority for the Administration, and we will continue to work with the private sector to do more to stop intellectual property crime.

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7.) In your opinion, what is the most effective thing Congress can do to help combat intellectual property crimes?

The most effective support Congress can provide in the fight against intellectual property crime is a continued focus on intellectual property rights, including its impact on the economy, trade and job creation. Apart from continuing to bring attention to intellectual property issues, Congress can be helpful in working to pass the Administration's legislative recommendations for intellectual property enforcement.

In March 2011, I issued a White Paper that set forth the Administration's 20 legislative recommendations designed to strengthen intellectual property enforcement. These legislative recommendations seek to provide enhanced penalties for offenses involving the misappropriation of trade secrets, economic espionage, and for intellectual property offenses involving organized crime, repeat offenders, counterfeit drugs, and sales of infringing products to the military and law enforcement. The recommendations also outline legislative changes that will provide enforcement agencies effective tools to combat infringement and curb the sale of counterfeit pharmaceuticals. Finally, the White Paper recommends that Congress amend the laws to continue to keep up with technology by clarifying that distribution by streaming or other new technology is a felony, similar to infringement by traditional distribution methods.

Throughout the 112th Congress, members have acted on many of the recommendations including introducing bills to punish economic espionage and enhance criminal penalties for the distribution of counterfeit drugs. Through the enactment of the National Defense Authorization Act for FY 2012, two recommendations, one to improve disclosure authority for CBP, and the second to increase penalties for sales of counterfeits to the military, have become law.

Three additional legislative recommendations became law on July 9, 2012, when President Obama signed the Food and Drug Administration Innovation and Safety Act (FDAISA), which contained a number of provisions directed at combating counterfeit drugs. Specifically, FDAISA provides for enhanced penalties under Title 18 for trafficking in counterfeit drugs and directs the U.S. Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements related to offenses that involve counterfeit drugs. It allows the FDA to require that companies notify the Agency if their drug has been counterfeited or stolen. In addition, the Act allows the FDA to destroy, without the opportunity to export, counterfeit drugs distributed in small packages (valued at $2,500 or less).

I welcome the continued focus and attention of Congress on intellectual property enforcement and I look forward to opportunities to continue to work with you and the committee on the remaining legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

8.) Which country presents the biggest problem with respect to intellectual property theft and why? What do you see as the most difficult challenge with respect to enforcing American intellectual property rights abroad?

Each year, the Office of the United States Trade Representative (USTR) releases its annual "Special 301" Report on the adequacy and effectiveness of U.S. trading partners' protection and

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enforcement of intellectual property rights (IPR). The Special 301 Report is an annual review of the global state of IPR protection and enforcement, and this year the report placed thirteen countries–Algeria, Argentina, Canada, Chile, China, India, Indonesia, Israel, Pakistan, Russia, Thailand, Ukraine, and Venezuela–on the Priority Watch List.

China -- given its status as the number one source of infringing goods seized at the U.S. border -- is a major focus of the Administration's attention, and our commitment to the strong enforcement of intellectual property rights in China is demonstrated at the highest levels of the Administration.

A foreign nation's insufficient intellectual property law enforcement, limited technical capabilities, and deficient political will all present challenges to U.S. right holders operating in overseas markets. Further, U.S. companies may be reluctant to export to countries where there is a lack of certainty that innovation, and the intellectual property rights in that innovation, can be protected. In addition, exporters may not be familiar with the legal environment in which they need to operate to protect their rights.

9.) Could you provide us with more details on how state and local law enforcement are participating in fighting intellectual property crimes? In your opinion, has the state training grant program been successful?

State and local law enforcement serve critical functions in the enforcement of intellectual property rights through their daily contacts with businesses and citizens located in their jurisdictions. The efficient coordination of Federal, state, and local law enforcement allows investigators to work in unison to jointly investigate and combat intellectual property crimes throughout the country.

Nationwide there are now 26 ICE Homeland Security Investigations-led Intellectual Property Theft Enforcement Teams (IPTETs) and 4 FBI-led Intellectual Property Task Forces. These teams and task forces are partnerships with state and local law enforcement built on the best practices identified by the IPR Center and DOJ. The teams and task forces have led to more efficient use of law enforcement resources and several major law enforcement operations.

Additionally, DOJ's Bureau of Justice Assistance continues to provide grant funding to state and local law enforcement agencies, as well as nonprofit organizations, to establish or maintain ongoing IP task forces and to support efforts to educate the public to prevent, deter, and identify intellectual property crimes. The BJA grant program has bolstered the efforts of state and local authorities to combat intellectual property crime at a local level. In 2011, there were a number of notable successful cases resulting from BJA grants, including the seizure of $1.1 million in counterfeit UL-labeled stereo and audiovisual equipment by North Carolina state law enforcement authorities. In that case, the items seized posed a shock and fire hazard to users and would have endangered consumers had these products reached their intended markets.

Taken together, the program grantees have seized approximately $200 million worth of infringing merchandise, currency, and other assets since October of 2009—over 18 times the amount invested in this program ($10.9 million) as of June 2012. In 2011 alone, program grantees seized nearly $64 million worth of infringing merchandise.

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The Honorable Senator Tom Coburn M.D.
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. The 2011 report outlines several developments with China, including the Chinese search engine (Baidu) music licensing agreement with One-Stop China, which is a joint venture between Universal Music Group, Warner Music Group and Sony BMG.

a. Can you explain how this agreement has had an effect on US-China relations and whether it has actually reduced infringing online music purchases through Baidu?

In February 2011, the Office of the United States Trade Representative (USTR) released the first-ever out-of-cycle Notorious Markets List. This list identified more than 30 online and physical foreign markets that deal in infringing goods, including several markets based in China. Baidu, a leading Chinese search engine was listed in the report. In July 2011, Baidu signed a music licensing agreement with One-Stop China, a joint venture between Universal Music Group, The Warner Music Group and Sony BMG.

As far as the effect on U.S.-China relations and the reduction of music piracy, I can report to you that Baidu was removed from the Notorious Markets List when USTR issued its second out-of-cycle review of the Notorious Markets List on December 20, 2011. The removal of China's most popular search engine from the Notorious Markets List has had a positive impact on U.S.-China relations and has sent an important signal to the marketplace about the need to have legitimate content on websites available in China.

b. Does the music industry also agree as to the effectiveness of this agreement?

The Baidu and One-Stop China agreement was recognized as a positive accomplishment. The music industry agrees that this was the right agreement to strike and that turning Baidu from an illegitimate source of content to a legitimate one was a good result. However, this is not the end of China's piracy problem, as evidenced by the mention of "Sogou MP3" and "Gougou," two Chinese online services, in the USTR's Notorious Markets List.

c. Was your office involved in negotiating this agreement or were the parties to the agreement the only negotiators?

My office was not involved in the negotiations of the music licensing agreement.

2. Last year, China also launched its Special Campaign against IP infringement. The annual report notes China has agreed to make aspects of the Special Campaign, including the State Council-level leadership structure, permanent by the end of 2011. Has this occurred? What other parts of the Special Campaign have been effectively implemented by China?

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In March 2011, China's State Council extended through June 2011 the Special IPR Campaign begun in October 2010. The Special IPR Campaign targets a broad range of IPR violations including copyright piracy and trademark counterfeiting over the Internet, distribution of infringing optical discs and publications, counterfeit cell phones, counterfeit pharmaceuticals, counterfeit seeds, and counterfeit bulk commodities for export.

U.S. rights holders in the trademark and copyright sectors have reported that enforcement agencies in China were markedly more active in conducting raids, seizures and arrests during the Special Campaign. It also appears that during the Special Campaign the Chinese Government focused its efforts with respect to infringement that occurs online in a manner that was meant to ensure that online entities were more responsive to requests from rights holders to remove infringing materials.

Given the results of the Special Campaign, we have welcomed the creation of the National Intellectual Property Enforcement Office, which is led by Vice Premier Wang Qishan and staffed by the Ministry of Commerce and its division on Market Order and Supervision. The office was established in November 2011 under State Council Order 37 to provide a permanent mechanism under senior leadership for IPR enforcement and investigation. We look forward to engaging with the office and working to ensure that the good progress made on these issues during the Special Campaign continues unabated.

3. In May 2011, ICE signed a Memorandum of Understanding (MOU) with China's Administration Customs to enhance cooperation on law enforcement. CBP also signed an MOU with China's Ministry of Public Security to increase information sharing and enforcement.

a. Could you provide an update on the results of these MOUs and other meetings between US leadership and Chinese officials?

Although no one country stands alone as the cause of intellectual property crime, China continues to be the largest source of trademark counterfeiting and copyright piracy in the world, and these activities bear a direct or indirect relationship to the majority of economic espionage and federal trade secret prosecutions in the United States.

U.S. Immigration and Customs Enforcement (ICE) has not seen significant steps taken to increase enforcement actions or cooperation between the U.S. and China on intellectual property violations since Director Morton signed a Memorandum of Understanding (MOU) with the Ministry of Public Security. ICE would like to see more complete responses from Chinese authorities when ICE requests assistance on investigations. ICE also would like to have leads and requests for joint investigations in China followed up on and results shared with ICE. On May 10, 2011, CBP signed a memorandum of understanding "Regarding Cooperation in Law Enforcement Matters" with China's Ministry of Public Security (MPS). The MOU contains general provisions for sharing enforcement related information, including information about IPR enforcement. CBP is seeking to identify the appropriate information to

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share and the proper method for sharing that information with MPS, and is working with ICE to coordinate information sharing efforts with MPS.

b. Have U.S. efforts truly had an effect on increasing Chinese IP enforcement and eliminating China's indigenous innovation policies?

President Obama, Vice President Biden, Secretaries Clinton and Geithner, Attorney General Holder, Ambassadors Kirk and Locke, and I have directly and repeatedly pressed China to significantly improve its intellectual property enforcement, as well as end the practices that discriminate against foreign firms in the Chinese marketplace under the banner of "indigenous innovation policy." As an Administration we are attentive to the dangers of losing sensitive commercial and military technology in the course of cooperation with China. While we remain vigilant in monitoring the efforts of our Chinese counterparts in protecting intellectual property and eliminating forced technology transfers, direct negotiation has yielded some significant commitments from China.

For example, in May 2011, during the third round of the U.S.-China Strategic and Economic Dialogue (S&ED), China agreed to eliminate all "indigenous innovation" government procurement catalogues and to revise its regulations in a way that delinks indigenous innovation products from the provision of government procurement preferences. China also pledged to improve on the high-level, long-term mechanism of intellectual property protection and enforcement, building on the Special Campaign, and to strengthen inspections of software on government computers.

In November 2011, during the 22nd session of the U.S.-China Joint Commission on Commerce and Trade (JCCT), China agreed to eliminate any "indigenous innovation" product accreditation catalogues or other measures linking innovation policies to government procurement preferences at the provincial, municipal, and regional level by December 1, 2011. The Chinese also committed to make permanent, for the first time, a State Council-level leadership structure, headed by a Vice Premier, to lead and coordinate intellectual property enforcement across all of China. Lastly, the Chinese pledged to ensure that PRC government agencies at all levels use only legitimate software and that all types of software used by government agencies are licensed.

In May 2012, at this year's first round of the S&ED, the United States and China committed to intensive, on-going discussions of the implementation of China's February 2012 commitment that technology transfer and technology cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access. Both countries will ensure the full participation and timely cooperation of all relevant agencies and authorities. China agreed to prioritize trade secrets in its IPR protection policies and to increase enforcement against trade secret misappropriation. China also recognized the importance of increasing the sales of legitimate IP-intensive products and services within its borders.

Engagement with China on intellectual property enforcement is a worthy enterprise. However, it remains to be seen what the true impact of China's commitments will be. The impact is

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dependent on the follow through and execution of these commitments by the Chinese government.

4. As part of the report's section on international capacity building and training, you note PTO established a searchable online database where all federal agencies involved in IP enforcement training can post their activities online. The report states, "In 2011 alone, the database lists over 100 training programs conducted by 7 US government agencies in 36 countries." I agree it helpful to have this new database, but this website is only an effective resource if used consistently and correctly by federal agencies.

a. How consistent have federal agencies been in uploading accurate information to the database?

The following U.S. Government agencies reported training events in the IPR training database for 2011: United States Patent and Trademark Office; Other Department of Commerce (including International Trade Administration); U.S. Immigration and Customs Enforcement; Federal Bureau of Investigation; Copyright Office; and Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training. To avoid duplicate reporting, the leading agency of a program has the responsibility to report the program and list all of the participating agencies. The leading agency is the agency responsible for the activity, event, or program planning. The leading agency is the sponsor and manages the agenda and activities taking place with the meeting, event, or program. Many of these programs include other participating agencies, that is, agencies that participate or are involved in the planning of an activity, event, or program with a leading agency.

We understand that the agencies are frequently providing accurate information to the database. The number of reported training programs and variety of countries is evidence of the database's utility. We will continue to work with agencies on a regular basis to ensure that the database is an accurate reflection of the government's IPR training efforts.

b. In addition to the website and the IPR Center, does any other agency coordination occur in order to avoid conducting overlapping training or other education programs, particularly those offered in the same foreign countries?

There are several ways in which the agencies communicate and work cooperatively to minimize instances of overlapping training and to make efficient use of limited training resources. First, my office has led an interagency working group to improve the effectiveness of U.S. government personnel overseas. These working groups have used a collaborative approach to tackling enforcement issues, which has increased the amount and quality of coordination between the agencies. Last year marked the first time that 17 key overseas U.S. embassies had in place annual interagency work plans that set objectives and activities to address critical intellectual property issues in the host country identified by the United States. The 17 countries in which U.S. embassies developed interagency IPR work plans are: China, Brazil, India, Russia, Thailand, Canada, Chile, Egypt, Colombia, Mexico, Ukraine, Spain, Saudi Arabia, Israel, Peru, Turkey, and Nigeria. Each of these work plans include training objectives tied directly to specific policy

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goals, which helps to ensure that training events are coordinated and that resources are used in a focused and efficient manner.

Second, the Department of State uses foreign assistance anti-crime funds managed by the Bureau of International Narcotics and Law Enforcement Affairs, in collaboration with the Bureau of Economic and Business Affairs (EB), to provide capacity-building, training, and technical assistance to foreign law enforcement and judicial officials to combating intellectual property rights crime. The State Department plans to enable U.S. Government law enforcement interagency training teams to prioritize assistance to less developed countries in Latin America, Africa and the Asia Pacific which are both on the Special 301 list and face health and human safety risks associated with counterfeit medicines, as well as those countries faced with growing digital piracy.

Third, my office established an interagency international training working group last year to improve the efficiency and coordination of international intellectual property enforcement capacity-building and training, and to ensure the U.S. Government makes the best possible use of its limited training resources by focusing on Administration priorities, such as training foreign law enforcement officials to tackle counterfeit drugs, conducting online enforcement, and developing new techniques to combat intellectual property crime. As a result of the IPEC interagency working group to improve efficiency and results of the training and capacity building, the U.S. Patent and Trademark Office launched the Global Intellectual Property Training Database to help facilitate the group's coordination and oversight of all training activities.

c. Appendix C of your 2012 report lists the major IP enforcement activities of every agency. I reviewed just the *international capacity building programs* conducted in 2011 and found 25 PTO programs, approximately 56 International Trade Administration (ITA) programs, Customs and Border Protection programs in 18 different countries, 109 Immigration and Customs Enforcement trainings, significant State Department government-to-government training programs, and the U.S. Copyright Office's hosting of international training, education and outreach programs. I understand not all of these programs focus on the exact same issue in the same countries, but do you believe there are any training programs that can be eliminated or consolidated to both improve the training programs and reduce government expenditure in this area? Why or why not?

Appendix C of my office's 2011 Annual Report on Intellectual Property Enforcement, issued in March 2012, contains reports and examples from several agencies describing their various training programs the organize, or in which they participate. There exists overlap in reporting because individual agencies reported separately for the same training event. In addition, some agencies also provided information on meetings or conferences that they participated in as an expert speaker, which may have been organized by the private sector, or another government.

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We believe that the current enforcement training programs make sense because they focus on the specific challenges in foreign countries. We will continue to work with agencies to further coordinate our training efforts and to make sure that our limited resources are used wisely.

i. Do you plan to use the database to perform a duplication and consolidation analysis of domestic and international IP enforcement training programs in the future?

The IPR training database was a product of the international training working group, led by my office and formed to improve interagency coordination of international capacity building and training. The database is intended to allow agencies to use resources more efficiently, prevent duplication, improve training results, and increase transparency and public participation. We will work with Federal agencies to examine whether the database entries can be used to review government training efforts and to suggest improvements.

ii. What other oversight measures do you believe could be helpful to ensure agencies are not conducting overlapping programs abroad or domestically?

One of the overarching principles outlined in the 2010 IPEC Joint Strategic Plan is ensuring efficiency and coordination. To that end, we pledged to strengthen the coordination of law enforcement efforts at the Federal, state and local level; increase personnel stationed overseas; and enhance international training and capacity building efforts to increase efficiency and effectiveness and to minimize duplication and waste.

A key tool that highlights agency cooperation has been the establishment of four interagency working groups, among them a group that focuses on U.S. Government personnel stationed overseas and another that concentrates on international training efforts. These working groups have used a collaborative approach to tackling enforcement issues identified in the June 2010 Joint Strategic Plan on Intellectual Property Enforcement that has increased the amount and quality of coordination between the agencies.

We believe that this collaborative approach is working well. These interagency working groups, along with the work of the National Intellectual Property Rights Coordination Center, have been successful in ensuring that training efforts are well coordinated. We will continue to work with the agencies to make sure that the U.S. government's limited training resources are used efficiently.

5. I was encouraged to read about the Administration's focus on voluntary private industry agreements to address counterfeiting and piracy. However, I am somewhat concerned about the time it has taken to establish these working groups. Could you provide a brief update on the status of each private sector group, including the Center for Safe Internet Pharmacies (CSIP), payment processors, Internet Service Providers (ISPs) and ad networks and exchanges and the willingness of companies to participate?

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The founding members of CSIP include American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft (Bing), Neustar, PayPal, Visa, and Yahoo! CSIP is also actively adding new partners. For example, we understand that Facebook is giving serious consideration to joining CSIP. CSIP has prepared an education campaign, complete with official media tools, and it has produced a public service announcement. CSIP launched its data-sharing tool in early June 2012, and formally launched on July 23, 2012.

The payment processors completed their agreement in June 2011. American Express, Discover, MasterCard, PayPal, and Visa all participated. Google Wallet is considering whether to join. Based on our discussions with processors and rightholders that are using the mechanisms, we understand that the program is working effectively. However, we know that criminal enterprises will always be changing tactics, so we look forward to continuing to work cooperatively with the payment processors.

In July 2011, five major ISPs—AT&T, Cablevision, Comcast, Time Warner Cable, and Verizon—and major and independent music labels and movie studios signed a memorandum of understanding to help educate the public and deter copyright infringement. The Center for Copyright Information (CCI) was formed as a part of that collaborative effort. CCI hired an executive director and announced its Board of Directors in April 2012.

In May 2012, the Association of National Advertisers and the American Association of Advertising Agencies issued a joint statement of best practices to address online piracy and counterfeiting. The two industry groups took this important step to avoid unintentionally providing financial support to, or otherwise legitimizing Internet sites whose primary and apparent purpose is to infringe intellectual property.

As indicated above, some of the voluntary agreements are currently operational, while others have been concluded, but are not yet operational. Consequently, we are still in the early stages for voluntary practices, and we remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement. We will be vigilant and revisit them to make sure that they are working and that they are effective.

The Administration is committed to encouraging voluntary agreements as one tool in the fight against infringement, and we believe that the U.S. Government's attention to this has encouraged companies to be willing to explore best practices. We further believe that continued oversight by and support from Congress will encourage parties to commit to doing more to fight counterfeits and piracy, and that much can be achieved in this manner while respecting the principles of due process, free speech, fair use privacy, and competition.

a. Regarding CSIP, I understand, in 2010, a core group agreed to form a non-profit, and more recently elected a Board of Directors and hired a part-time executive director. Is CSIP now fully operational? If not, what have been the primary causes of delay?

Yes, CSIP is now fully operational. CSIP hired its executive director in December 2011 and formally announced its launch in July 2012. CSIP has prepared an education campaign, complete

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with official media tools, and it has produced a public service announcement. CSIP launched its data-sharing tool in early June 2012. CSIP is also actively adding new partners. For example, we understand that Facebook is giving serious consideration to joining CSIP.

b. Could you tell me what concrete actions CSIP has taken to address the problem of counterfeit pharmaceuticals? What type of partnership does CSIP have with law enforcement and has that been helpful in addressing this issue?

In addition to the several actions listed above in part (a) that it has completed, CSIP is briefing other government agencies on its efforts and progress. The organization continues to prepare executives of its member companies to raise awareness of CSIP's efforts and the problem of counterfeit pharmaceuticals at various meetings and conferences, and CSIP is actively adding new partners. We understand that Facebook, for example, is giving serious consideration to joining CSIP. CSIP is discussing with FDA and the IPR Center how it can best partner with law enforcement.

c. How does your staff coordinate with the private sector on these working groups and agreements? What type of metrics have you established to evaluate the success of these voluntary groups and to determine the level of involvement needed and resources expended by your office?

My office is committed to facilitating and encouraging discussion among the relevant private sector on voluntary best practices that are consistent with our commitment to due process, free speech, fair use, privacy, competition, and other important privacy concerns. We are able to identify issues or concerns based on our experience in brokering voluntary agreements. We recognize that the agreements ultimately should be driven by the private sector to best encourage participation and cooperation by companies and to ensure success in these efforts.

My office regularly meets with private sector participants to discuss their progress, review any available data, and consider changes in strategy to combat infringement. We have emphasized to the private sector the need for sharing empirical data and information on trends with us so we can assess whether this approach is as effective as we believe it will be. Because we are still in the early stages for voluntary practices – some are operational while others have reached agreement only – we remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement. We will be vigilant and revisit them to make sure that they are working and that they are effective.

d. During the oversight hearing, you noted several other areas where voluntary working groups might be helpful to bolster intellectual property protection, such as cyber lockers, domain name registrars, and ad brokers.

i. Does your office plan to reach out to businesses in these industries in order to establish such voluntary agreements, or are companies in

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these industries already beginning discussions to establish best practices?

My office has worked with domain name registrars, for example in the effort to address fake online pharmacies responsible for distributing illegal pharmaceuticals, as they formed the non-profit organization Center for Safe Internet Pharmacies. My office is committed to continuing to work with ad brokers to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

We are acutely aware that cyberlockers pose a particular problem. I very much appreciate knowing of your interest in voluntary best practices for cyberlockers and will actively consider what we can effectively do here.

ii. Is there a particular reason ad brokers were not a part of the recent agreement between the Association of National Advertisers and the American Association of Advertising Agencies to address online piracy and counterfeiting?

In addition to the work my office has accomplished working cooperatively with Internet service providers, credit card companies, domain name registrars and registries, and online advertisers, we are committed to continuing to work with ad brokers and ad networks to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

The Interactive Advertising Bureau (IAB), the advertising business organization that represents a large number of the most prominent ad brokers and media outlets, openly supported the Association of National Advertisers (ANA) and the American Association of Advertising Agencies (4As) agreement through comments from the IAB President and CEO, quoted in the 4As/ANA press release.

Separately, Facebook, Google, Twitter, and AOL formed the Ads Integrity Alliance, an initiative intended to protect users from bad ads, such as ads for counterfeit goods, and maintain trust in the online advertising ecosystem. This is a positive step. However, it is important that we also continue to work on the problem of good ads from legitimate companies supporting sites that are dedicated to online infringement.

6. Your 2012 annual report notes, as part of increasing transparency in policymaking, the Administration solicits and receives comments through Federal Register notices. The report then outlines several examples of IP enforcement issues on which it sought comment, such as Special 301 review, ways to prevent counterfeit products from entering the US supply chain, and helping small businesses obtain international patent protection. Can you provide several examples of how public comment has been incorporated into Administration policy in some of these areas of IP enforcement?

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My office strongly believes in the role public participation plays in the policy development process. Public comment has been incorporated into Administration policy in a number of ways, including the following:

- As part of the comments submitted during development of the Joint Strategic Plan on Intellectual Property Enforcement, numerous comments were submitted that recommended developing a solution to allow U.S. Customs and Border Protection to share information on suspect imports to assist the Agency with making a seizure determination. IPEC and CBP developed a legislative proposal for authorizing CBP to share this type of information as part of the Joint Strategic Plan and the Administration's 2011 legislative proposals. Through the National Defense Authorization Act for FY 2012, certain information sharing capabilities recommended in public comment were provided to CBP.

- Comments were also submitted advocating that CBP notify complainants who have obtained an Exclusion Order from the U.S. International Trade Commission when goods covered by the Exclusion Order are denied entry into the United States or seized by CBP. These recommendations were incorporated into the Joint Strategic Plan and DHS and IPEC are working to develop an approach and secure any necessary authorities.

- Building on recommendations concerning its Special 301 process, USTR began a new initiative in 2011 to increase the effectiveness and encourage the implementation of Special 301 action plans. The new initiative invites trading partners appearing on the Special 301 Priority Watch List or Watch List to negotiate a mutually agreed action plan designed to lead to that trading partner's removal from the list.

7. Are there any particular areas of IP enforcement where you believe there is a greater tendency for agencies to overlap or duplicate efforts? If so, how has your office addressed those concerns?

Part of IPEC's mission is to make the U.S. Government's efforts more efficient and effective in protecting the people and the companies that innovate and create. There has been significant progress in improving agency coordination and increasing the efficiency and effectiveness of law enforcement efforts at the federal, state and local level, of personnel stationed overseas, and of the U.S. Government's international training efforts.

In February 2011, President Obama created a significant tool to improve coordination by issuing Executive Order 13565 which established a Cabinet-level advisory committee, chaired by the IPEC, comprised of the heads of the departments responsible for intellectual property enforcement, namely the Departments of Agriculture, Commerce, Health and Human Services, Homeland Security, Justice, State, and Treasury, the Office of the United States Trade Representative, and the Office of Management and Budget.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market. .

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To ensure that valuable investigative resources are not expended on duplicative efforts, the IPR Center brings together 20 partner agencies in a de-confliction process with participation from the Department of Justice's Computer Crime and Intellectual Property Section. The agencies work cooperatively on investigations using their agency-specific expertise to develop cases with one another. In FY 2011, the IPR Center vetted 178 leads directly referred to it and de-conflicted 2,877 investigative leads generated by field offices of partner agencies—an increase of 429% in comparison to FY 2010.

Key overseas U.S. embassies have in place annual interagency work plans that set country-specific objectives and activities to address the country's critical intellectual property issues. These work plans ensure that resources are used in a focused and efficient manner. The work plans were developed in coordination with the IPEC interagency working group established to improve the effectiveness and efficiency of overseas personnel to combat infringement in priority locations around the world.

As a result of the IPEC interagency working group to improve efficiency and results of the training and capacity building, the U.S. Patent and Trademark Office launched the Global Intellectual Property Training Database which serves as a searchable database (www.usipr.gov) where agencies now post information on their enforcement training. This publicly available database will allow resources to be used more efficiently by sharing training materials among agencies and avoiding duplicative programs.

8. Last month, the Department of Commerce released its report, *"Intellectual Property and the U.S. Economy: Industries in Focus,"* which provided an overview of the economic contributions by IP-intensive industries to the U.S. economy. I understand your office was very involved in its development and release, and this data will be very helpful to Congress as we continue to work on IP issues.

a. How often do you believe this type of report will be released or updated?

We are pleased that the report, the first of its kind, has been well-received. Never before has the U.S. Government produced a report of this scale that details the nature and impact of intellectual property across the entire American economy and I would like to take this opportunity to commend the work done by the Department of Commerce (led by ESA and PTO), in coordination with Council of Economic Advisors, USTR, the Department of Labor, and other relevant agencies, in producing this report.

We plan to make this an annual report. The Department of Commerce, working with the other relevant Federal agencies, will calculate the number of jobs and the contribution to the GDP on an annual basis and release those figures in an updated report each year.

b. How have the results of the report altered or informed, if at all, the focus of your office or the Administration's legislative recommendations to Congress in the area of intellectual property?

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We have begun the process of working with the Federal agencies to develop the Administration's new Joint Strategic Plan on Intellectual Property Enforcement for submission to the President and Congress. The new Joint Strategic Plan will guide the Administration's efforts for the next three years. In developing the Strategy, we will consider all available data, including the information contained in the Department of Commerce's recent report *Intellectual Property and the U.S. Economy: Industries in Focus*.

With respect to legislative recommendations, we sent the Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations in March 2011, before the Department of Commerce report was released. We appreciate the recommendations we have received from Congress and look forward to continuing to work with Congress on these legislative recommendations.

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The Honorable Senator Amy Klobuchar
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. I know there are many government agencies involved in protecting intellectual property - how do these agencies avoid duplicating efforts, and how does your office help in that effort?

Part of IPEC's mission is to make the U.S. Government's efforts more efficient and effective in protecting the people and the companies that innovate and create. There has been significant progress in improving agency coordination and increasing the efficiency and effectiveness of law enforcement efforts at the federal, state and local level, of personnel stationed overseas, and of the U.S. Government's international training efforts.

In February 2011, President Obama created a significant tool to improve coordination by issuing Executive Order 13565, which established a Cabinet-level advisory committee, chaired by the IPEC, comprised of the heads of the departments responsible for intellectual property enforcement, namely the Departments of Agriculture, Commerce, Health and Human Services, Homeland Security, Justice, State, and Treasury, the Office of the United States Trade Representative, and the Office of Management and Budget.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market.

To ensure that valuable investigative resources are not expended on duplicative efforts, the National Intellectual Property Rights Coordination Center (IPR Center) brings together 20 partner agencies in a de-confliction process with participation from the Department of Justice's Computer Crime and Intellectual Property Section. The agencies work cooperatively on investigations using their agency-specific expertise to develop cases with one another. In FY 2011, the IPR Center vetted 178 leads directly referred to it and de-conflicted 2,877 investigations opened by field offices of partner agencies—an increase of 429% in comparison to FY 2010.

Key overseas U.S. embassies have in place annually updated interagency work plans that set country-specific objectives and undertake activities to address individual countries' critical intellectual property issues. These work plans ensure that resources are used in a focused and efficient manner. The work plans were developed in coordination with the IPEC interagency working group established to improve the effectiveness and efficiency of overseas personnel to combat infringement in priority locations around the world.

As a result of the IPEC interagency working group to improve efficiency and results of the training and capacity building, the U.S. Patent and Trademark Office launched a searchable database (www.usipr.gov) where agencies now post information on their enforcement training.

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This publicly available database will allow resources to be used more efficiently by sharing training materials among agencies and avoiding duplicative programs.

2. What can Congress do to help IPEC and the federal agencies responsible for investigating intellectual property theft?

The most effective support Congress can provide in the fight against intellectual property crime is a continued focus on intellectual property rights, including its impact on the economy, trade and job creation. Apart from continuing to bring attention to intellectual property issues, Congress can be helpful in working to pass the Administration's legislative recommendations for intellectual property enforcement.

In March 2011, I issued a White Paper that set forth the Administration's 20 legislative recommendations designed to strengthen intellectual property enforcement. These legislative recommendations seek to provide enhanced penalties for offenses involving the misappropriation of trade secrets, economic espionage, and for intellectual property offenses involving organized crime, repeat offenders, counterfeit drugs, and sales of infringing products to the military and law enforcement. The recommendations also outline legislative changes that will provide enforcement agencies effective tools to combat infringement and curb the sale of counterfeit pharmaceuticals. Finally, the White Paper recommends that Congress amend the laws to continue to keep up with technology by clarifying that distribution by streaming or other new technology is a felony, similar to infringement by traditional distribution methods.

Throughout the 112th Congress, members have acted on many of the recommendations including introducing bills to punish economic espionage, enhance criminal penalties for the distribution of counterfeit drugs. Through the enactment of the National Defense Authorization Act for FY 2012, two recommendations, one to improve disclosure authority for CBP, and the second to increase penalties for sales of counterfeits to the military, have become law.

Three additional legislative recommendations became law on July 9, 2012, when President Obama signed the Food and Drug Administration Innovation and Safety Act (FDAISA), which contained a number of provisions directed at combating counterfeit drugs. Specifically, FDAISA provides for enhanced penalties under Title 18 for trafficking in counterfeit drugs and directs the U.S. Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements related to offenses that involve counterfeit drugs. It allows the FDA to require that companies notify the Agency if their drug has been counterfeited or stolen. In addition, the Act allows the FDA to destroy, without the opportunity to export, counterfeit drugs distributed in small packages (valued at $2,500 or less).

It has become clear that being able to address threats at the source is a highly effective method to reduce intellectual property crimes. For example, working with foreign law enforcement to shut down a factory producing counterfeit pharmaceuticals can provide greater protection to the consumer than attempting to seize every individual package shipped from that factory into the U.S. Similarly, working closely with foreign counterparts to disrupt international criminal networks that illegally distribute copyrighted material in the country of origin will often result in quicker results and greater deterrence than seeking to gather evidence and extradite defendants through traditional processes. In the President's 2013 budget, DOJ requested funds to place six

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International Computer Hacking and Intellectual Property (ICHIP) Coordinators in strategic global locations to strengthen international intellectual property efforts. The ICHIP program would also support the DOJ's transnational organized crime strategy as related to intellectual property rights (IPR), online fraud, and data breaches that threaten U.S. economic security in targeted regions around the world.

I welcome the continued focus and attention of Congress on intellectual property enforcement and I look forward to opportunities to continue to work with you and the committee on the remaining legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

3. Intellectual property theft is obviously an international issue. In what ways does your office coordinate with foreign governments? Are we getting good cooperation from foreign investigative and prosecutorial authorities in cases involving theft of American intellectual property?

In today's digital environment where virtually every significant IP crime and cybercrime investigated and prosecuted in the U.S. has an international component, it is impossible to address such crimes adequately without sustained and strong international engagement.

Operating from abroad, often beyond the reach of U.S. law enforcement, today's criminals committing intellectual property crimes are more technologically savvy than ever. They exploit new technology to develop increasingly sophisticated and diverse methods of committing every imaginable type of violation, including widespread online piracy and increased sales of counterfeit network hardware and other counterfeit goods. To successfully prosecute the perpetrators of these criminal enterprises, U.S. law enforcement relies on the cooperation of international counterparts. Some nations are considered to be better partners than others in the fight against intellectual property violations. I would, however, defer to those agencies to discuss the details of such cooperation in greater detail.

To address the international aspects of intellectual property crime, DOJ has continued to make significant efforts to strengthen international law enforcement relationships. The Administration believes that such efforts are, and will always continue to be, a high priority. These efforts are designed to increase cooperation and evidence sharing in criminal cases and to build capacity through training in foreign countries to prosecute these offenses. Building such foreign capacity would reduce the number of safe havens around the world and overcome jurisdictional and resource limitations in prosecuting crimes originating overseas.

It has become clear that being able to address threats at the source is a highly effective method to reduce intellectual property crimes. For example, working with foreign law enforcement to shut down a factory producing counterfeit pharmaceuticals can provide greater protection to the consumer than attempting to seize every individual package shipped from that factory into the U.S. Similarly, working closely with foreign counterparts to disrupt international criminal networks that illegally distribute copyrighted material in the country of origin will often result in quicker results and greater deterrence than seeking to gather evidence and extradite defendants through traditional processes. In the President's 2013 budget, DOJ requested funds to place six International Computer Hacking and Intellectual Property (ICHIP) Coordinators in strategic

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global locations to strengthen international intellectual property efforts. The ICHIP program would also support the DOJ's transnational organized crime strategy as related to intellectual property rights (IPR), online fraud, and data breaches that threaten U.S. economic security in targeted regions around the world.

Some countries have been exceptional in their cooperation with U.S. law enforcement. For example, in the United Kingdom, the City of London Police, Metropolitan Police and the Serious Organized Crimes Agency continue to engage with ICE-HSI and the IPR Center. Other examples of cooperation include South Korean law enforcement efforts to partner with ICE-HSI Attachés on several significant cases; ICE-HIS has seen increased cooperation from Hong Kong Customs; Italian authorities are working with ICE-HSI on significant investigations; and French authorities have worked hard with ICE-HSI to address large organized criminal enterprises engaged in intellectual property theft. Many of these cases are active and still pending.

Based on public reports,a number of cases indicate cooperation between DOJ and multiple international Justice and law enforcement officials. The investigations of Megaupload, NinjaVideo and TVShack are examples. Multilateral organizations such as INTERPOL, the World Customs Organization and EUROPOL have stepped up their joint efforts with ICE-HSI, FBI, and FDA. EUROPOL recently joined the IPR Center as a partner. I would, however, defer to those agencies to discuss the details of such cooperation in greater detail.

The IPR Center has been able to expand its international membership and partnership with multilateral organizations that has resulted in increased participation from international partners. This is especially true with respect to cooperation from the European Union (EU). Since the addition of Europol earlier this year, EU law enforcement cooperation is increasing and is paying dividends. There is still much work to be done to foster cooperation internationally. In addition to international law enforcement coordination and cooperation, this can be achieved through continued diplomatic engagement by the Department of State, trade agreements and reporting mechanisms at USTR.

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The Honorable Senator Al Franken
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. **Is IPEC conducting an interagency review to assess the number of "forced technology transfers" from U.S. companies to China? If no, will you commit to conduct such a review to assess this problem, what industries and companies are affected, the value of these transfers, and how much technology is being transferred to China that was developed using federal government resources?**

Many U.S. companies remain very concerned that the Chinese government has adopted policies or practices that systematically disadvantage foreign rights holders, by inappropriately conditioning market access and investment approvals, and other government benefits on the sale or licensing of IPR and other proprietary information to Chinese entities.

We have multiple mechanisms to address these concerns: U.S.-China Joint Commission on Commerce and Trade (JCCT) working groups, the U.S.-China Strategic and Economic Dialogue (S&ED) and the Innovation Dialogue. While we welcomed China's commitment, reiterated in the joint fact sheet issued during Vice President Xi Jinping's visit to Washington on February 14, 2012 "that technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access," we will continue to work with China to develop a mechanism designed to resolve, in an expeditious manner, any concerns regarding the implementation of this commitment.

We also are engaged in candid dialogue with our stakeholders about the importance of careful, long term strategic thinking about the protection and use of their core assets in every market where IPR protection and enforcement remains a challenge. Moreover, agencies across the Administration – including USTR and the Department of Commerce – have stepped up their efforts to address these issues. We can provide you with a briefing should you have any further questions on this topic.

2. **What is IPEC doing to coordinate with other agencies to limit the number of "forced technology transfers" where the intellectual property and/or technology was developed using federal grants, public-private partnerships, loans, loan guarantees, or other federal support?**

   Please see response above.

3. **Please provide your recommendations for safeguards that should be implemented at both the domestic and international levels that could protect against forced technology transfers.**

   Please see response above.

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The Honorable Senator Mike Lee
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. The protection of intellectual property is vital to our nation's economy, and the enforcement of these rights often falls to the Federal agencies in your network. While I am committed to strong enforcement of IP rights, I am also keenly aware of the tension between the protection of IP interests and the protection of civil liberties. How have you attempted to strike a balance between these competing concerns?

The mission of this office is to develop effective intellectual property enforcement policies that ensure clarity and coordination so that precious resources are not wasted on duplicative efforts. As the country's first IPEC, I have followed the lead of President Obama in advancing Internet policies that promote free expression, privacy, open government and economic growth. My office and this Administration have never lost sight of preserving and protecting the rights guaranteed by the Constitution.

As an Administration we believe that we must pursue different tactics simultaneously to combat online copyright infringement as effectively as possible. These tactics include –

1) increased and coordinated domestic law enforcement efforts;
2) increased voluntary efforts by the private sector;
3) increased consumer education on the risks of infringement;
4) increased law enforcement by foreign countries;
5) create an environment that supports the development of legitimate alternatives that appeal to consumers.

It is our firm belief that intellectual property enforcement policies must not, need not and will not come at the cost of free speech, fair use, privacy, due process, competition, or the technical security of the Internet. I will continue to develop policies that will support intellectual property enforcement strategies that protect U.S. innovation with the overall goal of strengthening our economy and protecting American jobs.

2. Counterfeiting and piracy are not solely domestic or foreign problems, and any effective enforcement system must address both sources. How does the economic impact of infringement originating on American soil compare to piracy that comes from abroad? How does the enforcement of infringement differ between domestic and foreign sources?

I agree that incidents of counterfeiting and piracy often incorporate both foreign and domestic actors and it is therefore imperative that an effective enforcement strategy address both. There are at least two significant differences between our ability to address infringement of intellectual property here at home and overseas. First, the jurisdictional reach of US law enforcement is extremely limited overseas and therefore they are largely dependent on cooperation with foreign

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governments to address intellectual property crime overseas. Second, our ability to encourage foreign companies and other stakeholders to take voluntary actions to reduce intellectual property infringement is also limited. Therefore, we again need the cooperation of foreign governments to work with us and to reach out to their constituencies.

The Department of Homeland Security (DHS) and Department of Justice (DOJ), with the support of this office and relevant Federal agencies are working successfully to increase cooperation with foreign law enforcement in some countries. Recent examples of cooperation on law enforcement operations include the Pangea operation against counterfeit drugs, conducted with the participation of 81 countries, the Asia Pacific Economic Cooperation (APEC) law enforcement operation overseen by INTERPOL– the first time APEC has been used to coordinate a law enforcement operation; the seizure of counterfeit goods valued at over $250,000,000 by Brazilian law enforcement working with U.S. Immigration and Customs Enforcement (ICE); and the Megaupload case. There are other examples detailed in our Annual Report on Intellectual Property Enforcement. Further, the President's budget includes funding to place additional DOJ law enforcement personnel in key countries because we believe that having additional DOJ personnel on the ground to directly and consistently build relationships will foster long term cooperation.

With respect to your second question, the Camp David G8 Leaders' Statement included a strong expression of support for voluntary best practices as part of the approach to address online infringement. My office, working with the Department of State and other relevant Federal agencies, has begun outreach to the G8 member countries – Canada, France, Germany, Italy, Japan, Russia, and the United Kingdom – to foster cooperation on these efforts and turn the statement into action.

We do not have precise data on the overall scale of domestic infringement versus foreign infringement. (I would note that the U.S. International Trade Commission has quantified the economic impact of infringement occurring in China specifically in a report issued in May 2011, available at http://www.usitc.gov/publications/332/pub4226.pdf.) The volume and economic effect of domestic infringement versus foreign infringement also varies depending on the type of infringement. For example, we believe that most manufacture of counterfeit product occurs overseas and is consumed globally (both in the United States and overseas). Trade secret theft occurs both on US soil and overseas, although we are particularly concerned with trade secrets that are being stolen and transferred overseas to foreign government or foreign private competitors. Online infringement occurs both domestically and overseas; there are a number of sites that have a nexus to the United States in various ways (such as having servers located here or having a domain name registered here), and there are many sites that do not. Both sites based here or overseas avail themselves of services provided by U.S. companies (domain name registrars, ad brokers, payment processors, etc.) to distribute goods. And sites that are set up in the United States to market or accept orders for physical counterfeit goods, are often distributing goods that are manufactured overseas.

As described above, while our ability to directly enforce against infringement overseas is relatively more limited, we cannot rely exclusively on foreign law enforcement to act when we can take action on our own initiative to stop dangerous products from entering the United States. For example, DOJ and DHS launched Operation "In Our Sites" to target websites distributing infringing goods. Most of those actions have been against sites distributing physical counterfeit

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goods manufactured overseas. Further, U.S. Customs and Border Protection, working with Special Agents from ICE Homeland Security Investigations, have significantly increased seizures at the border – from FY 2009 to FY 2011 seizures of counterfeit consumer safety and critical technology goods has increased nearly 200% and seizures of counterfeit drugs has increased nearly 600%.

3. A portion of the funding for IP enforcement goes to public awareness programs. Can you explain what role public awareness plays in IP enforcement?

Public awareness plays an important role in combating intellectual property rights violations and in working to shape norms. In November 2011, I was joined by Attorney General Holder and other Administration officials at the White House to announce progress we've made cracking down on intellectual property theft crimes, and announce a new public awareness campaign to combat the purchase and sale of counterfeit and pirated products. The new intellectual property theft public campaign was developed through a partnership between DOJ's Bureau of Justice Assistance and the National Crime Prevention Council. This campaign will educate the public about the full range of intellectual property crimes we confront, from counterfeit consumer goods and counterfeit pharmaceuticals laced with potentially dangerous substances to illegal downloads, while highlighting the potential threat these crimes pose to economic prosperity and public safety. The campaign includes a television public service announcement, materials delivered through social media, and radio, web, and print ads.

At the event, Attorney General Holder and I were joined by Acting Deputy Secretary of Commerce Rebecca Blank, who discussed the ways in which counterfeit goods impact the everyday lives of American families. Director of U.S. Immigration and Customs Enforcement John Morton was also in attendance to discuss ongoing Administration law enforcement efforts concerning counterfeit goods and intellectual property crimes. And Ann Harkins, National Crime Prevention Council President and CEO, was on hand to unveil the products of the campaign that will help build awareness about the harm caused by counterfeit goods and engage the public in stopping intellectual property theft.

Additionally, I would note that training of other countries' customs authorities, law enforcement, prosecutorial, and judicial personnel in intellectual property enforcement matters has been complemented in some instances by funding provided by State Department for public diplomacy initiatives conducted by U.S. embassies in 26 countries. These embassy efforts, leveraged through partnerships with host governments, NGO's, and the private sector, have educated foreign public opinion on the importance of IPR generally and, where appropriate, have emphasized the threat posed by counterfeit medicines and Internet piracy. Notable examples include 1) public service announcements in Guatemala, Venezuela, and Cambodia publicizing the importance of consumers purchasing medicines through secure pharmaceutical supply chains; 2) workshops in Brazil, Chile, Estonia and the Ukraine seeking to build empathy among youth aged 12-18 for local artists whose livelihoods depend on protecting and enforcing IPR; and 3) distribution of a free digital phone application in China which encourages job seekers to understand protection of IPR as a core value of global companies.

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4. Law enforcement had a huge victory last year in its successful shutdown of Megaupload, one of the most well-known piracy sites in the world. Although many details of the ongoing investigation may not be shared, please give as complete an answer as you are permitted. What role did IPEC play in this endeavor? Has there been any noticeable effect on the incidence of piracy from the shutdown of this site?

In accordance with Title 15, Section 8111(b) (2), IPEC may not control or direct any law enforcement agency in the exercise of its investigative authority. We are vigilant in maintaining strict compliance with this legislative directive. My office does not take or direct enforcement or investigative action against websites. At no time have I directed law enforcement agencies to conduct operations against websites suspected of distributing counterfeit or pirated goods. This hands-off approach includes not participating in or providing input on the recent investigation and prosecution of Megaupload and its owners and operators.

However, according to news reports, as a result of the recent indictment and pending extradition of the owners and operators of the file sharing site Megaupload, competitor sites operating with a business model similar to Megaupload have made changes. For example, several other file sharing sites and cyberlockers have voluntarily changed their model so that illegally obtained versions of copyrighted material are not posted on their sites. Furthermore, some of the sites also discontinued rewards programs for users who uploaded popular content.

5. During the hearing, you discussed your efforts to encourage private sector entities to adopt best practices.

a. What effect have these efforts had on piracy and counterfeiting?

The Administration continues to facilitate and encourage dialogue among the different private sector entities that make the Internet function, as these companies can act as checkpoints for infringing activity and reduce the distribution of infringing goods in a manner that is consistent with our commitment to due process, free speech, fair use, privacy, competition, and other important public policy concerns.

Specifically, my office has worked closely with Internet service providers (ISPs), advertisers, credit card companies, payment processors, search engines, and domain name registrars and registries to take action to reduce online infringement.

In May 2012, the Association of National Advertisers and the American Association of Advertising Agencies issued a leadership pledge to address online piracy and counterfeiting. In their joint statement, they recognized that Internet advertising may unintentionally provide financial support to or otherwise legitimize Internet sites whose primary and apparent purpose is to infringe intellectual property. To combat this complex problem, the associations encouraged their members to voluntarily avoid placement of their ads on such sites. This statement was also supported by the Interactive Advertising Bureau which represents ad networks.

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In June 2011, American Express, Discover, MasterCard, PayPal, and Visa – major credit card companies and payment processors – developed voluntary best practices to withdraw payment services for sites selling counterfeit and pirated goods.

In July 2011, a voluntary agreement was finalized among several ISPs – AT&T, Comcast, Cablevision, Verizon, and Time Warner Cable – and major and independent music labels and movie studios to reduce online piracy. Under the agreement, ISPs will notify subscribers, through a series of alerts, when their Internet service account appears to be misused for infringement on peer-to-peer networks. The Center for Copyright Information (CCI) was formed as a part of that collaborative effort. CCI hired an executive director and announced its Board of Directors in April 2012.

Finally, in December 2010, spurred by the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and Internet intermediaries announced that they would form a non-profit group to combat counterfeit online "pharmacies" – criminals masquerading as legitimate pharmacies. In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions. CSIP announced its launch on July 23 of this year.

Some of the voluntary agreements are currently operational, such as the agreement between payment processors and CSIP. Other agreements have been concluded, but are not yet operational, for example CCI. Consequently, we are still in the early stages for voluntary practices, and we remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement. We will be vigilant and revisit them to make sure that they are working and that they are effective.

b. What can you tell us about the next steps you'll be taking to encourage private sector solutions?

We look forward to continued work with other parts of the Internet economy, including ad networks and search engines, as well as interested stakeholders, to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

Further, we believe that this voluntary non-regulatory approach to combating online infringement can serve as a positive example to other countries as they contemplate their own Internet policies. The G8 Leaders Statement included a strong expression of support for voluntary practices, and my office has met with officials from countries interested in this area. We want to encourage our trading partners to pursue voluntary best practices and have begun outreach to them. Finally, we are also exploring the expansion of voluntary best practices into the physical supply chain to help combat theft of trade secrets.

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The Honorable Senator John Cornyn
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. I understand that the Treasury Department and Customs and Border Patrol recently issued a interim rule to address whether and how to share samples and images of suspected counterfeit goods with rights holders as required by the NDAA, one that gives the importer a role in the authentication process. What is the legal basis for relying on the importer in this way?

The Interim Final Rule issued by U.S. Customs and Border Protection (CBP) and the Department of the Treasury (Treasury) does not establish new or additional rights for importers. Rather, the Interim Final Rule, pursuant to the National Defense Authorization Act for FY 2012, is focused on providing CBP with explicit authority to share information such as samples and unredacted photos of suspect goods with right holders for the purpose of assisting CBP Officers in making an infringement determination. Importers, right holders, and other members of the trade community provide CBP with information in numerous contexts throughout the importation process, including information that CBP uses as part of CBP's admissibility determination when goods are detained for suspected intellectual property violations.

The legal basis for CBP's recognition of the importer's role in supplying information when suspect merchandise is detained is set forth in 19 U.S.C. § 1499(c)(2). Further, as a general matter, CBP's authority to enforce intellectual property laws includes the following statutory provisions: 15 U.S.C. § 1124-25, 15 U.S.C. § 1127, 19 U.S.C. § 1526(e); 19 U.S.C. § 1595a; and 19 U.S.C. § 1624.

2. The interim rulemaking states: "This procedural safeguard is intended to achieve the policy goals of the NDAA in a manner consistent with maintaining the flow of information to the government, fostering competition, keeping prices low, and maintaining consumer choice." Please identify the statutory delegation of authority to CBP to police competition, pricing and consumer choice.

As the primary all-threats border agency, CBP is charged with ensuring our nation's economic competitiveness and homeland security. CBP works to achieve this objective by facilitating the flow of legitimate trade while securing the border against threats to our nation's economic and national security. CBP, through its legacy relationship with Treasury has long performed a trade enforcement and facilitation function. The primary statutory authority under which CBP performs these functions is Title 19, and more recently Title 6 following the establishment of the Department of Homeland Security.

In addition to the Agency's statutory authorities listed above, Executive Order 13563 provides that the regulatory system must promote economic growth, innovation, competitiveness, and job creation. We believe that maintaining the flow of information to the government, fostering

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competition, keeping prices low, and maintaining consumer choice promotes the goals set out by the President's Executive Order.

3. How does your office plan to identify, categorize and address counterfeits that endanger public health and safety?

Counterfeits that endanger public health and safety are a top priority for IPEC. Significant work is underway to address counterfeits that pose a significant risk to public health and safety by my office and agencies such as CBP, U.S. Immigration and Customs Enforcement (ICE), U.S. Food and Drug Administration, the Department of Justice, and the U.S. Consumer Product Safety Commission. These efforts have focused agency resources around commodities where the danger to public health and safety resulting from counterfeit products is especially high.

For example, in 2011 CBP established two Centers of Excellence and Expertise focused on pharmaceuticals and electronics to allow ports of entry to more effectively process imports and segment high-risk shipments and importers.

In March 2011, I sent Vice President Biden and Congress a counterfeit pharmaceutical strategy that set out concrete steps the Administration plans to take to fight counterfeit drugs. A detailed description of ongoing efforts and policy recommendations directed at combating the global flow of counterfeit drugs in order to implement the counterfeit pharmaceutical strategy can be found on page 42 of IPEC's 2011 Annual Report on Intellectual Property Enforcement.

During summer 2011, National Intellectual Property Rights Coordination Center (IPR Center) member agencies in coordination with the World Customs Organization carried out Operation Short Circuit, a multilateral international operation across 43 countries directed at disrupting the importation and distribution of dangerous consumer goods. The operation resulted in the seizure of 388 shipments containing, among other things, 791,936 counterfeit batteries, 75,301 counterfeit power supplies and adaptors, 115,117 counterfeit chargers, and 4,760 boxes of counterfeit holiday lights.

The results of these efforts are clear. According to CBP/ICE annual seizure statistics, consumer safety and critical technology IPR seizures increased by 183 percent from FY 2009 to FY 2011. Top among seizures in this category were commodities such as pharmaceuticals, health/personal care, critical technology, and electrical articles for consumer purchase.

4. Should your office have additional programs dedicated to counterfeits that threaten public health and safety, beyond pharmaceuticals and military counterfeits? Why or why not?

IPEC and its Federal agency partners consider counterfeits that endanger public health and safety a top priority and considerable efforts are directed at addressing this issue. As described in response to Question 3 above, the IPR Center, along with its international partners and the Department of Justice, has undertaken major law enforcement operations targeting a wide range of goods that can endanger public health. In addition, counterfeit goods of all types pose a serious problem for the U.S. Government due to the adverse impact on its ability to accomplish

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its stated mission, national security implications and the substantial waste of resources and taxpayer money. In addition to direct impact on U.S. Government, counterfeits impact the economy and jeopardize the safety of the public and businesses our government works to protect.

Recognizing the need for a coordinated and robust Federal response to the threat posed by counterfeits entering the U.S. Government supply chain, IPEC established a government-wide working group responsible for developing a framework for procurement that is flexible enough to accommodate the wide variety of missions across the U.S. Government and their different supply chains and associated systems of procurement. The focus of this work is to improve our procurement practices to prevent counterfeits from entering the U.S. Government supply chain, mitigate the risk of counterfeits that do infiltrate the U.S. Government supply chain, and develop comprehensive remedies available to the U.S. Government when counterfeit goods are purchased and delivered in the supply chain.

IPEC is in the process of working with the Federal agencies to develop a new intellectual property enforcement strategy for submission to the President and Congress. I appreciate Senator Cornyn's support in addressing the threats posed to public health and safety by counterfeits and would further welcome opportunities to collaborate on identifying additional areas in which such efforts may be directed.

5. Customs and Border Patrol recently highlighted the rapid growth in seizures of deliveries via international mail and courier facilities. Would you discuss this issue in your annual report?

IPEC recently called attention to this issue and a number of ongoing law enforcement efforts in its 2011 Annual Report. The challenge posed by counterfeiters who use small packages delivered through international mail and express carrier facilities is one of the reasons we need to have, in addition to increased law enforcement, increased cooperation with the private sectors. Packages shipped to the United States international mail and courier facilities contain counterfeit drugs and consumer goods that are purchased online. I believe that working cooperatively with credit card companies, advertisers, ad networks, domain name registrars and other companies that interact with and provide services to sites engaged in distribution of counterfeit goods can be immensely helpful in addressing the problem we face.

6. Can you provide an assessment of the scope of this problem today and address whether it should be a priority for IPEC?

The threat posed by counterfeit and pirated goods shipped through international mail and express carriers is an important priority and one which IPEC and the Federal agencies charged with enforcing intellectual property rights are working to combat. Law enforcement efforts directed at interdicting infringing goods shipped in the express and international mail environments have resulted in significant increases to seizure levels of infringing goods shipped through these modes of transit. For FY 2011, seizures in the international mail and express carrier environment reached 18,442.

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One example of the law enforcement efforts leading to increased seizures is the CBP-led initiative with the Asia Pacific Economic Cooperation (APEC) targeting counterfeit pharmaceuticals shipped via international mail and express carriers. The initiative resulted in enforcement actions against over 1,200 shipments of counterfeit pharmaceuticals in the Asia Pacific region. In addition to the CBP initiative, Operation Apothecary was developed whereby 12 special operation enforcement surges were carried out by ICE Homeland Security Investigations, CBP, the FDA Office of Criminal Investigations (OCI), and the U.S. Postal Inspection Service (USPIS) at international mail facilities and express consignment facilities across the country. This operation targeted potential vulnerabilities in the importation process that might allow for the smuggling of commercial quantities of counterfeit, unapproved and/or adulterated drugs through the Internet, international mail facilities, express carrier hubs, and land borders. During FY 2011, Operation Apothecary surges also resulted in 22 criminal arrests, 10 indictments, 10 convictions, and 177 seizure incidents with a domestic value of more than $22 million.

7. If it is a priority, can you provide the Committee with a description of how you intend to address it?

In addition to ongoing law enforcement activities, my office is collaborating with the private sector in a number of ways to address this, and a variety of other intellectual property enforcement issues. For example, on June 25, 2012, IPEC issued a *Federal Register* Notice as part of its development of the new intellectual property enforcement strategy previously mentioned. As part of the *Federal Register* Notice, IPEC and CBP have solicited recommendations regarding steps that could be undertaken by CBP, its partner U.S. Government agencies, and the private sector to further improve detection of express carrier and international mail shipments containing infringing goods.

8. What are the measures you have in place to assess the effectiveness of the various programs run by your office?

The IPEC office was created to make the government's efforts more efficient and effective in protecting people who innovate and create. My job is to work with the various agencies in the federal government and other offices in the White House to make sure intellectual property laws are enforced and working properly.

The U.S. Government as a whole has been working efficiently to tackle intellectual property enforcement issues. My office coordinates through a variety of formal and informal means, including daily correspondence and regular calls with the enforcement agencies, as well as more formal interagency meetings. With the passage of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Congress created an interagency intellectual property enforcement advisory committee, which has been helpful in coordinating these efforts. Furthermore, in February 2011, President Obama signed Executive Order 13565, establishing a Cabinet-level advisory committee, chaired by IPEC, comprised of the heads of the departments responsible for intellectual property enforcement.

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A key tool to improve agency coordination and effectiveness has been the establishment of four interagency working groups concerning U.S. Government procurement, U.S. Government personnel stationed overseas, international training efforts, and counterfeit pharmaceuticals. These working groups have used a collaborative approach to tackling enforcement issues identified in the June 2010 Joint Strategic Plan on Intellectual Property Enforcement, which has increased the amount and quality of coordination between the agencies. For example:

- The procurement working group is charged with developing legislative, regulatory and policy recommendations for eliminating counterfeit products in the U.S. Government supply chain.

- The overseas personnel working group identified 17 countries as priority countries for intellectual property enforcement and recommended that U.S. embassies in each of those countries establish senior-level interagency working groups. The working groups have now been established and each working group has completed detailed work plans setting out the actions that embassy personnel will take to address the specific challenges in each country.

- The international training working group was formed to improve interagency coordination of international capacity building and training. As a result of the IPEC interagency working group's effort, the U.S. Patent and Trademark Office launched the Global Intellectual Property Training Database which serves as a publicly-accessible, online database that will lead to more efficient use of resources by allowing different agencies to share materials and avoid duplicative work.

- In March 2011, the counterfeit pharmaceutical working group presented a strategy to the Vice President and to Congress that detailed how the U.S. Government would fight counterfeit drugs including drugs from illegal online pharmacies. The group is now working on implementation of that strategy.

The IPR Center is another excellent example of law enforcement and regulatory agencies coordinating with each other to fight intellectual property crimes. The IPR Center uses the expertise of its member agencies, also working closely with the Department of Justice's Computer Crime and Intellectual Property Section to share information, develop initiatives, coordinate enforcement actions, and conduct investigations related to intellectual property theft. Examples of these coordinated efforts include:

- The IPR Center has been making sure resources do not overlap, by working with the FBI and other IPR Center partners to de-conflict investigative activity, and these efforts have been effective. The de-confliction process has been collaborative and complementary, using each agency's comparative advantage to most efficiently conduct investigations.

- Over the past year, the IPR Center has added more partners, including the State Department, the Consumer Product Safety Commission (CPSC), the Army Criminal Investigation Command – Major Procurement Fraud Unit, and the

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Defense Logistics Agency – Investigations Division. The IPR Center also increased its foreign law enforcement relationships, with the addition of EUROPOL.

- The FBI has improved the coordination of intelligence of global intellectual property threats through its Intelligence Fusion Group (IFG). The IFG, in collaboration with IPR Center partners, examines and defines the intellectual property rights threat, shares intelligence, issues intelligence reports and develops strategies for addressing intellectual property crimes.

- The FBI's Intellectual Property Rights Unit (IPRU), stationed at the IPR Center, is staffed by five full-time FBI agents who conduct complex intellectual property investigations and work with IPR Center partners to de-conflict intellectual property cases.

- ICE and the FBI have formed 30 law enforcement teams that include federal, state and local law enforcement coordinated across the country to fight intellectual property crime.

Federal agencies have demonstrated significant commitment to the goals of the Administration on enforcement of intellectual property. The Joint Strategic Plan on Intellectual Property Enforcement that we issued on June 22, 2010 reflected the cooperative efforts of agencies. Since then, we have documented our continuing progress in reports to Congress issued in February 2011 and March of this year.

9. Please describe how you have acted based on your assessments. For instance, how have the measures you have put in place resulted in the improvement of less effective programs and/or the discontinuation of ineffective ones?

We will not solve the intellectual property theft problem by simply doing more of the same thing. Improved coordination, greater focus on enforcement and ensuring that our laws are strong are potential tools to address intellectual property infringement. The Joint Strategic Plan on Intellectual Property Enforcement seeks to advance, and is implementing, many of those changes. The Administration also adopted a new and innovative approach to combat infringement online, which focuses on combining voluntary private sector cooperation, and increased education to the public about the risks of and damage done by infringement.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market.

To ensure that precious investigative resources are not expended on duplicative efforts, the IPR Center brings together 20 partner agencies in a de-confliction process. The agencies work cooperatively on investigations using their agency-specific expertise to develop cases with one another. In FY 2011, the IPR Center vetted 178 leads directly referred to it and de-conflicted

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2,877 investigations opened by field offices of partner agencies—an increase of 429% from FY 2010.

Another example that demonstrates how my office had responded to improve less effective efforts pertains to the comprehensive review of existing intellectual property laws to determine needed legislative changes. In March 2011, we issued a White Paper that set forth the Administration's 20 legislative recommendations designed to strengthen intellectual property enforcement. These legislative recommendations seek to provide enhanced penalties for offenses involving the misappropriation of trade secrets, economic espionage, and for intellectual property offenses involving organized crime, repeat offenders, counterfeit drugs, and sales of infringing products to the military and law enforcement. The recommendations also outline legislative changes that will provide enforcement agencies the tools to combat infringement and curb the sale of counterfeit pharmaceuticals. Finally, the White Paper recommends that Congress amend the laws to continue to keep up with technology by clarifying that distribution by streaming or other new technology is a felony, similar to infringement by traditional distribution methods.

Throughout this legislative session, Congress has acted on many of the recommendations including introducing bills to punish economic espionage, fight counterfeit drugs, clarify that commercial streaming is a felony, improve disclosure authority, and increase penalties for sales of counterfeits to the military. In December, the President signed into law the National Defense Authorization Act for FY 2012 (NDAA). Section 819 of the NDAA includes provisions that (1) increase penalties for sales of counterfeit goods sold to, or for use by, the military or national security applications, and (2) provide CBP with explicit authority to give right holders more information to assist CBP with its infringement determination. These specific portions of the NDAA achieve key objectives set out in the Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations.

Three additional legislative recommendations became law on July 9, 2012, when President Obama signed the Food and Drug Administration Innovation and Safety Act (FDAISA), which contained a number of provisions directed at combating counterfeit drugs. Specifically, FDAISA provides for enhanced penalties under Title 18 for trafficking in counterfeit drugs and directs the U.S. Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements related to offenses that involve counterfeit drugs. It allows the FDA to require that companies notify the Agency if their drug has been counterfeited or stolen. In addition, the Act allows the FDA to destroy, without the opportunity to export, counterfeit drugs distributed in small packages (valued at $2,500 or less).

I look forward to working with Congress on the remaining legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

10. Do you weigh the effectiveness of DOJ grants against other uses of the granted money? If so, how?

DOJ's Bureau of Justice Assistance (BJA) continues to provide grant funding to state and local law enforcement agencies, as well as nonprofit organizations, to establish or maintain ongoing IP task forces and to support efforts to educate the public to prevent, deter, and identify intellectual

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property crimes. The BJA program has been very successful and has bolstered the efforts of state and local authorities to combat intellectual property crime on a local level. In 2011, there were a number of notable and successful cases resulting from BJA grants, including the seizure of $1.1 million dollars in counterfeit UL-labeled stereo and audiovisual equipment by North Carolina state law enforcement authorities. In that case, the items seized posed a shock and fire hazard to users and would have endangered consumers had these products reached their intended markets.

Taken together, as of June 2012, the BJA program grantees have seized approximately $200 million worth of infringing merchandise, currency, and other assets since October of 2009—over 18 times the amount invested in the program ($10.9 million). In 2011 alone, program grantees seized nearly $64 million worth of infringing merchandise..

The BJA does utilize benchmarks to assess grantees' effectiveness. I would refer you to the staff of the BJA as to the exact criteria utilized to weigh the effectiveness of DOJ grants.

11. How have you assessed which grant recipients are the most effective?

Please see response above.

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SUBMISSIONS FOR THE RECORD

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20502

Testimony of Victoria A. Espinel
U.S. Intellectual Property Enforcement Coordinator
Office of Management and Budget
Before the U.S. Senate Committee on the Judiciary
Washington, DC
May 9, 2012

Chairman Leahy, Ranking Member Grassley, members of the Committee on the Judiciary: Thank you for your continued leadership on this important issue. I also want to thank you for the support that this Committee has provided to my office and the Administration's overall intellectual property enforcement efforts. Although my young office operates with limited resources, your support and the attention you bring to this issue has helped us to be more effective.

In June of 2010, we sent to you the Administration's Inaugural Joint Strategic Plan on Intellectual Property Enforcement. That Strategy was developed with significant public input -- including more than 1,600 comments from the public -- and the coordinated efforts of the Federal agencies, including the U.S. Departments of Commerce (DOC), Health and Human Services (HHS), Homeland Security (DHS), Justice (DOJ), State and the Office of the U.S. Trade Representative (USTR). The overarching goal of the Strategy is to protect U.S. jobs, to increase exports of innovative technology and creative works and to support and protect our intellectual property rights, thereby allowing America's innovation to continue to drive our economic growth. A second principal goal is to protect the health and safety of the public. In that Strategy, we set out six broad principles that we would follow to meet our goals and 33 specific actions that we would take to improve enforcement. We knew the Strategy would take time to fully implement, and we are making progress in doing that. I want to highlight some of the concrete steps that we have taken to support those principles and to improve enforcement since we issued the Strategy.

I. Lead by Example

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First, we will lead by example and work to ensure that the U.S. Government does not purchase or use infringing products. Specifically, we must prevent counterfeit and pirated products from coming in to the U.S. Government supply chain and take aggressive action especially against those who sell counterfeits to our military or for critical infrastructure needs. To that end, in December 2011, President Obama signed into law the National Defense Authorization Act of 2012 (NDAA), which includes provisions that (1) increase penalties for sales of counterfeit goods sold to, or for use by, the military or national security applications, and (2) provide authority to give rightholders more information to help determine if imported products suspected being counterfeit are genuine or not. These specific pieces of NDAA achieve key objectives in the Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations. We thank the members of this committee, and other members of the Congress, who worked so hard to make the protection of intellectual property a significant part of our Nation's defense.

Also, we continue to work closely with the Department of Defense (DOD), National Aeronautics and Space Administration, DOJ, DHS and other Federal agencies in examining ways to prevent counterfeit and pirated products from entering the United States government's supply chain, particularly our military and critical infrastructure. For example, in August 2011, the IPEC took aim at counterfeits in the United States Government supply chain by releasing a Federal Register Notice that sought comment from the public on how the U.S. Government can prevent counterfeit products from entering its supply chain. The IPEC has now processed the feedback and further agency input into recommendations that will be available soon.

We also continue to pursue, catch, and punish those who are selling fakes into our military supply chains, through aggressive and coordinated seizures, investigations, and prosecutions. For example, in October 2011, a Federal judge sentenced a defendant to 38 months in prison for her part in a scheme in which she and others imported $15.8 million worth of counterfeit integrated circuits from China and Hong Kong and sold hundreds of thousands of them to the U.S. Navy, defense contractors and others, marketing some of the products as "military-grade." The success of this case depended on the closely coordinated work of U.S. Immigration and Customs Enforcement – Homeland Security Investigations (ICE-HSI), Naval Criminal Investigative Service, the Department of Transportation's Office of the Inspector General, the U.S. Postal Inspection Service, DOD, U.S. Customs and Border Protection (CBP), and the U.S. Attorney's Office for the District of Columbia. Also, in March 2012, the FBI and Offices of Inspector

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General from both the Department of Transportation and the Department of Labor arrested 15 individuals for their role in a scheme to falsely certify the quality of aircraft windows.

II. Transparency

Second, we will be transparent in our policymaking and enforcement. The IPEC maintains an open door policy and meets with hundreds of stakeholders, large and small, across a broad range of sectors in developing and implementing the Administration's strategy for intellectual property enforcement. Also, the IPEC issues a periodic report to the public, called the Intellectual Property Spotlight, which reports on what the U.S. Government agencies, along with their state, local, and foreign law enforcement partners, are doing to protect intellectual property. The Department of Justice and FBI also publish annual reports on IP enforcement pursuant to the PRO IP Act, and meet regularly with stakeholders and victims of IP crime. Finally, the National Intellectual Property Rights Coordination Center (IPR Center) continues to provide information to victims and rightholders through its outreach program known as Operation Joint Venture. In FY 2011, Operation Joint Venture conducted 352 outreach and training events to 17,083 individuals, an increase of 16 percent over FY 2010.

In February of this year, I hosted a meeting between members of the interagency work plan group which I chair, and private sector industry stakeholders. The purpose of this meeting was to get stakeholder input for improving the execution of plans involving our intellectual property working groups located at key U.S. embassies.

III. Improve Coordination

Third, we will improve coordination, including coordination of our law enforcement, the men and women stationed in our embassies overseas and our international training with foreign officials meant to build capacity.

Towards this end, we have identified 17 countries in which improving intellectual property enforcement is a priority. The embassies in each of those countries have each established senior-level intellectual property working groups and have completed detailed plans setting out the actions each embassy will take to address the specific challenges in those countries. Each country's post has a formal interagency team of U.S. Government personnel stationed there to help improve the host country's protection and enforcement of intellectual property rights.

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We established these interagency working groups to better coordinate our training efforts and to make sure that our limited resources are used wisely. In May 2011, as part of this effort, the U.S. Patent and Trademark Office (USPTO) launched a new searchable database (www.usipr.gov) for U.S. Government intellectual property enforcement training programs conducted around the world. In 2011 alone, the database listed over 100 training programs conducted by 7 U.S. Government agencies in 36 countries.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market. By ensuring that we are using our precious resources in the most efficient manner we can make better informed decisions and maximize assets. Last year, federal law enforcement took a modest 5% increase in spending and turned it into a 33% increase in operations in comparison to the previous year. Since 2009, the Department of Justice's Bureau of Justice Assistance awarded $10.9 million in grants to state and local law enforcement agencies for intellectual property enforcement, as well as support training, technical assistance, and outreach. The return on the total investment yielded seizures of infringing goods that were valued in excess of $202 million – roughly 18 times the value of the original grants.

Perhaps one of the most impressive statistics regarding efficient coordination involves the National Intellectual Property Rights Coordination Center. Under the leadership of ICE-HSI in coordination with the 20 participating agencies – including international partners like INTERPOL, the Royal Canadian Mounted Police, Mexican Customs and recent addition EUROPOL – the center maximized resources through the de-confliction of cases. The de-confliction process has been collaborative and complementary, using each agency's comparative advantage to most efficiently conduct the investigation. The agencies have cooperatively worked on investigations using their agency-specific expertise to develop cases with one another. This includes FDA pharmaceutical testing, Consumer Product Safety Commission (CPSC) product safety analysis, IRS financial audits, Postal Service package inspections, CBP import targeting, ICE HSI undercover operations, FBI undercover investigations, and many other activities. Last fiscal year, the number of leads de-conflicted totaled 2,877 – a 429% increase compared to 2010.

IV. Increase enforcement efforts overseas

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Fourth, we will increase enforcement overseas, including pressing foreign governments to do more to protect American right holders. Ten days ago, USTR issued the 2012 Special 301 Report. This report is an annual review of the state of intellectual property rights (IPR) protection and enforcement by trading partners around world.

This year's Special 301 Report highlights progress made in Spain, which after years of placement on the Watch List, was removed from the list because of steps made to address piracy over the Internet, including the recent adoption of regulations to implement a law to combat piracy over the Internet. Malaysia was also removed from the Watch List after passing significant copyright amendments to strengthen its protection and enforcement against copyright piracy and promulgating regulations to protect pharmaceutical test data. The United States will continue to monitor progress in these two trading partners, and will continue to work with these trading partners to address other areas of concern. In addition, Ukraine was moved to the Priority Watch List in this year's Special 301 Report, because of its failure to effectively implement its 2010 IPR action plan, and in light of serious concerns relating to counterfeiting and rampant piracy, including piracy over the Internet.

In addition to the removal of Spain and Malaysia from the Watch List and inclusion of Ukraine on the Priority Watch List, the 2012 Special 301 Report noted significant new IPR laws, rules, or leadership structures in Israel, the Philippines, Russia and China, among other countries. Significant trends noted in the report included growth in the online sale of pirated products and counterfeit hard goods; a surge in the use of legitimate courier services to deliver infringing goods; an increase in the practice of shipping of counterfeit products separately from labels and packaging in order to evade enforcement efforts; growing challenges facing rights holders seeking to collect royalties that are legally owed for the public performance of their musical works in certain regions; the need for stronger and more effective criminal and border enforcement to stop the manufacture, import, export, transit, and distribution of pirated and counterfeit goods; the manufacture and distribution of pharmaceutical products bearing counterfeit trademarks; and bulk active pharmaceutical ingredients (API) used to manufacture pharmaceuticals that bear counterfeit trademarks that are not made according to good manufacturing practices.

In September 2011, the FBI posted an agent dedicated to intellectual property investigations in Beijing, China to work full time on intellectual property matters. That agent will be in addition to existing FBI Attaché staff in Beijing and the ICE-HSI special agent dedicated to intellectual property issues, who are also

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stationed in China. USPTO added two Intellectual Property Attachés in Beijing and Guangzhou and will station a third in Shanghai.

Moreover, in the President's 2013 budget, DOJ requested funds to place six International Computer Hacking and Intellectual Property (ICHIP) Coordinators in strategic global locations to strengthen international intellectual property efforts. The ICHIP program would also support the DOJ's transnational organized crime strategy as related to intellectual property rights (IPR), online fraud, and data breaches that threaten U.S. economic security in targeted regions around the world.

We are pressing our foreign counterparts to do more. President Obama, Vice President Biden, U.S. Trade Representative Ron Kirk, and other senior Administration officials have directly and repeatedly pressed China and other countries to do much more to combat intellectual property theft.

For example, in November 2011, President Obama continued the Administration's press for more American jobs at the Asia Pacific Economic Cooperation (APEC) leader's summit, by calling attention to China's record on intellectual property. Following closely in November, at the 22nd Joint Commission on Commerce and Trade (JCCT) in Chengdu, China, Administration officials from the U.S. Trade Representative, and the Departments of Commerce and Agriculture secured important commitments from China on key intellectual property issues, including: the establishment of a State Council-level leadership structure to lead and coordinate intellectual property rights enforcement across China; the completion dates for the legalization of software at the provincial, municipal, and county level governments; and the elimination of any catalogues or other measures linking innovation policies to government procurement preferences at the provincial, municipality, and autonomous region levels.

Vice President Biden also continued the Administration's engagement on intellectual property rights as part of his August 2011 trip to China, pressing for better enforcement in several forums, including in his meetings with China's leaders. Chinese Vice President Xi Jinping affirmed China's commitment to intellectual property rights (IPR) enforcement, promising that China would intensify IPR protections and treat all businesses equally in terms of accreditation of indigenous innovation products and government procurement. In February 2012, during Vice President Xi's visit to the United States, Vice President Biden was able to persuade the Chinese to raise their quota cap on American movies and negotiated a better revenue share for distributors.

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And just last week, at the conclusion of this year's U.S.-China Strategic and Economic Dialogue in Beijing, China agreed to increase enforcement against thieves who would steal trade secrets from foreign companies, and it committed to treat intellectual property owned or developed in other countries the same as that developed in China.

China also, for the first time, committed to creating an environment where the level of sales of legitimate IP-intensive products and services within its border will increase, in line with its status as a globally significant economy. This commitment in particular is a meaningful one, as an underlying goal of strong IP enforcement is to ensure that legitimate sales can flourish and take back the marketplace from the clutches of the pirates and counterfeiters.

We are also seeing greater cooperation from some foreign governments in law enforcement operations. For example, the Department of Justice and the FBI worked with their foreign counterparts in New Zealand, Hong Kong, the Netherlands, and Germany in the investigation of Megaupload and the arrest of its operators. That investigation is still pending and the case is still active so I cannot comment on specifics. However, the investigation could not have moved forward without the assistance of foreign law enforcement that was willing to cooperate. The important take away is that this case is the exception and not the rule in investigations involving foreign based websites.

In June 2011, ICE-HSI Brasilia special agents participated with Brazilian authorities in operations against several complexes near a shopping district that led to the seizure of 10 million items estimated to be worth the equivalent of approximately $255 million. The Sao Paulo Mayor's office initiated the program and invited ICE-HSI Brasilia special agents to participate in the operation which included 400 Brazilian national, state, and city-level officials.

In July 2011, the IPR Center, with DOJ and other agency participation, organized an IPR criminal enforcement symposium in Manila, Philippines for law enforcement officers, prosecutors, and officials. Within two months of the symposium, Philippine law enforcement officers conducted two highly successful operations. First, in late August, HSI Manila special agents assisted the National Bureau of Investigation in seizing counterfeit Oakley merchandise, worth approximately $1.2 million, during the execution of six search warrants executed in Manila, Philippines. Then, a day later, HSI Manila special agents assisted the Philippine Bureau of Customs in seizing approximately 6,000 counterfeit luxury

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branded products, estimated at $17 million, during the execution of a search warrant in Manila, Philippines.

Also, Operation Pangea IV was launched by INTERPOL and the World Customs Organization (WCO) in September, involving 81 participating countries, in a global law enforcement effort focused on websites supplying illegal and dangerous medicines. As a result, 2.4 million illicit and counterfeit pills worth $6.3 million were confiscated, 13,495 websites were shut down, and 55 individuals are currently under investigation or under arrest, according to INTERPOL.

Operation APEC was a CBP-led Asia Pacific Economic Cooperation (APEC) Mutual IPR Enforcement Operation. The operation targeted counterfeit pharmaceuticals by developing model practices for intellectual property enforcement in international postal and express courier facilities. This is the first time a joint law enforcement operation has ever been conducted through the auspices of APEC. The United States and ten other countries participated in the operation which had enforcement actions ranging from detentions to seizures taken on over 1,200 shipments. The United States' side of the operation was conducted by CBP and seized over $230,000 worth of counterfeit pharmaceuticals.

In addition, Operation Short Circuit was the culmination of a three-month operation conducted by 43 countries and led to the seizure of more than one million counterfeit electrical goods. This operation was spearheaded in the United States by the IPR Center and conducted on an internal level in coordination with the WCO. This operation resulted in the seizure of counterfeit electrical goods that posed a significant risk to public safety.

Finally, during a six-week operation in November and December, the IPR Center coordinated several Federal agencies, state and local law enforcement, and the Government of Mexico to seize over 327,000 counterfeit items worth an estimated $76.8 million, which is nearly 200% greater than the first iteration of Holiday Hoax in 2009 ($26 million). The operation spread across 66 U.S. cities; 55 cities in Mexico; and Seoul, South Korea. Local authorities have also arrested 33 people connected to the violations.

In addition to the recent and significantly successful international law enforcement cooperation achieved, 2011 also built on the strides made for trade policy tools to protect intellectual property. For example, after completing negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) with 37 other countries, who together with the United States represent over 50 percent of global

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trade, the United States and seven other countries signed ACTA in October. ACTA provides for enhanced international cooperation; promotion of sound enforcement practices; and a strengthened legal framework for IPR enforcement in the areas of criminal enforcement, enforcement at the border, civil and administrative actions, and distribution of copyrighted material on the Internet. This agreement is in addition to three bilateral Free Trade Agreements with Colombia, Panama, and South Korea which were both overwhelmingly approved by the Congress and signed by President Obama in October 2011. Each of these trade agreements contains a chapter dedicated to intellectual property rights, with state-of-the-art protections spanning all types of intellectual property, and requirements to join key multilateral intellectual property rights agreements. They also contain strong provisions to ensure that intellectual property rights are efficiently and effectively protected in those countries.

China is clearly a priority focus because of the scope and volume of its problems there. Due to growing concerns over China's administrative and judicial systems of patent enforcement, IPEC in 2011 launched an initiative to hear from U.S. companies about any challenges they have faced when enforcing their patents in China. IPEC and USPTO have conducted roundtables in Washington, Beijing, Shanghai, and Guangzhou as part of a new focus this year on China's patent enforcement system. Public comments were solicited through a Federal Register Notice in October. The U.S. Government is looking for ways to address companies' concerns, including the lack of effective discovery, low damages awards, unexamined utility model patents, and enforceability of judicial orders.

USTR released its first-ever out-of-cycle Notorious Markets List in February 2011, listing more than 30 online and physical foreign markets that deal in infringing goods, including several markets based in China. As a result of the increased attention to these markets, Taobao, China's leading business-to-consumer website listed on the Notorious Markets List, launched a campaign to address the availability of infringing goods through its website. Baidu, a leading Chinese search engine listed in the report, signed a music licensing agreement with One-Stop China, a joint venture between the Universal Music Group, the Warner Music Group, and Sony BMG. USTR released a second out-of-cycle Notorious Markets List in December 2011. Baidu was removed from the Notorious Markets List as a result of its landmark licensing agreement with U.S. and other rights holders. However, Taobao, which appears to have made efforts to address intellectual property rights infringement at its site, reportedly continues to offer infringing products and therefore remains on the Notorious Markets List.

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ITA and USPTO also continued to educate U.S. small- and medium-sized companies regarding intellectual property issues in China. ITA's Office of China Economic Area hosts a China IPR webinar series, free of charge, on the website www.stopfakes.gov, with 15 webinars conducted in 2011, on topics such as Chinese bad-faith trademark squatting, protection of intellectual property at Chinese trade fairs, and intellectual property licensing in China. STOPfakes.gov, which was recently designed to be more user-friendly, is maintained by ITA's Office of Intellectual Property Rights.

One of my serious concerns related to China is the threat to U.S. innovation from economic espionage and trade secret theft by persons on behalf of Chinese companies. Economic espionage and the theft of trade secrets represent a significant cost to victim companies and threaten the economic security of the U.S.

Economic espionage and trade secret theft inflicts costs on companies such as loss of unique intellectual property, loss of expenditures related to research and development, and loss of future revenues and profits. Many companies are unaware when their sensitive data is pilfered, and those that find out are often reluctant to report the loss, fearing potential damage to their reputation with investors, customers, and employees.

The pace of foreign economic collection of information and industrial espionage activities against major U.S. corporations is accelerating. Foreign competitors of U.S. corporations with ties to companies owned by foreign governments have increased their efforts to steal trade secret information and intellectual property. The loss of this information and intellectual property can have serious repercussions for the victim company.

For FY 2011, DOJ and the FBI saw an increase of 29 percent in economic espionage and trade secret theft investigations compared to FY 2010. As a result of recent Federal investigations and prosecutions, evidence suggests that economic espionage and trade secret theft on behalf of companies located in China is an emerging trend. In FY 2010, of the nine cases brought to date pursuant to 18 U.S.C. § 1831 – economic espionage to benefit a foreign agent – seven have involved a link to China. U.S. corporations and cyber security specialists also have reported an onslaught of computer network intrusions originating from Internet Protocol (IP) addresses in China, which private sector specialists call "advanced persistent threats." Some of these reports have alleged a Chinese corporate or government sponsor of the activity. However, law enforcement and the intelligence community have not been able to attribute many of these private sector data

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breaches to a state sponsor. Attribution is especially difficult when the event occurs weeks or months before the victims request law enforcement help.

V. Secure our supply chain

Fifth, we will secure our supply chain. That includes securing the physical border, working to minimize infringing products coming into the United States and preventing innovative technology from being illegally transferred out of the United States.

The Administration takes the threat to health and safety from fake products very seriously. In 2011, the United States Government agencies have reflected that concern by engaging in highly coordinated and successful activities that included international operations, domestic investigations, and high-level prosecutions against especially egregious offenders whose intellectual property theft activities directly threatened lives with illegal pharmaceuticals, dangerous consumer electronics, fakes sold to the military, and even human trafficking.

Because of serious risks to health and safety, combating counterfeit drugs is a major priority. Fortunately, the Administration is turning the tide by reinventing the ways that the U.S. Government agencies enforce against fake prescription drugs. For example, in 2011 CBP instituted a pilot program—the Centers for Excellence and Expertise (CEE)—that focused on forming closer partnerships with pharmaceutical and electronics companies to better understand the industry's practice, and to leverage this information into more efficient and effective enforcement. CEE's success cannot be denied as the pilot – now a full-blown center – increased the amount of DHS fake pharmaceutical seizures by nearly 200 percent. In March of 2011, we sent to Congress a strategy which laid out how we will combat counterfeit drugs sold on the Internet, smuggled into the U.S., and sold in cities throughout the United States. We plan to update this strategy and send the results to Congress later this year.

Securing our supply chain includes not only the physical border, but also combating infringement in the digital world. Since 2010, we have advanced a coordinated approach to combat online infringement: increased law enforcement action, voluntary efforts by the private sector and consumer education.

In June 2010, DOJ and ICE-HSI announced the first coordinated effort to target websites engaged in distributing or providing access to pirated or counterfeit goods. Under Operation In Our Sites, American law enforcement has conducted a

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series of operations seizing over 750 domain names. Over 500 million visitors to these sites were redirected to a banner informing them of the domain name's seizure and of the criminal penalties for infringement.

Effective enforcement against online infringement also requires strong laws that keep up with technology. In March of 2011, we made 20 recommendations for legislative changes to Congress to strengthen enforcement. Those recommendations are up on the White House website. Since the release of the legislative recommendations, we have been working with Congress on legislative proposals that reflect the White Paper recommendations. As discussed earlier, two of those recommendations are now law, and we look forward to making further strides with the Congress towards the rest.

We know that there is a great deal of interest in Congress to give our law enforcement additional tools to stop websites engaged in substantial criminal infringing activity. We believe that new legislative and non-legislative tools are needed to address offshore infringement and counterfeiting and call on all stakeholders to work cooperatively together.

In January of this year, I co-authored a White House blog post in response to a We the People petition regarding online piracy legislation that was being considered in Congress. This response clearly stated the Administration's position. Specifically, the Administration recognizes that online piracy is a serious problem, but also makes it clear that we will not support legislation that reduces freedom of expression, decreases cybersecurity or undermines the dynamic, innovative global Internet. The Administration remains committed to working with Congress to ensure that these issues are addressed in a manner that takes into account the challenges and opportunities of the Internet and that is consistent with the Administration's goals and public policy principles.

On engagement with the private sector, we know that effective enforcement must involve private-sector stakeholders. We are working with private-sector companies that facilitate or benefit from e-commerce to encourage practical and effective voluntary actions to address repeated acts of infringement. These voluntary agreements must respect privacy, due process and protect legitimate uses of the Internet. In 2011, my office worked with Internet Service Providers, advertisers, industry associations, credit card companies, payment processors, search engines, domain name registrars and registries to help facilitate action against illegal activity. And the results are noteworthy.

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Last week, the Association of National Advertisers and the American Association of Advertising Agencies issued a leadership pledge to address online piracy and counterfeiting. In their joint statement, they recognized that Internet advertising may unintentionally provide financial support to, or otherwise legitimize "rogue" Internet sites whose primary and apparent purpose is to steal or facilitate theft of American intellectual property. To combat this complex problem, the associations encouraged their members to voluntarily avoid placement of their ads on such sites. This statement was also supported by the Interactive Advertising Bureau.

In June 2011, American Express, Discover, MasterCard, PayPal and Visa—major credit card companies and payment processors—reached an agreement to develop voluntary best practices to withdraw payment services for sites selling counterfeit and pirated goods.

In July 2011, a voluntary agreement was finalized among several internet service providers (ISPs) - AT&T, Comcast, Cablevision, Verizon, and Time Warner Cable - and major and independent music labels and movie studios to reduce online piracy. Under the agreement, ISPs will notify subscribers, through a series of alerts, when their Internet service account appears to be misused for infringement on peer-to-peer networks.

Finally, in December 2010, as a result of the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and internet intermediaries announced that they would form a non-profit group to combat illegal fake online "pharmacies." In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions; they are currently in talks – which we are coordinating – with FDA to establish a process for sharing information, to the extent permitted by law, on fake online pharmacies.

The third piece of our online enforcement approach is to make sure the public is aware of the risks of counterfeiting and piracy online. It is essential to inform the public of the far-reaching implications that counterfeiting and other intellectual property crimes have on jobs, the economy and the health and safety of consumers.

In November 2011, I joined Attorney General Eric Holder, Deputy Secretary of Commerce Rebecca Blank, ICE Director John Morton, and the President of the

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National Crime Prevention Council, Ann Harkins, in unveiling the first comprehensive public awareness campaign to inform the public about the dangers of counterfeits and piracy. The campaign includes a television ad, new media ads, radio ads, and posters and was partially funded through the Department of Justice's Bureau of Justice Assistance

VI. Data

Finally, we will want to ensure that our policies are built on the best data possible. Last month, I was joined by Commerce Secretary John Bryson, Deputy Secretary of Commerce Rebecca Blank, USPTO Director David Kappos, U.S. Chamber of Commerce President and CEO Thomas Donohue, and President of the AFL-CIO Richard Trumka in announcing the release of a report by the U.S. Department of Commerce identifying the sectors that generate intellectual property and the impact of those sectors on the U.S. economy. The report examined the quantifiable metrics of jobs, exports, and wage premiums that those sectors support. This study is the first of its kind — never before has the U.S. Government produced a report of this scale that analyzes the nature and impact of intellectual property across the entire American economy.

Some key findings determined that intellectual property is a key driver of our economy. The report found that IP-intensive industries create 27.1 million jobs and indirectly support another 12.9 million jobs. All told, nearly 30 percent of all U.S. jobs are directly or indirectly attributable to the IP-intensive industries.

Intellectual property is also critical to our balance of trade; goods from the IP-intensive industries account for 60 percent of all U.S. exports. In 2010 alone, IP-intensive industries accounted for about $5.06 trillion in value added, or 34.8 percent of U.S. gross domestic product.

As the Joint Strategic Plan described a year ago, the U.S. Government is committed to utilizing the resources at our disposal to improve intellectual property enforcement to grow the U.S. economy; create jobs for American workers and support for U.S. exports; promote innovation and the security of America's comparative advantage in the global economy; protect consumer trust and safety; protect national and economic security; and enforce rights consistent with U.S. law.

Mr. Chairman, in closing, I commend this Committee's leadership on intellectual property enforcement. Several members of this committee have sponsored legislation aimed at protecting intellectual property rights. Intellectual

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property is used everywhere in the U.S. economy and intellectual property rights support innovation and creativity in virtually every U.S. industry. That creativity and innovation must be protected through approaches that include increased law enforcement operations both domestically and by foreign governments, bridging the public awareness gap regarding the dangers of online infringement, voluntary action by the private sector and encouraging the development of authentic alternatives for consumers.

I look forward to working closely with this Committee on improving our protection of American intellectual property. Now, I would be happy to take any questions.

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Statement of Senator Grassley for Judiciary Committee Hearing "Oversight of the Office of the Intellectual Property Enforcement Coordinator," May 9, 2012

Mr. Chairman, first I'd like to thank you for holding this oversight hearing. It's important that the Committee receive an update on what the Office of the Intellectual Property Enforcement Coordinator has been doing to improve protection of American intellectual property. Welcome back to the Committee, Ms. Espinel. We're glad to hear from you today.

The United States is a global leader in innovating, creating, and developing new technologies and products. Intellectual property plays a crucial role in supporting technological advances, innovation and creativity.

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Not only that, intellectual property plays a critical role in job creation, economic growth, and the balance of trade.

A recently released report by the Department of Commerce measured the economic impact of intellectual property on the United States economy and found that "the entire U.S. economy relies on some form of intellectual property, because virtually every industry either produces or uses it."

Among its principal findings, the Commerce Report found that in 2010, 27.7% of all jobs in the United States were directly or indirectly attributable to intellectual property intensive industries. Specifically, in 2010, intellectual property intensive industries directly supported 27.1 million American jobs and indirectly supported another

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12.9 million jobs. The jobs in intellectual property intensive industries paid well compared to other jobs, specifically 42% higher than in other non-intellectual property intensive industries. Further, according to the Commerce Report, in 2010, these industries accounted for approximately $5.06 trillion in value added, or 34.8% of United States gross domestic product. Merchandise exports of intellectual property intensive industries totaled $775 billion in 2010, accounting for 60.7% of all United States exports.

This data demonstrates the importance of intellectual property in the United States economy and why intellectual property should be protected. So it is really unfortunate that intellectual property theft has increased dramatically, adversely impacting American businesses that innovate and generate new products and jobs for

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Americans. According to one report, domestic production and consumption of counterfeit and pirated products cost our economy $215 billion annually, while counterfeit and pirated products account for $360 billion in losses in international trade annually. The global impact of counterfeiting and piracy is even more dramatic, amounting to $650 billion annually and resulting in the loss of 2.5 million jobs in the G-20 economies.

In addition to the loss of jobs and adverse impact on the United States economy, intellectual property theft is a serious consumer protection issue. I can't imagine that anyone intentionally sets out to buy unsafe or defective counterfeit goods, especially counterfeit pharmaceuticals. Yet unsuspecting consumers are scammed all the time into purchasing these dangerous

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and potentially life threatening products. Even the federal government, including our military, is duped into buying harmful and sub-par counterfeit products, putting people at risk. This is not acceptable.

So it's important for the Judiciary Committee to examine how industry and the federal government are addressing intellectual property crimes, what is being done to enforce intellectual property rights, and how the word is getting out that intellectual property theft hurts the United States economy, threatens jobs, and puts people at risk of harm. It's also important for us to ensure that efforts to combat counterfeiting and piracy do not limit freedom of expression, inhibit innovation, impair privacy and security, or undermine the internet.

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Mr. Chairman, I have another commitment at 10:30 so I'll have to leave early, but if I don't have the opportunity to ask questions here, I'll submit them in writing.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Oversight Of The Office
Of The Intellectual Property Enforcement Coordinator
May 9, 2012

I am pleased to welcome the Intellectual Property Enforcement Coordinator, Victoria Espinel, back to the Committee today to discuss the work that is being done to enforce our Nation's intellectual property laws. As we move further into the 21st century, intellectual property is one of America's most important assets. A report released by the Department of Commerce shows that IP-intensive industries directly accounted for over 27 million jobs in 2010—nearly one in five jobs across the country. They indirectly support another 12.9 million jobs. Protecting American industry and innovation is not a Republican or Democratic issue, but a national priority that benefits all of us.

This is the third oversight hearing this Committee has held to discuss intellectual property enforcement since the establishment of the Intellectual Property Enforcement Coordinator. One of the primary roles of this position is to coordinate the work being done across Government agencies to combat intellectual property theft. I am pleased to have Ms. Espinel here today to talk about the efforts being made not only by her office, but by the numerous departments and agencies with which she works on a daily basis, including the Department of Justice, the FBI, the Department of Homeland Security, and the U.S. Trade Representative.

Last year, the I.P. Enforcement Coordinator, in collaboration with those agencies and others, provided a set of legislative recommendations to Congress designed to strengthen our Nation's intellectual property laws. Congress has already taken action on several of those proposals. Last December, Senator Whitehouse and other members of this Committee worked to pass important legislation that will protect our military supply chain by increasing the penalties for those who sell counterfeit goods for use by the military or in connection with national security.

Congress has also passed legislation, originally part of the PROTECT IP Act, that will make it easier for Customs and Border Protection to determine whether products stopped at the border are counterfeits. This has been a particularly serious concern as the counterfeiting of microprocessors has become increasingly sophisticated. I am pleased that Congress has acted and I will be interested to hear more about the Administration's enforcement.

In March, the Senate passed the Counterfeit Drug Penalty Enhancement Act, a bipartisan bill that I introduced with Senator Grassley to strengthen the penalties for trafficking in counterfeit drugs. I hope that the House will soon vote on that legislation so that it, too, can become law.

These practical measures remind us that effective intellectual property enforcement benefits not only American workers and American companies, but also American consumers. Again, recently we have seen troubling reports of people getting sick because of counterfeit prescription drugs. Law enforcement has seized shipments of counterfeit smoke detectors and electronics. These counterfeit products threaten the safety of Americans and undermine confidence in the marketplace.

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This Committee has worked hard to address these challenges and other problems faced by American workers and consumers because of intellectual property theft. As we go forward, I hope we will also continue to look for balanced solutions to address the continuing problems of intellectual property theft and abuse online.

I have always been committed to a free and open Internet that allows for the free exchange of information and ideas. But our commitment to an open Internet should not give a free pass to the rogue foreign websites that serve no purpose but to steal the hard work of American writers, musicians, and creators. We should all work together to help solve these problems in a balanced and effective way that stays true to our ideals.

I appreciate the work that Ms. Espinel and our Federal agencies are doing to try to meet the threats to American intellectual property and innovation.

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