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PROTECTING U.S. INTELLECTUAL PROPERTY OVERSEAS: THE JOINT STRATEGIC PLAN AND BEYOND

HEARING

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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PROTECTING U.S. INTELLECTUAL PROPERTY OVERSEAS: THE JOINT STRATEGIC PLAN AND BEYOND

WEDNESDAY, JULY 21, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m. in room 2172, Rayburn House Office Building, the Honorable Howard L. Berman (chairman of the committee) presiding.

Chairman BERMAN. The hearing will come to order. In a moment I will recognize myself and the ranking member for up to 7 minutes each to make opening statements. All other members will then have an opportunity to make a 1-minute opening statement if they wish to do so, and without objection members may also place written statements in the record.

Last year the committee held a hearing with witnesses from industry and labor to examine the impact of intellectual property theft on the U.S. economy. Today's hearing will focus on government efforts to stem the problem of piracy.

In my district, I have seen firsthand how piracy and counterfeiting impacts not only creativity, but jobs. The lengthy credits at the end of every movie remind us how many people it takes to bring a film to the screen—and there are many who play supporting roles to the projects who don't even appear in the credits. When a movie is pirated, it puts all of those jobs at risk.

The ease of the distribution in the case of CDs and DVDs make them an obvious target for piracy, but counterfeiting and IP theft impact many other industry from pharmaceuticals to auto parts, from clothing to sporting goods. As such, intellectual property is an integral part of many important policy issues, from climate change, to fighting infectious disease in the developing world, to Russia's accession to the WTO.

The geographic scope of intellectual property theft has also grown. While our attention was previously focused on a relatively small number of countries—most notably Russia and China—we have now seen an explosion of piracy and counterfeiting in many nations. And the situation is further exacerbated by Chinese policies like "indigenous innovation" which may discriminate against foreign intellectual property holders in favor of their own domestic businesses. Today, piracy and counterfeiting has become so effortless, and enforcement resources spread so thin, that the legitimate

marketplace for music and movies is disappearing in countries such as Spain.

The current situation is untenable—and I commend the Obama administration for taking aggressive action to improve enforcement. We were pleased to see Vice President Biden call industry leaders together back in December, and eagerly awaited the Joint Strategic Plan on Intellectual Property Enforcement, which was recently issued by U.S. Intellectual Property Enforcement Coordinator Victoria Espinel, one of our distinguished witnesses today.

In the 2009, Pro-IP Act, we envisioned that the intellectual property enforcement coordinator would work with all the key players in the administration and make policy recommendations to help Congress and the relevant agencies and departments more efficiently and more effectively protect this vital part of our economy. The Joint Strategic Plan takes an important step in the right direction by including IP-enforcement guidelines stretching across eight different Federal agencies. We look forward to hearing Ms. Espinel speak on behalf of the administration about improving and modernizing our laws, and look forward to working with her and ensuring she has adequate resources to do her job.

The coordinator has a tough job that is enhanced by the many agencies it works with to coordinate our IP enforcement strategy. Most recently, I was interested to read about the initiative undertaken by Immigration and Customs Enforcement, or ICE, to seize the domain names of Web sites that were unlawfully offering first-run movies. That is exactly the kind of innovative thinking the Vice President called for—and I am curious to hear from Assistant Secretary Morton on how it came about, the obstacles you faced and how we can scale Operation "In Our Sites" to enterprises that facilitate the theft of music, books and other products prone to counterfeiting.

I understand that the program isn't a panacea—I know that some unlawful sites that we take down today will spring up with new names, and in new jurisdictions, tomorrow. But part of the idea is to educate users—looking for the many legitimate sites such as Hulu, Vevo, Pandora Rhapsody, and others coming online every day.

Senator Leahy and I are exploring legislative approaches to expand on the ICE program, and would like to learn from your experiences before introducing legislation later this month. But we are committed to reining in the rogue sites and the intermediaries that facilitate or support financially the online businesses predicated on theft. As was described at a subcommittee hearing held 3 years ago, Visa testified that its credit card system should not be used for illegal transactions. Furthermore, they stopped processing transactions for ALLOFMP3.com, a notorious foreign Web site based in Russia for downloading illegal music in part because it was the "right thing to do." This should be the guiding principle.

Our frustration with lackluster foreign enforcement is nothing new. The Office of the U.S. Trade Representative has been publishing its Special 301 report for about two decades, detailing the state of intellectual property enforcement in all its forms on a country-by-country basis. While there is some positive news in this year's report in three countries—the Czech Republic, Hungary, and

Poland—have been removed from the watch list much more work needs to be done. Some of the largest countries and largest markets in the world such as China, Russia, and India remain on the priority watch list. The same goes for one of our closest trading partners, Canada, which is on the priority watch list for failing to fulfill international commitments to strengthening its copyright laws and for demonstrating weak enforcement in the IP and online areas.

This committee should play a positive role in moving the ball forward. After last year's hearing on copyright issues, the committee engaged in conversations with the Government of the Bahamas on their compulsory license of pay television which had been on the books for almost 10 years. As a result of our intervention, the Bahamas repealed those compulsory license and copyright owners are now negotiating for their goods and service for market value.

In the State Department authorization bill passed by the House last year, we included a provision that would expand the IP attaché program to provide for greater focus on intellectual property protection in our embassies around the world and station additional personnel in countries where greater U.S. involvement could result in better enforcement.

The committee needs to continue to engage on these issues. I look forward to hearing from all of our distinguished witnesses on the ways we can support a strong and productive government role in protecting one of our most treasured assets.

First, though, I would like to turn to the ranking member, Ileana Ros-Lehtinen for any opening remarks that she may wish to make.

[The prepared statement of Mr. Berman follows:]

Wednesday, July 21, 2010

Verbatim, as delivered

Chairman Berman's opening remarks at hearing "Protecting US IP Overseas: The Joint Strategic Plan and Beyond"

Last year the Committee held a hearing with witnesses from industry and labor to examine the impact of intellectual property theft on the U.S. economy. Today's hearing will focus on government efforts to stem the problem of piracy.

In my district, I have seen first hand how piracy and counterfeiting impacts not only creativity, but jobs. The lengthy credits at the end of every movie remind us how many people it takes bring a film to the screen – and there are many who play supporting roles to the projects who don't even appear in the credits (motel owners, caterers, accountants etc.). When a movie is pirated, it puts all of those jobs at risk.

The ease of distribution in the case of CDs and DVDs make them an obvious target for piracy but counterfeiting and IP theft impacts many other industries from pharmaceuticals to auto parts, and from clothing to sporting goods. As such, intellectual property is an integral part of many important policy issues, from climate change, to fighting infectious disease in the developing world, to Russia's accession to the WTO.

The geographic scope of intellectual property theft has also grown. While our attention was previously focused on a relatively small number of countries – most notably Russia and China – we have now seen an explosion of piracy and counterfeiting in many nations. And the situation is further exacerbated by Chinese policies like "indigenous innovation" which may discriminate against foreign IP holders in favor of their own domestic businesses. Today, piracy and counterfeiting has become so effortless, and enforcement resources spread so thin, that the legitimate marketplace for music and movies is disappearing in countries such as Spain.

The current situation is untenable – and I commend the Obama Administration for taking aggressive action to improve enforcement. We were pleased to see Vice President Biden call industry leaders together back in December, and eagerly awaited the Joint Strategic Plan on Intellectual Property Enforcement, which was recently issued by U.S. Intellectual Property Enforcement Coordinator Victoria Espinel, one of our distinguished witnesses today.

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The Committee needs to continue to engage on these issues and I look forward to hearing from all of our distinguished witnesses on the ways we can support a strong and productive government role in protecting one of our most treasured assets.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. My commitment to protecting the intellectual property rights of U.S. citizens and our companies is longstanding. Prior to becoming the ranking member of this committee, I chaired the Subcommittee on International Economic Policy and Trade where fighting the piracy of intellectual property was one of our top concerns. I would like to note that our chairman has demonstrated consistent leadership on this issue in this committee as well as at the Judiciary Committee where in the 110th Congress Chairman Berman served as the chairman of the Subcommittee on Courts, the Internet and Intellectual Property. Under his direction the Foreign Affairs Committee held a field hearing, as he noted, in California in April 2009, that brought together a remarkable set of witnesses representing the major interests in the music and movie industries. He knows a lot of cool people in Hollywood. Thank you for that hearing.

Their description of the threat to their industries from piracy in China and elsewhere was stunning in its scope and consequences. Unfortunately, this problem has continued to grow rapidly. The Global Intellectual Property Center estimates that the annual loss to U.S. businesses now total over $12 billion in the music recording

industry, $12 billion in the automotive industry, $46 billion the pharmaceutical industry, and $53 billion in the software industry. That is well over $100 billion in income and jobs lost—stolen actually—from this country and our citizens every year.

It is unfortunate that many people in our country and abroad regard these crimes as impacting only faceless and wealthy corporations. The fact is that our economy has become increasingly more knowledge-based, and costs resulting from IPR policy have grown for all of us in terms of reduced employment, reduced income, and government revenue.

The problem is a global one, and there are few countries where it does not occur, including our own, but there are some countries where the problem is not only widespread among the general population, but it is tolerated, even promoted by national and local governments. China is by far the worst violator of intellectual property rights globally, and its government is complicit in ensuring that it keeps its number one position. Chinese authorities have repeatedly pledged to take action to deal with the open and rampant theft of U.S. intellectual property. However their efforts to date have been minimal, especially when compared with the immense resources and energy they have dedicated to censoring the Internet services of content that they find objectionable. In fact, intellectual property piracy in China is rapidly increasing, often with tacit government support and even as a consequence of official policy.

For example, the government is actively supporting efforts by China's largest Internet search company to become a global player. With the government looking on by automatically offering to those who log on its site the opportunity to link to a long list of known music piracy sites, in effect actively facilitating the theft of intellectual property. The Chinese authorities are fully aware of this problem and could stop it with a simple phone call, but they have brushed aside all requests to do so and have deliberately decided to do nothing to halt the aiding and abetting of this continuing theft.

But this is only one of many examples. Intellectual property violations in Russia are also extensive and longstanding, ranging from pirated music and videos to pharmaceuticals. Here, too, the government has repeatedly promised to take action, but then has done little or nothing.

Corruption at all levels of the Russian Government has made this problem a difficult one to address, but it is compounded by the lack of interest on the part of senior officials who see it as an American problem that does not impact them. However, Russia's desire to join the World Trade Organization, or the WTO, provides the United States with the necessary leverage to compel Moscow to carry out its promises. Before the U.S. approves its application, we must require that Moscow take effective action to shut down the expensive piracy of intellectual property occurring on its territory and put in place far-reaching safeguards to ensure that it does not reoccur.

In fact, given Russia's history of broken promises, Moscow should be required to demonstrate a long track record of success prior to an okay by the United States to its joining the WTO.

President Obama has said that increasing U.S. exports is a key to creating jobs here in the U.S. Because those exports are increasingly made up of intellectual property, our future prosperity depends upon our ability to fight piracy in other countries.

An easy way to enhance U.S. exports and intellectual property rights at the same time is through carefully negotiated trade agreements such as those we have already signed with Colombia, Panama and South Korea. These agreements will help raise the standards of our trading partners' national laws and regulations regarding intellectual property protection to new highs. They will also provide enhanced monitoring and corrective measures if the governments refuse to take action to end piracy.

At a time when Americans are apparently facing extraordinary economic challenges, Congress cannot leave the task of protecting intellectual property rights of U.S. citizens and U.S. businesses to the Executive Branch alone. We cannot afford a business as usual approach to those governments that profess friendship and cooperation even as they bless the theft of our citizens' wealth and of our country's prosperity.

Thank you, Mr. Chairman, for this hearing and this opportunity.

Chairman BERMAN. Thank you very much for your very strong statement, and does the gentleman from California seek recognition? The gentleman is recognized for 1 minute.

Mr. SHERMAN. I think we have taken good steps to do what we can to protect intellectual property if we are going to be inside the box, but the problem is as long as we stay inside the box America will be a nation in decline. China is synonymous with intellectual property theft. Our diplomats trip over pirated disks being sold on the streets on their way to meetings where they can make further concessions to the Chinese.

Not content with stealing our intellectual property for the Chinese market, China now wants to steal the U.S. market as well through the Internet. Clearly trade retaliation is necessary to get China's attention, but that would anger many in Wall Street, Washington, and Wal-Mart. We should also be taking cyber offensive to use viruses to shutdown these sites and we should be going after those who advertise on sites primarily dedicated to piracy.

I look forward to trying to get outside the box. I realize that the tendency is to stay inside. Thank you.

Chairman BERMAN. Thank the gentleman. The gentleman from New Jersey, Mr. Smith, is recognized for 1 minute.

Mr. SMITH. Mr. Chairman, it is very sobering to read that the Global Intellectual Property Center estimates almost $125 billion of losses annually in just four industries alone: The pharmaceutical, automotive, recording, and software industries. The loss of American jobs is staggering. Mr. Chairman, as we all know, almost all of the damage done to American workers, to our companies, and to our economy is done by a mere handful of foreign governments—China, Russia, Brazil, Mexico, and just a few others. In fact, the Chinese Government is the cause of most of the problem. It tolerates and in some cases probably encourages widespread infringement of American intellectual property rights, and then exports U.S. property rights infringing products right back to us.

In fact, the U.S. Trade Representative's 2010 Special 301 report said that 79 percent of the infringing products ceased at our border were of Chinese origin.

Mr. Chairman, my hope is that we will take not only Special 301 actions against the Chinese on such things as labor rights, but Special 301 negotiations should be fully initiated, and if they fail we need to take more aggressive action.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from Florida, Mr. Deutch, is recognized for 1 minute.

Mr. DEUTCH. Thank you, Mr. Chairman. Thank you, Ranking Member Ros-Lehtinen. Thank you for holding this hearing. I would like to thank the witnesses for being here today and I look forward to hearing your thoughts.

Intellectual property theft is often overlooked as a serious crime but, unfortunately, it is a highly lucrative underground business that often serves as a profitable and low-risk funding source for very serious criminal activities from international crime groups to terrorist organizations. There are too many examples to list where profits from IP piracy ends up in the hands of terrorist groups. One notable example involves several piracy rings in the tri-border area of South America that have been linked to large-scale donations to the Iranian-backed terrorist organization Hezbollah.

Isolating the sources of this funding through this IP piracy will take high level international cooperation, increased accountability, and adequate resources. This hearing should provide an opportunity to explore this further. I hope we will continue our work on this important issue, Mr. Chairman, and I look forward to probing this further as we get into questions.

I yield back. Thank you.

Chairman BERMAN. The gentleman from California, Mr. Rohrabacher, is recognized for 1 minute.

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

So, we are losing jobs, we are losing over $100 billion a year. This is insane. I will just say that steal from me once, shame on you. Steal from me twice, shame on me. Well, the fact is we have been ignoring this for years. We watched China track down a dissident who may utters a few words on the Internet, and yet they won't put up one bit of effort to try to stop this theft of intellectual property rights which is putting our people out of work, and transferring wealth into their countries. We have been putting up with it. It is time for us not to put up with it anymore. We either get tough on intellectual property rights and the theft of our intellectual property or we will lose the future because that is what the future is all about.

Thank you very much, Mr. Chairman.

Chairman BERMAN. I thank the gentleman, and the gentleman from Illinois, Mr. Manzullo, is recognized for 1 minute.

Mr. MANZULLO. Thank you, Mr. Chairman, for calling this meeting. It has been nearly 2 years since we passed the Pro IP Act and it was signed into law, and it is quite appropriate that we have this oversight hearing today.

IP piracy threatens our future economic prosperity. IP piracy is more than music, it is more than movies, it threatens the long-term health of the manufacturing sector. Coming from a district where

one out of four jobs in our biggest city is directly related to manufacturing, it is quite important to us.

I experienced this issue firsthand several years ago when I advocated for an environmental technology firm located in Rockford, Illinois, which experienced theft of their IP for a wastewater treatment plant when bidding on a project in China. They were one of the few success stories using the Chinese court system to enforce their patent. I worked directly with our U.S. Embassy officials in Beijing who personally monitored the hearing and also worked very closely with the Chinese Ambassador to the United States. At that time I chaired the U.S.-China Interparliamentary Exchange, and he took great interest in the case because it was such a rank violation.

Chairman BERMAN. Time.

Mr. MANZULLO. But it should not take the intervention of a Member of Congress in order to protect our manufacturers.

Chairman BERMAN. The time of the gentleman has expired. I now ask unanimous consent to enter into the record a letter from Jim Gianopulos, chairman and CEO of Fox Filmed Entertainment, and comments from the American Association of Independent Music, supporting the importance of this hearing. The committee has received no letters dismissing the importance of the hearing. [Laughter.]

[The information referred to follows:]

P.O. Box 900
Beverly Hills, California 90213-0900
Phone 310 369 4400 • Fax 310 369 4353

FOX FILMED ENTERTAINMENT
A UNIT OF NEWS CORPORATION

James N. Gianopulos
Chairman & CEO

July 20, 2010

The Honorable Howard L. Berman
Chairman
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Berman:

I want to thank you for holding this important hearing on "Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond." There is no greater threat to the growth of the U.S. economy and job creation then the theft of America's greatest assets, its intellectual property.

We want to applaud the Administration's strategic plan for intellectual property enforcement that was spearheaded by Intellectual Property Enforcement Coordinator, Victoria Espinel. The plan underscores the importance of copyright law as an effective means to protect our nation's creative freedoms, and more importantly, lays out a clear plan to ensure today's laws are better enforced. We look forward to working with the Administration and Congress on implementing the goals of the plan.

I also want to applaud the incredible work recently accomplished by the U.S. Immigration and Customs Enforcement Center. The IPR Center's "Operation in Our Sites" enforcement campaign, under the capable leadership of ICE assistant secretary John Morton, serves as a guiding model from which Hollywood studios and the 2.4 million individuals who work in the creative industry, clearly benefit. We are deeply grateful for the ongoing commitment of ICE in our collective battle against the raging consequences of global Internet content theft.

ICE's recent enforcement actions against illicit websites managed to effectively seize domain names from a number of Web operations and other pay services, all of which trafficked in pirated movies and television content. What was equally impressive was ICE's ability to shut down not only sites in the U.S., but also sites overseas, where ICE has jurisdiction in 44 countries. Without such a coordinated effort put forth by ICE and other government leaders, we as content owners risk not only an enormous revenue loss, but as a nation, we're threatened by the loss of millions of jobs that the film and television production industry provide for Americans.

Fox, and all of our creative partners, are reliant upon the aggressive enforcement programs put forth by John Morton and the IPR Center. We are also grateful for your continued leadership in protecting intellectual property both domestically and aboard. We welcome the opportunity to discuss content enforcement with you or your staff and are here to assist you in any way possible.

Sincerely,

Written Testimony of

American Association of Independent Music (A2IM)

Before the

United State House of Representatives

Committee on Foreign Affairs

Protecting U.S. Intellectual Property Overseas:
The Joint Strategic Plan and Beyond

July 21, 2010

The American Association of Independent Music ("A2IM", www.a2im.org) thanks Chairman. Howard Berman, ranking Member Ileana Ros-Lehtinen and the House of Representatives Foreign Affairs Committee for allowing us to respectfully submit our comments on the current status of International Intellectual Property as it relates to our members. A2IM is a 501(c)(6) not-for-profit trade organization representing the independent music community which, based upon label ownership not distributorship, represents over 90% of annual music label new releases of recorded music and per Nielsen/SoundScan reports. Despite market barriers to entry, independent releases represent over 30% of annual U.S. recorded music sales, including over 38% of digital sales.

A2IM was established five years ago to protect the rights of the American Independent music label community with the core mission statement of obtaining tangible economic gains for its members via advocacy, commerce opportunities, and member services, including education, most notably the Independent Music Label roadmap and resulting new media white papers on E-Mail marketing, Direct-To-Fan commerce and social networks. A2IM's main objective is to also get independent music labels access in the new digital market place for both promotion and monetization.

The Independent Music Sector

The independent music label community A2IM's membership is made up of Independent music labels that have banded together to form a central voice advocating for the health of the Independent music sector. Our membership includes the independent music label leaders like Beggars/Matador/4AD/XL, Concord Music Group, Curb Records, Razor & Tie, Roadrunner, Windup, etc. It should be noted that our membership is not just made up of these market leaders. A2IM membership includes music labels of varying sizes and genres, many owned by artists like Alison Brown and Garry West of Nashville, Burning Spear of Brooklyn, Brett Gurewitz of Epitaph/Anti/Hellcat in L.A., the Hanson brothers in Tulsa, Joan Jett in NYC, Carol King in Idaho, Moe in Buffalo and the Skaggs Family and Gillian Welch in Nashville, etc. Many of our member labels are located across America, in addition to the traditional New York, Nashville and Southern California music areas, including Mountain Apple in Hawaii, Barsuk in Seattle, Kill Rock Stars in Portland, Six Degrees in San Francisco, Basin Street in New Orleans, Saddle Creek In Omaha, RhymeSayers in Minneapolis, Red House in St. Paul, Ghostly in Ann Arbor Alligator in Chicago, Righteous Babe in Buffalo, YepRoc in Haw River, North Carolina, Tropisounds in Miami just to name several, many of which are brands in their own rights, like Alligator is for Blues. In addition to our label members A2IM has associate members, those who work with, depend upon, or just support Independent music. All of our label members have one thing in common that they are small business people with a love for music who are trying to make a living.

The 2009 Recording Industry of America ("RIAA", www.RIAA.com) retail statistics show the precipitous drop in music industry commerce continues. In 1999 RIAA reported revenues at retail of $14.6 billion, all physical recorded music sales. Ten years later in 2009 total revenues reported were $7.7 billion from all sources, which included performance income, subscription services, etc. At these levels of revenues it is hard for our industry to sustain itself and for both music creators and those who invest in that creation to make a living. The fall in music revenues has a multiplier effect on our economy due to its usage in film, TV, advertising, games, etc.

Looking abroad, A2IM supports the proposed Anti-Counterfeiting Trade Agreement (ACTA) agreement for establishing international standards on intellectual property rights enforcement as a must for our industry's survival. In addition, while the effect of piracy and the resulting music slump is a worldwide problem, the U.S. is being particularly hard hit and needs support as the U.S. is losing its place in the world music market. Per the International Federation of the Phonographic Industry ("IFPI", www.ifpi.org) wholesale statistics, in 2005 the U.S.'s share of the international music market was 34%. In 2009 the U.S. was down to 27% market share and was, for the second year in a row, behind Japan in sales of physical CD's.

The independent music sector has been hardest hit by the music industry downturn as, unlike the major labels which all have large staffs and international offices, independent music labels in most cases have historically had smaller staffs and no international offices, resulting in lower potential economies of scale. As music revenues have declined independent music labels have been less able to reduce their staffing and have needed to invest less in signings of new artists and also reduce the amounts spent on marketing and promoting all artists, at home and abroad. This issue combined with shrinking physical retail space (with the remaining retail space being

dedicated to major label hits) and lesser digital financial terms has created a dire economic situation for our members.

The independent music sector has been hardest hit by the music industry downturn as, unlike our major label colleagues, independent music labels have historically had smaller staffs resulting in lower potential economies of scale. As music revenues have declined independent music labels have been less able to reduce their staffing and have needed to invest less in signings of new artists and also reduce the amounts spent on marketing and promoting all artists, at home and abroad. This issue combined with shrinking physical retail space (with the remaining retail space being dedicated to major label hits) and lesser digital financial terms has created a dire economic situation for our members.

This precipitous drop has caused the international market to grow in importance for our members. However the opposite has occurred as, In addition to the overall drop in U.S. share of worldwide music sales, the IFPI has also confirmed that the percentage sales of U.S. repertoire within overseas markets is declining from 35-40% a decade ago to under 30% today. Conversely the international share of the diminishing U.S. market continues to increase, in the past ten years French exports to the U.S. increased from 2% of the French export market revenues to 25% of French export revenues. As other countries music companies receive varied types and levels of industry support from their governments, federal and local, our U.S. music industry continues to languish.

As our country's manufacturing and service sectors move abroad, Intellectual Property is one of the few potential growth areas for our economy and for exports and we, as music creators and small businessmen and investors in music creation from across the country, need our government's support. The bottom line is that the U.S. music industry sound recording creator community has reached the point where unless we get legal assistance in protecting copyrights from infringement and also get the percentage levels of performance income as is achieved in Europe it will be hard for our music creation community to have a business model that allows for both the future creation of music and the financial results to sustain itself and compete on the international stage.

We look forward to continuing to work with your Committee and the broader Congress to explore ways we may ensure this vital sector of our economy remains viable and completes on a level international playing field.

We thank you for your time and please do not hesitate to contact us with any questions at Rich.Bengloff@A2IM.org, 212-999-6113 Ext 1.

Chairman BERMAN. We are very pleased to have Victoria Espinel with us, the only member of the first panel. Victoria Espinel currently serves as the first U.S. Intellectual Property Enforcement Coordinator in the Executive Office of the President. She is responsible for developing and implementing the administration's unified strategy for the defense of intellectual property right.

From 2007 to 2009, Ms. Espinel taught intellectual property and international trade law at George Mason School of Law. Prior to this, Ms. Espinel served as the first Assistant U.S. Trade Representative for Intellectual Property and Innovation at the Office of the USTR, and in that capacity I remember her testifying before the committee down the hall.

She holds a master's of law from the London School of Economics, a J.D. from Georgetown University Law School, and a B.S. in foreign service from Georgetown University's School of Foreign Service.

We are very pleased to have you here and we look forward to hearing your testimony. Your entire statement will be put in the record, and if you would care to summarize your remarks, we welcome you to begin.

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

Ms. ESPINEL. Thank you very much. Chairman Berman, Ranking Member Ros-Lehtinen, and members of the House Committee on Foreign Affairs, thank you for your leadership on this important issue. I feel particularly privileged to work with this committee. This is a global problem that will require global solutions.

As many have already noted, intellectual property infringement affects a vast range of businesses and industry sectors. In developing a strategic plan, we asked the public for input so that the administration could hear their concerns directly, and we received over 1,600 responses. We reviewed all of those responses, and the hundreds of recommendations that came with them, and posted them on our Web site so that everyone could see what we were taking into account.

We met with companies across a broad spectrum of America's industries as well as unions, academics, and consumer groups to engage them about where the problems in enforcement lie, and to find out what we can do to make things better for the many Americans and American industries that depend on intellectual property for success. The strategy that we delivered to Congress a few weeks ago reflects that input from the public.

I also want to emphasize that the strategy reflects an extensive interagency collaboration: Justice, Homeland Security, Commerce, USTR, HHS, State, and others all worked with us to make this an excellent and forward-leaning strategy.

This plan has the ability to alter our approach to intellectual property enforcement for many years to come. To do so we are taking some bold new steps and we look forward to working with this committee on many of them. Let me highlight a few now.

Recognizing the importance of our overseas personnel, we will improve their effectiveness and coordination. Specifically, we will

work to prioritize our personnel where they are needed most. We will establish embassy working groups and work plans to better coordinate, and we will ensure that our overseas personnel have clear priorities and guidance.

We are establishing an interagency working group to improve our capacity-building and training so that foreign governments can strengthen enforcement on their own. We will share plans and information and best practices, focus efforts where enforcement is most needed, develop agency strategic plans, ensure that our trainings are consistent with our laws and with our polices, and coordinate our efforts with international organizations and the business community to make our trainings as effective as possible.

We will work with foreign government to increase foreign law enforcement efforts, and we will promote enforcement of American intellectual property rights through our trade policy tools, including bilateral dialogues, our trade agreements, communicating our concerns clearly through mechanisms such as Special 301, and when necessary, asserting our rights at the WTO to dispute settlement process.

We are establishing an interagency counterfeit pharmaceutical committee to focus on the problems associated with unlicensed Internet pharmacies distributing counterfeits in the United States and the proliferation of counterfeit drugs abroad.

We need to facilitate cooperation to reduce infringement over the Internet. It is essential for the private sector to work together to find practical and effective solutions to this problem, at the same time we will vigorously investigate and prosecute criminal activity. We will focus on foreign-based Web sites and web services that violate our intellectual property rights using a combination of tools, including law enforcement, diplomatic measures, and coordination with the private sector.

We will review how we support our businesses as they face difficulties in overseas markets. Due to the scale and scope of manufacturing, its industrial policies and its potential as an export market, it is fair to say that China raises a particularly troubling set of issues. Therefore China will be a significant focus of our enforcement efforts.

Since the release of the strategy a few weeks ago the administration announced the launch of a new joint initiative to go after Internet piracy, Operation In our Sites. During the course of the first investigation under this initiative, DHS and DOJ authorities moved together across the country to seize numerous bank and PayPal accounts from sites that were offering first run movies, often within hours of their theatrical release. Federal agents also seized the names for these pirate sites. But this is only the beginning of our enforcement actions.

Before I conclude I want to say a word or two about John Morton who is following me at this table. Under his leadership ICE has made intellectual property enforcement a real priority. ICE's creation of the interagency IPR center demonstrates that agency's commitments, and John has taken that center to a new place. Domestic and foreign law enforcement, as well as industry partners, are coordinating better and working together because of it both do-

mestically and internationally, and I want to applaud what he has done.

I have stated some ambitious goals today. We are aware that the release of the strategy is just the beginning, and that much hard work lies ahead. I commend your leadership on these issues and I look forward to working closely with this committee in the coming months on improving our enforcement efforts both here and abroad.

Thank you very much and I look forward to your questions.

[The prepared statement of Ms. Espinel follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
WWW.WHITEHOUSE.GOV/OMB

Testimony of Victoria A. Espinel
United States Intellectual Property Enforcement Coordinator
Office of Management and Budget
Executive Office of the President
Before the House Committee on Foreign Affairs
July 21, 2010

Chairman Berman, Ranking member Ros-Lehtinen, and members of the House Committee on Foreign Affairs. Thank you for your leadership on this important issue.

I sit here today humbled by my recent confirmation and service to the President as the first Intellectual Property Enforcement Coordinator on a vital issue facing American businesses and consumers in the 21st Century and sensitive to the foreign policy implications that flow from an issue that has such global reach.

I feel particularly privileged to have the opportunity to work with the House Committee on Foreign Affairs on this effort. This Committee has an important role to play, given that many intellectual property-related problems facing American businesses and consumers originate overseas. This is a global problem that will require global solutions. And while the United States must lead the way, we will need the cooperation of our trading partners overseas to succeed.

The United States is a global leader in developing new technologies in intellectual property-related industries. We lead the way in bringing new pharmaceuticals to consumers, inventing tires that keep families safe on the road, developing environmentally-conscious technologies, creating innovative software products, and producing films, music and games

craved by consumers throughout the world. However, our leadership in the development of innovative technology and creative works also makes us a global target for theft.

Congress tasked the Administration with developing and implementing a U.S. government strategy to tackle a wide range of problems associated with intellectual property enforcement and a few weeks ago, we presented our strategy to Congress. This first strategy reflects the extensive coordination between numerous U.S. government agencies, others in the public sector, the business community, interested groups, and my small but hard-working office. However, the release of this strategy marks only the commencement of a long process; much hard work lies ahead.

The country needs America's ingenuity now more than ever. It is American innovation that drives our economy and keeps people working. Strong intellectual property enforcement saves American jobs, it creates American jobs, it protects American ideas and it invigorates our economy. And that makes our international intellectual property enforcement efforts all the more critical. Without a focus on the problems that we face internationally, this strategy will not realize its full potential.

In this strategy, we have attempted to capture the significant issues that require immediate attention. We'll be targeting counterfeiters and pirates -- not those engaged in legal and legitimate activities. Increased coordination, cooperation, and prioritization must accompany this first step.

Intellectual property infringement affects a vast range of businesses and industry sectors. As part of our efforts to develop the strategic plan, we asked the public for input so the Administration could understand their concerns directly and we received over 1,600 responses. My office reviewed all of those responses and we posted them on our website so that anyone

who is interested can see what we are taking into account. I also met with many companies, across a broad spectrum of America's industries, as well as unions, academics and consumers groups to engage them about where the problems in intellectual property enforcement lie and to find out what we can do to make things better for the many Americans and American industries that depend on intellectual property for success. The strategy reflects the recommendations that came from the public. I also want to emphasize that the development of this strategy was an inter-agency collaboration. Justice, Homeland Security, Commerce, USTR, HHS, State and others all worked tirelessly to make this an excellent and forward leaning strategy.

The overarching mission of this strategy is to ensure that all of the agencies that have a hand in enforcing intellectual property are working together in a coordinated fashion and in a manner that is consistent with the priorities of the Administration. With increased cooperation and coordination, this plan has the ability to alter our approach to intellectual property enforcement for the better for many years to come. To do so, we are taking some bold new steps and we look forward to partnering with this Committee on many of them. Let me highlight a few now.

We are establishing an interagency working group to improve coordination of our international capacity building and training, so that foreign governments have the tools necessary to strengthen intellectual property protection on their own. The working group will create a forum in which agencies will share plans, information and best practices, focus efforts where enforcement is a high priority, develop agency strategic plans, measure the effectiveness of these efforts, establish a shared database for storing training materials, ensure materials are consistent with U.S. intellectual property laws (including the relevant balance in our laws) and are

consistent with U.S. policy goals, and coordinate our efforts with international organizations and the business community to make our trainings efforts as effective as possible.

Recognizing the importance of our overseas personnel to successful enforcement both here and abroad, we have committed to improving the effectiveness and coordination of intellectual property specialists stationed overseas. Bringing together the relevant agencies, we will work to prioritize stationing of these personnel based on identified need, establish embassy working groups and develop embassy work plans in countries where intellectual property enforcement is a priority, and implement procedures to measure their effectiveness on an ongoing basis. We will also work with foreign governments to increase foreign law enforcement efforts and promote enforcement of American intellectual property rights through trade policy tools, including bilateral trade dialogues, committing our trading partners to protect American intellectual property through trade agreements such as the Anti-Counterfeiting Trade Agreement and the Trans-Pacific Partnership, communicating U.S. concerns clearly through reports such as the Special 301 Report, and, when necessary, asserting our rights through the World Trade Organization dispute settlement process.

We are establishing a counterfeit pharmaceutical interagency committee to examine the numerous problems associated with unlicensed Internet pharmacies operating over the internet, health and safety risks in the United States associated with the distribution of counterfeits, and the proliferation of the distribution of counterfeit pharmaceuticals abroad.

We need to facilitate cooperation to reduce intellectual property infringement occurring over the Internet. It's important for the private sector to work to find practical and efficient solutions to this problem. At the same, we will also be exploring measures to reduce piracy. For example, we will go after the foreign-based websites and web services that infringe our

intellectual property rights utilizing a combination of tools, including law enforcement, diplomatic measures, and coordination with the private sector.

Since the release of this strategy, this Administration announced the launch of a new joint initiative to go after Internet piracy: "*Operation In Our Sites.*" During the course of this investigation, DHS and DOJ authorities across the country moved together to seize numerous bank and PayPal accounts from sites that were offering first-run movies, often within hours of their theatrical release. Federal agents also seized the domain names for the pirate sites, preventing the sites from continuing to operate. But this is only the beginning of our enforcement actions.

Finally, we will undertake a comprehensive review of efforts to support U.S. businesses that face difficulties enforcing their intellectual property in overseas markets in order to ensure that American rights are respected and enforced in global markets. There are several countries of key concern. However, due to the scale and scope of manufacturing, its industrial policies and its potential as an export market, it's fair to say that China raises a particularly troubling set of issues. Therefore, China will be a significant focus of our enforcement efforts as we address intellectual property infringement abroad. Whether it's coordinating our law enforcement personnel overseas, developing a strategy to go after foreign-based websites, or using trade policy tools to address the competitive disadvantages that we face, China will be a priority.

Before I conclude, I want to say a word or two about John Morton who is following me at this table. Under his leadership, ICE has made intellectual property enforcement a real priority. ICE's creation of the IPR Center demonstrates the agency's commitment, and John has taken the Center to a new place. Interagency, domestic and foreign law enforcement, as well as industry

partners are coordinating better and working together collaboratively because of it – both domestically and internationally.

I've stated some ambitious goals today. I commend your leadership on these issues and I look forward to working closely with this Committee in the coming months on improving our enforcement efforts - here and abroad. I look forward to your questions.

Chairman BERMAN. Well, I thank you very much, Ms. Espinel, and I will yield myself 5 minutes to start the questioning.

In the Joint Strategic Plan there is a paragraph about improving the effectiveness of personnel overseas to combat IP infringement. Do you have a notion of how the administration will do that? Will the administration support the provision on greater IP resources abroad that we had in our State Department authorization bill?

And just to add, I have some information that the administration does not have plans to replace the person who is in the Department of Justice's Intellectual Property Law Enforcement Coordinator Program who is now based in Sofia, Bulgaria, and as we understand when that individual returns at the end of the year there will be no replacement. Could you take a look into that particular issue and let us know if it has been resolved?

Ms. ESPINEL. We agree, as many have said the experience of the company in Mr. Manzullo's district indicates that our overseas personnel are critical to our efforts. They play a very important role in a number of ways, including improving our relationships with our counterparts in foreign law enforcement, which is critical because we have to have our trading partners taking this seriously if we are going to be effective. They have been very effective in terms of training capacity building, again to help foreign law enforcement take this on more seriously.

So I am in complete agreement with you that while the overseas personnel that we have right now are doing an excellent job, I think that there are also ways that they could be improved further.

We have some ideas along those lines. Part of that is making sure we have personnel in the places where we need them most. Part of that is making sure that they are working well within the embassies; that they have the support that they need when they are on the ground. Part of that is making sure that they are getting clear guidance and priorities from Washington, and that we have clear communication.

I am well aware of the bill that you introduced on this and it seems to me that the goals in that bill are entirely consistent with what we are trying to do with the administration's strategy, so we would indeed support that.

Chairman BERMAN. Can you give me advice on how to get the Senate to take it up? [Laughter.]

Ms. ESPINEL. I will confer and get back to you.

Chairman BERMAN. The same issue in the context of cooperative efforts within the business community the Joint Strategic Plan talks about, can you elaborate on that a little bit? And how do you hope to see that work, and what should Congress do, and how does it measure cooperative efforts within the business community to reduce Internet piracy, especially if no agreement is reached? Can we name and shame?

Ms. ESPINEL. So as we noted in the strategy, we think it is not just important but essential for the private sector to be working together, to have all sort of players in the Internet economy working cooperatively to find a solution to Internet piracy that is both practical and efficient. We are actively encouraging that cooperation to happen.

That said, while we think it is essential that it is happening, it is also not our position that we will sit back and wait for the private sector to figure this out on their own. There are actions that we can take as the government and we will take those actions, including investigating, vigorously investigating and prosecuting criminal activity where we can.

While we are also exploring alternative measures to reducing Internet piracy, and it may be that there are new things that we need to do, I will tell you we take this problem very seriously, and we would like to consider all options.

In terms of naming and shaming, since you raised that specifically, one of the things that we have committed to do in the strategy is work with USTR and the other agencies, of course, to use the Special 301 to highlight foreign Web sites that are a particular problem. One thing that has been very clear to me in this job is that foreign Web sites are a particular problem that we need to address both because of the scope of material that is coming into the United States from foreign-based Web sites, and because they pose particular challenges for our law enforcement to go after them. So we are very focused on figuring out how we address what is an admittedly an complicated problem, but an extremely important one.

Chairman BERMAN. Thank you, and my time has expired. I am going to yield 5 minutes to the ranking member, Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. Thank you for your testimony.

On China and Russia, all experts agree that China is by far the leading violator of intellectual property rights in the world and has been for some time, and for years the United States and other governments have pressed Chinese officials to take action to stop this rampant piracy with little to show for it. How can we bring sufficient pressure on China to stop this widespread theft? What form would that pressure take? And is this a country that deserves normal trade relations with the U.S.? I don't believe that it does because of this and many other reasons.

And on Russia, the Russian Government has repeatedly pledged and signed agreements to fight the rampant intellectual property piracy on its territory, but it has yet to fulfill any of those commitments. Now President Obama has said that he will work to bring Russia into the WTO as soon as possible. Now, given Russia's history of false promises wouldn't it make more sense to have its government demonstrate a track record of success in fighting piracy before we let them enter the WTO and thereby we lose our leverage? Thank you.

Ms. ESPINEL. Well, first of all, I would agree with you that China is the biggest problem that we face for a whole host of reasons, including the fact that the volume of what is coming out of China dwarfs what is coming out of other countries. Eighty percent of what our Customs seizes every year comes from China. The range of products that are coming out of China are immense, and the fact that China has beyond sort of a lack of enforcement has affirmative industrial policies in place that are directed at putting our companies at a competitive disadvantage is an enormous problem, and one that we are very focused on. It is unacceptable for China to

continue the practices that it has in place, and we are committed to making that stop.

There are a number of things in the strategy that I think will go to helping us enforce our rights better overseas in all markets, but let me assure you that in all of those areas China is a particular focus. There are a number of things that I could highlight. In the interest of time, though, let me focus on one that has a particular focus on China which is the following: We think it is very important to make sure that as our companies are moving into overseas markets, and in particular in China, that they know that they have the full support of the U.S. Government behind them.

And you mentioned the President's goals of doubling exports. Using intellectual property enforcement as one of the tools that we have to double exports is of critical importance to the administration. So we are going to, we are actively now actually working with Commerce and other agencies to assess what it is that we do as a government to support our industries as they are moving into China, and to see if, one, our companies are aware of the resources of the U.S. Government that are at their disposal, but two, and even more than that, that there is more that we could be doing now to make sure that our companies know that they are well supported by their government as they are navigating the Chinese market.

With respect to Russia, I could speak to the issues with Russia at great length. I will just say briefly there are enormous intellectual property enforcement problems in Russia as you pointed out. They have been going on for a significant amount of time. USTR and other agencies are well aware of that. I think that the point that you make about WTO accession is a very good one, and clearly Russia needs to make significant improvements in intellectual property in order to join the WTO.

Ms. ROS-LEHTINEN. Thank you, but I am not sure that my question was answered. What kind of pressure can we bring to bear on China and on Russia to make them fulfill their pledges and commitments, and isn't our rush to have Russia enter the WTO giving them an easy pass and saying they don't have to do anything about intellectual property theft?

Ms. ESPINEL. With respect to Russia, we have made clear to the Russian Government repeatedly that intellectual property enforcement has to be strengthened in order for them to enter the WTO, and in fact USTR is on its way to meet with Russia about WTO accession and the improvements that we need to make there in the coming weeks.

So, I think the leverage that we have with Russia and one of the important points of leverage that we have is exactly what you referred to, the WTO accession process, and we intend to use it. And if there is a lack of doubt about that let me allay those concerns.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman, my time is up but I think that we are just letting China and Russia slide, and I think it is pretty obvious.

Chairman BERMAN. The time of the gentlelady has expired. The gentleman from Florida, Mr. Deutch, is recognized for 5 minutes.

Mr. DEUTCH. Thank you, Mr. Chairman. Thank you for your testimony, Ms. Espinel.

Intellectual property theft, as I raised earlier, has been increasingly funding to the terrorist organizations like Hamas and Hezbollah, an egregious example of which there are, frankly, too many to list, involves counterfeiters in tri-border area of South America who have provided millions of dollars in direct contributions to Hezbollah through their IP piracy. In fact, one such especially designated global terrorist entity in Paraguay provided the payment of millions of dollars directly to Hezbollah.

Can you outline what is being done to combat this type of terror financing and what level of coordination between U.S. enforcement and intelligence agencies take place, and ultimately as you pursue your broader strategy, if you could speak to the extent to which this type of financing that comes from IP piracy plays a role in your determination of how best to approach these issues?

Ms. ESPINEL. Thank you. So, first I would say that we are well aware of the fact that piracy and counterfeiting generally are attractive for the types of organizations that you are talking about, for illicit organized criminal activity, because the margins are high and because the risks are low, or perceived as low, so that is something that we are quite focused on.

One of the things that I think that we need to ensure that we are doing a better job of in order to go after this problem is to make sure our law enforcement agencies are sharing information cooperatively, and that is something that we are very focused on and have already started to put steps in place to make sure that that happens.

With respect to the link between organized criminal activity and international piracy and counterfeiting, we are working with the National Security Council as well as other relevant agencies to see what more we can find out about the extent of that scope. There are some cases that you alluded to but there may be a problem, there may or may not be a problem that sort of extends beyond that, and I think that is important for us to know as we are putting our policies in place.

But more generally I think the efforts that we are taking with DOJ, with the FBI, with DHS, and others to prioritize this issue and to make sure our law enforcement agencies are sharing information cooperatively will be helpful to address this issue generally, and including the kind of links that you refer to between piracy and counterfeiting and organized criminal activity.

Mr. DEUTCH. Thank you. So as you put in place, as you pursue these efforts to share information between law enforcement agencies can you describe what that looks like on the ground, the enforcement of the IP laws and how that information ultimately is shared with appropriate national security agencies?

Ms. ESPINEL. Well, obviously I am somewhat limited in what I can say in a public hearing like this. What I can do, first of all, I am happy to have discussions outside this hearing if that would be helpful.

The second thing that I can tell you is, as we move forward in this progress and move toward better sharing of databases and other information, I think there will be stuff that we can talk about publicly. I am both obligated by legislation, but also interested in coming back and talking to this committee and to Congress gen-

erally about what we have done in December to move forward in practical ways.

Again, I may always be somewhat limited in what I can say in a public hearing.

Mr. DEUTCH. Finally, is the issue of funding of terrorist organizations through IP piracy on the agenda in discussions that take place not just interagency in America but in your discussions with the folks who do enforcement in the countries that we are dealing with to combat these issues?

Ms. ESPINEL. Absolutely.

Mr. DEUTCH. Thank you.

Chairman BERMAN. The time of the gentleman has expired, and the gentleman from New Jersey, Mr. Smith, is recognized for 5 minutes.

Mr. SMITH. Thank you very much, and thank you for your testimony.

Let me just focus on one particular issue. Both over-the-counter and prescription drug safety and efficacy are of deep concern to all patient consumers. As more drugs are foreign-sourced the risk of producing inferior, substandard products and/or the stealing of the patents to those compounds is obviously very, very high.

Bing reported last December on its blog, and it was an article written by Jim Edwards, that in China there were two inspectors watching the drug factories—in the entirety of China. I have seen other reports that suggested that less than 10 percent of the factories are looked at by FDA, so this is obviously an engraved invitation, if you ask me, for huge amounts of fraud, ripping off of, again, this intellectual property. And even if they don't sell the product to the United States, there are markets all over the world where that American name or that multinational's name will be bought and bought in huge quantities, and if it is an inferior compound or a ripped off product, obviously that raises very serious concerns.

So my question to you is, how does your office work with the FDA to ensure, and on the proactive side, I mentioned two inspectors, I don't know if that is true, we tried to get information, we got all kinds of numbers, but two is like—I mean, that is incompetence if you ask me in terms of sourcing or deploying FDA inspectors, how does your office work with the FDA to ensure that on-site inspections actually occur? Because if you don't go to the source, if you check out, how do you know what is going into the product as that product is produced, and whether or not it is being counterfeited, or they are doing something on the cheap in order to put the name on it but not have the effective ingredients?

And do you do anything when it comes to adverse events that are reported to the FDA? Is your office brought in in any way when there is a suspicion that these adverse impacts on patients might be triggered by a counterfeit or a compound that was pirated, and then it came back into the United States?

It seems to me, I mean, I have met with FDA people over the years many times, whether it be on Acutane or other things, and I have been shocked at how laissez-faire on some sells products they have been developing over the years. And it seems to me that, if there is a spike in adverse events, does that trigger anything to

suggest there might be a counterfeit product making its way into the United States?

And this is especially pertinent as more and more of our pharmaceuticals are foreign sourced, especially the manufacturing of that product—Pfizer, Astro-Zenica, and Novartis are only the most recent huge companies that are putting more, not less, of their operations in the PRC.

Ms. ESPINEL. Thank you. So this is an enormously important problem. As you pointed out, it has detrimental effects for our economy in terms of intellectual property infringement, but obviously the health and safety implications of this problem are enormous, and it is something that we care very much about. It is a problem that is both domestic in terms of an impact on our domestic economy, and a potentially growing problem in terms of counterfeit drugs actually getting into the supply chain in the United States.

Although I think most Americans probably feel that the U.S. supply chain is relatively safe, there are counterfeit pharmaceuticals coming into the United States, which is obviously an enormous problem, and as you pointed out, overseas the scope of this problem, particularly in countries located in Africa, is significant and reprehensible. So it is something we are very focused on.

We are setting up an interagency committee that is going—a new interagency committee that is going to focus on exactly this set of issues. We have been working very closely with FDA actually over the past few months as we put together the general strategic plan, and we will continue to do that.

One of the things that we are working with FDA on is seeing if there is a way to better track into the U.S. Government supply chain particular pharmaceuticals if it become clear that there is a problem, for example, counterfeiting, with those pharmaceuticals. So we are very focused on that.

With respect to your question about inspectors in China, I think we have grave concerns about the level of quality control in China.

Mr. SMITH. Is two the right number?

Ms. ESPINEL. But I was going to say that is something I don't know. So rather than speculate let me look into that and we will get back to you.

Mr. SMITH. I appreciate that. I noted or would note that there was a GAO report issued back in 2008 and it did make the point that we were spending some $11 million in 2008, fiscal 2008, on foreign inspectors. It seems to me that is woefully inadequate. And you know, if there could be some kind of collaboration with your office to say if we really want to cut down on the piracy but also protect the health and well being of your people we need to beef up inspections.

Ms. ESPINEL. Thank you.

Mr. SMITH. Thank you.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from Virginia, Mr. Connolly, is recognized for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman, and thank you for holding these hearings. I would ask, if it hasn't already been done, concurrence to at this point put my full statement in the record.

Chairman BERMAN. Without objection, it will be included.

Mr. CONNOLLY. I thank the chair. Ms. Espinel, if the United States is successful in shutting down a Web site like China's Baidu, is there a risk for retaliatory measures for U.S. search engines?

Ms. ESPINEL. As I have said in the testimony, as we say very clearly in the strategy, one of the problems that we have to address is this issue of foreign-based Web sites, and the products that are being brought into the United States with digital content, but also physical products such as counterfeit pharmaceuticals that are coming in through foreign-based Web sites. So, we have committed to focus on those as a particular problem, and I think John Morton is also going to be speaking directly to that issue.

That said, we are aware of the fact that foreign-based Web sites raise a whole host of complicated issues. One of those issues is the fact that it is difficult for our law enforcement, it is more challenging for our law enforcement to go after foreign-based Web sites. The other is that it is very important to this administration that our policies with respect to the Internet in general are ones that preserve openness and don't give other countries excuses to do things that we find unacceptable.

However, this is illegal activity. This is illegal activity that has an enormously detrimental impact on our economy, so it is important that we go after it vigorously.

Mr. CONNOLLY. In May, the Congressional International Anti-Piracy Caucus highlighted the problem of foreign Web sites, as you just said, that provide access to unauthorized copies of U.S. copyrighted material. Priority sites for China's Baidu, Canada's isohunt, the Ukraine's MP3's fiesta, Germany's RapidShare, Luxembourg's RMX 4U.com, and Sweden's The Pirate Bay, what sort of collaborative efforts are needed among the original content producer and companies that specialize in advertising of payment solutions to shutdown these sites, in your view?

Ms. ESPINEL. I think it is absolutely essential that that cooperation take place and that is something that we have been working on facilitating very actively. There are many, many players in the Internet economy. Obviously the rightholders have a big responsibility to be enforcing their rights, but in order for us—for us as a country to have a solution to this problem that is practical, efficient, and not overly burdensome, it is necessary for us to have cooperation from all the players in the Internet economy, and all the people that are benefitting either directly or indirectly from infringement.

I do want to emphasize though that while we think that cooperation is very important we also know that we as a government need to be taking action, so we will not just sit back and wait for the private sector to come to an agreement. We are both exploring whether there are other measures that we can use to reduce Internet piracy, and we will vigorously investigate and prosecute Internet piracy as we can with the existing law enforcement authorities that we have now.

Mr. CONNOLLY. To what extent do you believe in this effort, Europe's lack of recognition of the First Sale Doctrine is an impediment?

Ms. ESPINEL. That my lack of recognition?

Mr. CONNOLLY. No, no. Europe's, Europe's lack of recognition of the First Sale Doctrine. They have a different view of copyright law than we do.

Ms. ESPINEL. The Europeans have a different view of many things compared to what we do. With respect to the First Sale Doctrine and their view of that, would you allow me to find out more about that——

Mr. CONNOLLY. Sure.

Ms. ESPINEL [continuing]. So I can give you a better and more complete answer?

Mr. CONNOLLY. Yes, get back to us.

And my final question, you know, President Obama has made significant expansion, I think, of the doubling of exports, one of his major goals, a laudable goal, lots of things have to be in place for that to happen—new trade agreements, strengthen and enforce trade agreements and so forth, but one of them clearly is this issue of intellectual property protection, and especially in a place like China. If they are going to be stealing intellectual property left and right so that we have nothing to sell them because they sell it and manufacture it themselves to the domestic market, it defeats the whole purpose of a free trade regime, and significantly impedes the ability of the President to achieve his goal. Your comment?

Ms. ESPINEL. I absolutely agree with you. We have a very ambitious goal set by the President to double exports in 5 years. Part of what we have to do in order to meet that goal is to make sure we have viable export markets. If our export markets are polluted by counterfeit and piracy, there is no way for our businesses to be able to compete. So, it is critical to the administration that one of the things we do, and as you say there are many things that we will have to do, but one of these has to be ensuring that our intellectual property rights are being enforced overseas.

Chairman BERMAN. The time of the gentleman has expired, and I believe this is the first time the First Sale Doctrine has ever been mentioned in a Foreign Affairs Committee hearing. [Laughter.]

Mr. Manzullo, the gentleman from Illinois is recognized for 5 minutes. It is all according to this screen. I just follow the screen.

Mr. MANZULLO. Well, thank you.

Maybe this question is over simple, if that is a word. Mr. Smith talked about piracy taking place in pharmaceuticals, which is very subtle, hard to determine, and takes an enormous amount of people and agencies to try and find the source, et cetera. I was in China several years ago in Ku-ming, when I led the U.S.-China Interparliamentary Exchange. Congresswoman Jackson Lee was with me, and Congresswoman Marcia Blackburn, and we went into the town square there, and the people that were our hosts surrounded us. Marcia said, "Don, why don't you pull the guards with you and let me go off and find the stuff?"

Well, it wasn't too hard. So I took the guards with me. Congresswoman Blackburn just walked a few feet and there they were, first run movies for a buck, everything being openly sold, absolutely no desire, no enforcement on the part of the Chinese Government to stop that. Interestingly enough when you leave China, when you fill out the declarations it says that you are not taking from China any CDs or movies or things of that nature.

My question is, if the Chinese are making absolutely no efforts to corral piracy within their own country, knowing full well that that crap finds its way back to the United States and around the world and destroys jobs, what do you do in a case like that?

You can have all the personnel you want. I mean, how do you enforce that? How do you force China to follow their words that says that they want to be a player and protect intellectual property rights?

Ms. ESPINEL. So, first, with your permission I would like to refer to something that you said in your opening statement. You referred to a company in your district that had been having serious problems in China.

Mr. MANZULLO. Right.

Ms. ESPINEL. And I wanted to note that I have been talking to a number of companies in the manufacturing space and working with the National Association of Manufacturers to visit Illinois, in particular, to talk to manufacturing companies there so that we understand better the problems that they are facing, and can do a better job of trying to address them.

With respect to your question now, obviously the lack of political will in China to address this issue and the lack of it being a significant priority for many parts of the Chinese Government is a real challenge that we face. So part of what we need to do to address this is to make clear to the Chinese that for this administration at this time this is a real problem and the policies that China has put in place——

Mr. MANZULLO. No, I understand that it has been a problem all along, regardless of who is in the White House or who controls Congress. You would agree, this is not a political issue because we all agree up here it is a big trade infringement, but how do you punish China for doing this?

I mean, it is so outrageous. You have probably been there and seen the piracy taking place. That is why I said it is probably an over-simple question, but that goes right to the heart of it. You know, unless China enforces these laws internally—I mean, why even waste your time sitting at a table with them? There has to be a penalty that they have to pay. What would the penalty be?

Ms. ESPINEL. Well, China needs to enforce its laws domestically, but even beyond the domestic market one of the problems that we face with China, we as the United States face with China, is the fact that they are manufacturing illegal products and then exporting them around the world. Obviously we need to be working very closely with the Chinese Government to try to fix this problem but——

Mr. MANZULLO. But why would they work with you when they allow the open sale taking place in the town squares? I mean, they have no desire to crack down. They need to pay a penalty. I mean, they know that. They have gamed the system so long. I am sorry. I took your time.

Ms. ESPINEL. But I do want to emphasize that part of—the United States is not going to be able to address this problem by itself, we are aware of that, and one of the things that we need to do as well is working with our trading partners because we are not the only country that is facing these problems now, and see if we

can improve the coordination that we have with other governments so that we can collectively bring pressure to bear on China.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. Thank you, Mr. Chairman.

I want to agree with the gentleman from Illinois. They are not going to do anything unless there is a penalty, but I think that the Chinese are right if they assume that Wall Street, Wal-Mart and Washington will combine to make sure that they never face a penalty.

I think the witness is wrong when you tell us that this is a low priority for China. It is a high priority. It is very important to them that they keep stealing, and for them to say, no, this is a low law enforcement priority, no, it is a very high priority that they keep stealing our intellectual property.

Now, the gentleman from Virginia talked about the President's idea of tripling exports. I hope that this is not to be combined with quintupling imports. We have got to cut the trade deficit. Increased exports when exceeded by increased imports means we lose even more jobs.

I do want to highlight the particular venality of Baidu, which is perhaps more than any—well, certainly more than any other company in the IAPC 2010 report responsible for the theft of American music, and China is like 99 percent of the online piracy for music, and I hope you would respond for the record what you are going to do about it, but I suggest that the gentleman from Illinois is probably right. Without penalties they are not going to do anything.

It is your job to summarize for the President all the options, and so my concern is whether you are investigating all the options or just those that you are allowed to talk about in polite society. For example, have you investigated and do you know whether we have the technological capacity to take down the illegal site, the sites primarily devoted to music piracy or movie piracy? The site is up somewhere in the world, God know some hackers at a high school in China could take it down. They have taken down our U.S. Government sites, whether it is virus or multiple hit.

Do we have the capacity to do that? Have you investigated that?

Ms. ESPINEL. That is something that we are actively investigating because——

Mr. SHERMAN. Oh, good. Go ahead.

Ms. ESPINEL [continuing]. It is obviously a big concern. It is not a simple question and it is not a simple answer. In summary, I will say there are technological ways to take down sites, but one of the challenges that we face is that even if a site is taking down it is not that hard for a site to go back up at a slightly different——

Mr. SHERMAN. Well, if you take down 10 or 20, it makes a statement. You can take them down as quickly as they can put them up. But you are saying we have the capacity if somebody has got a site, you know, stolenmusic.com, we could take that site down, we are just not doing it yet because we figure they will pop up as——

Chairman BERMAN. Will the gentleman yield?

Mr. SHERMAN. Yes, I will yield.

Chairman BERMAN. What about a safe harbor for copyright holders who want to use efforts to deny service to——

Mr. SHERMAN. They will help.

Chairman BERMAN [continuing]. Intellectual property infringers? I heard that idea once.

Ms. ESPINEL. If I could just make a general comment. I would also say our ability and what we can do differs significantly when we are talking about domestic versus foreign-based Web sites.

Mr. SHERMAN. I am talking about foreign-based Web sites.

Ms. ESPINEL. That is not one of the things——

Mr. SHERMAN. And you are right, I think Universal could hire a couple of those high school kids and maybe act more quickly than the government. Let me ask and squeeze in one more question.

What do we do with those who pay money to advertise on sites devoted chiefly to music or movie theft? Are they allowed to deduct their cost of their advertising? Do they face any penalties based on the amount, or what is the penalty for buying an ad on stolenmusic.com?

Ms. ESPINEL. So since your question is with respect to foreign-based Web sites, let me just emphasize that our ability to take down——

Mr. SHERMAN. Assume it's a U.S. company selling vegematics to Americans and they buy an ad on this Chinese Web site westealmusic.com?

Ms. ESPINEL. And with respect to your question about penalties for ad brokers, it is an interesting one. It is not one that has been raised.

Mr. SHERMAN. I have raised it. Please report back to the committee about it.

Ms. ESPINEL. One of the things that my office can do is take exactly this kind of input and concerns and make sure that we are investigating it and discussing it internally as an administration.

So, I thank you for that, and I thank you for any input you might have in the future.

Mr. SHERMAN. Thank you.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from California, Mr. Rohrabacher, is recognized for 5 minutes.

Mr. ROHRABACHER. First and foremost, let me identify myself with the line of questioning and the statements made by Mr. Manzullo or Mr. Sherman. Mr. Sherman, as some of us have dealt with in the past, understand that he is an accountant by profession, and thus accountability actually means something to him, and he has a career of looking at cost/benefit and calculating that out, and so I think that really leads to reality at times, although I disagree with him on some thing. [Laughter.]

Now with that said let me note that there were some things that I disagreed with Members of Congress a few years ago when they were proposing that our patent system change so that the actual publication of patents even before they were issued was mandated.

Do you think that if we would have mandated the publication of our patent applications before the issuance of those patents would have increased the theft of American intellectual property rights?

Ms. ESPINEL. The type of domestic patent reforms that you refer to are not ones that my office has directly focused on.

Mr. ROHRABACHER. That is not what I am asking you. I am asking you as someone who understands intellectual property theft. The law mandating the publication of a person's patent application before it was issued would it increase the chances of theft?

Ms. ESPINEL. Well, in truth since that is not what my office focuses on, and since it's not deeply familiar with the background of, I don't want to give an answer. However, I am happy to take those concerns back and——

Mr. ROHRABACHER. Okay, got it. Now, how long have you been in your position now?

Ms. ESPINEL. A little over 6 months.

Mr. ROHRABACHER. 6 months? And what consequences have you determined were applicable to people in countries that we actually find blatantly and continuing even after being notified involved the intellectual cost of American property, or the cost of American intellectual property I should say?

Ms. ESPINEL. So I came into this office about 6 months ago with three main goals.

Mr. ROHRABACHER. I am not asking that. What are the consequences, I don't care what main goals you came in with, what are the consequences you have determined after 6 months plus you have a background in this for years, what consequences are you suggesting that someone or some government that continues to acquiesce or involves themselves in intellectual property theft should face?

Ms. ESPINEL. I think with respect to individuals that are engaged in intellectual property, that are engaged in criminal activities, we need to be prosecuting them. Investigating them and then prosecuting them.

Mr. ROHRABACHER. In other countries. So we demand that the other countries prosecute them. What are we doing now? The other countries know this intellectual property theft is going on. They have not prosecuted. What if they continue to refuse to prosecute those people? What consequences are you suggesting that people who blatantly go along with this intellectual property theft or are involved in it will suffer?

You have been there 6 months. You would have a whole career based on this. What are your recommendations?

Ms. ESPINEL. One of the things that we need to do is see whether or not our own domestic law enforcement, which is very focused on the situation now, as John Morton and others can testify to is to make sure that they have the authorities that they need. There may be additional legislative authorities in order to be able to go after effectively people that are in overseas markets so that we are not entirely dependent on the government of those countries to act.

Mr. ROHRABACHER. And if indeed the other government refuses to permit our jurisdiction, our people doing this, what are the consequences that you believe that we should do as a nation to those nations that are refusing to go along with us and are acquiescence to this $100 billion rip off of the American people?

Ms. ESPINEL. Well, obviously, if other government are not respecting our rights, we need to make clear to them that the United States considers this to be——

Mr. ROHRABACHER. No, no, what are the consequences? Making clear, they know what they are doing, we know what they are doing. What are the consequences that you are suggesting that our Government do to a government like China that is blatantly permitting this rip off of the American people?

Ms. ESPINEL. One of the areas where there can be consequences is to use our trade policy tools, including as the ranking member, Ms. Ros-Lehtinen said.

Mr. ROHRABACHER. What retaliation in those trade rules would you suggest that we implement?

Chairman BERMAN. The time of the gentleman has expired. Unanimous consent if there is no objection heard, I will give the gentleman another minute.

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

So what would you suggest that when the President has seen the leadership in China four times so far in his presidency, what do you think the President—now you say we are getting serious—what should the President say, if you don't do this, you have known all along they are ripping us off, what should the President suggest we are going to do this if you don't crack down?

Ms. ESPINEL. Well, as you are aware, our ability to impose penalties on other countries is limited, it is shaped by the laws that Congress put in place. So as I alluded to before, and maybe I should be more explicit about this, it may be necessary for us to make legislative changes both so that we have more teeth in our trade policy tools, and so that our domestic law enforcement——

Chairman BERMAN. Would the gentleman yield for 10 seconds?

Mr. ROHRABACHER. Of course I will.

Chairman BERMAN. In the late 1990s, rampant continues, at another time when there was rampant piracy in China with the manufacturing of counterfeit CDs, we proposed countervailing tariffs on a variety of items that we thought equaled the value of the stolen property. Just the threat of that caused three plants to be destroyed. Unfortunately the piracy continued in other places.

Mr. ROHRABACHER. Let me reclaim my time. The chairman has come up with a great suggestion of what we can consider. Would you think that this is something that we should do and threaten other countries that are acquiescent to this type of rip off of the American people?

Chairman BERMAN. Unfortunately, the time has expired 40 seconds, but we can hear back from you later.

Ms. ESPINEL. Those types of suggestions from Members of Congress are enormously helpful.

Chairman BERMAN. The gentlelady from Texas, Ms. Sheila Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and thank you for the hearing, and that of the ranking member.

This is an issue that many members have been addressing from the 1990s, and as Congressman Manzullo said, it is not an issue that is partisan. I remember working with Chairman Hyde, the late Chairman Hyde from Illinois on the Judiciary Committee and

as well Chairman Berman over the years on this question of intellectual property.

I think it is important to note that the cost of this abuse is jobs, and I have never seen an administration more committed to creating job than the Obama administration. The true cost to the American people is seen in the 750,000 jobs that have been lost as a result of intellectual property violations. Worst of all the statistics have indicated that the scale of these illegal activities is rising despite efforts from both the government and private sector by billions of dollars a year.

One of the most troubling, my colleagues have spoken about the pharmaceuticals, but I remember the tooth paste scare, counterfeit tooth paste that contained a dangerous chemical that was distributed and sold to consumers under the trademark of Colgate-Palmolive. Of course, that company lost reputation and millions of dollars.

So, I think what we are trying to glean from you, Ms. Espinel, is what is the enthusiasm, the energy? I am going to yield to you for an answer but as I do that I note that my friend John Morton will be testifying, and let me just as an aside compliment him for an innovative and new approach to ICE's immigration efforts with respect to employers. I know this is not that hearing, but I want to put that on the record. It has achieved, I think, a better approach.

I use that as an example that the government can be effective, but I am not hearing the sense of urgency in grabbing after this crisis of losing jobs in an economy that cannot afford to lose the jobs, and I know that you work with the USTR (U.S. Trade Representative), a very competent part of your competent team and your own competence.

So let me yield to you to allow you to energetically give us some meat and potatoes. What would you be doing with respect to your efforts at the WTO, at the IPR? Would you seek stronger commitments? Where is, as my colleagues have been asking, where is the hammer? Where is the recognition that this is a crisis?

If we were to go and find "Avatar" for $1 in China, recognizing all that the director and others put in that amazing picture, if nothing else because of the magnitude of it, I use that as an example that is most in our minds that it is a huge cost of putting that together, and then to find that in China, then I would say this is dish banging time on the table. This is time to show that kind of "I am going to get them" in an obviously civil manner.

I am going to yield to you for the enthusiasm, the action items that the administration is doing and thinking about it in terms of stopping the loss of almost 1 million jobs from counterfeit activities going on.

I yield to you, Ms. Espinel.

Ms. ESPINEL. Thank you, and thank you for your kind words to my colleague, John Morton, and all the excellent work that ICE, the whole ICE team, is doing under his leadership which is indeed innovative and a real significant step forward in terms of the progress and priorities.

Let me assure you this administration is enormously committed to this problem. As you pointed out, the President's number one

priority is getting our economy back on track, and enforcement of intellectual property is critical to protect the jobs that we talked about and to promote our exports as we have already talked about.

Ms. JACKSON LEE. Will you look for stronger language in a WTO TRIPs agreement specifically?

Ms. ESPINEL. That is an interesting question. That is, again, one that has not come up in the 6 months, but those kinds of suggestions are interesting to us. I think, you know, beyond the TRIPs agreement, which is not to downplay the importance of it because it is enormously important, it is clear that we need a stronger international standard on enforcement, and whether we do that at the WTO or whether we do that working with our trading partners directly, I completely agree with you that the legal framework, the international agreements that we have right now on intellectual property enforcement, while good, are not good enough.

Ms. JACKSON LEE. So you would ask for stronger intellectual property rights enforcement?

Ms. ESPINEL. Yes, absolutely.

Chairman BERMAN. The time of the gentlelady has expired, and the gentleman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much.

Mr. POE. Thank you very much, Mr. Chairman. Thank you for being here. Appreciate your comments. I have several questions. But first, I just want to make it clear to you that in my other life I used to be a judge and prosecutor and I hate thieves. There is just nothing worse than a thief, whether it is an individual or a nation.

China seems to me to have a culture of thievery. It is culturally and politically acceptable, in my opinion, in China to have theft of American products and intellectual property, and I know they are big trading buddies, but how do we hold them accountable specifically. I like the tariff idea.

What about until China gets their thievery in order not allowing visas for their citizens not to come to the United States? If we mean business about not stealing business, what do you think about that idea?

Ms. ESPINEL. I think we do mean business. I think we absolutely need to make sure that China is being held accountable.

Mr. POE. Do you like the idea of withholding visas until they start cracking down on the organized crime in their country of stealing intellectual property?

Ms. ESPINEL. I think it is an interesting idea. I think we need to make sure in everything that we do that we are taking steps that benefit our economy as a whole. And so one of the things that makes dealing with China complicated is the fact that we do have many different connections with China in our economy, and while we absolutely need to make sure that the violations of American intellectual property rights, the fact that China is taking our research and development, the fact that China is building an innovation industry basically on the backs of our own industries, we need to make sure that stops, but we need to make sure that stops in a way that doesn't have a significant detrimental impact on other parts of our economy.

Mr. POE. Well, I don't know that prohibiting visas from the Chinese that wants to come to school here hurts our economy as much as the thievery that takes place in China with the intellectual property. I understand that the piracy of movies, the piracy of songs has prohibited the development of more movies, the development of more music in the music industry because of the cost to our industry because of piracy, not just in China, but the former Soviet Bloc and Eastern European countries are involved in all of this as well. So there needs to be some consequences.

I agree with all of those who have stated, you know, we can try the diplomatic channels. Well, that doesn't work.

Next question: Have you had any input, influence, encouragement or discouragement from the State Department not to be so tough on the Chinese because they are our trading buddies?

Ms. ESPINEL. No. The State Department, among other agencies, works very closely with us on the plan. I think they are well aware, as are we, of the problems that we face in China. I think the short answer to that question is no.

Mr. POE. Good. Good to hear.

Google was real concerned about the Chinese and their intellectual property theft of Google. Now that has sort of been resolved. I understand that Google is not too concerned about their blog site being a venue for intellectual property theft. Do you want to comment on that? That their blogs are being used as a basis for developing piracy, international piracy.

Ms. ESPINEL. Well, I won't comment or speak for Google in terms of their views on intellectual property enforcement or intellectual property infringement. I will tell you that we are discussing with Google, as we are with a number of the companies that are involved in making the Internet work and making the Internet the great thing for American commerce as it has been, to see whether or not there are additional things that we could be doing to address one of the negative effects of the Internet, which has been this proliferation of counterfeiting and piracy.

Mr. POE. I have two more questions in my 30 seconds. Master Card and Visa, how cooperative are they in all of this process? When people use Master Card, pirate company allows Master Card or uses Master Card and Visa, are they cooperative in trying to bring down these sites, refuse payment? Are you getting cooperation from Master Card and Visa or are they slow?

Ms. ESPINEL. We are talking to Master Card and Visa about what their operations are. Again, I don't want to speak for them but I don't believe they want their services to be used for illegal activity, so I am hopeful that we will be able to move the ball there.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from New Jersey, Mr. Sires, and I do remind the members we have the second panel. Mr. Sires.

Mr. SIRES. Thank you, Mr. Chairman, and I apologize for not being here earlier but I had other commitments.

I will just be very blunt with you. Is there anything that they don't steal or copy in China from us or from the rest of the world? Can you think of anything?

Ms. ESPINEL. Certainly the scope of what is manufactured in China in various ways is vast.

Mr. SIRES. Okay. So how can I as a consumer in New Jersey feel that it is safe for me to take it off the shelf if they don't cooperate? They obviously are not embarrassed by it because I assume that you have approached this subject with them, and I would like to know of their reaction, but how can I as a consumer feel that it is safe to take that product off the shelf that comes from China?

I mean, just the other day I saw medicine. You know, it just goes on and on and on. So what can you assure me that we are doing everything we can to make sure that the product that I am going to purchase is safe?

Ms. ESPINEL. I can assure you that this is an issue that we care deeply about, and we have already talked in this hearing quite a bit about the importance of intellectual property enforcement to our jobs and to our exports, and to restoring our economy. But the issues that you raise, the issues of health and safety and that sort of basic issue of consumer confidence in the system is one that I think is enormously important. Part of what intellectual properties do for us as a society has helped give our consumer that certainty, that predictability, that faith that our products are what they purport to be.

So, we need to have our laws, but we also need to make sure that those laws are being enforced so that consumer can have confidence.

I think the U.S. Government supply chain is certainly the focus of this committee. There are other countries overseas that struggle even more with the issue of their supply chain being infiltrated, but we are very focused on making sure that our own supply chain into the United States Government and to our United States consumers is as secure as it can be.

Mr. SIRES. And I will just share this with you in less than 1 minute. The other day I was having lunch—this happened a couple of months ago—I was having lunch and I was having a piece of catfish, and another member sat next to me, and he said—I won't mention his name. He said, you know, we have to do something in the agriculture bill because most of the catfish that is imported into the United States are grown by sewage outflows in Vietnam. I can tell you that I will never eat another piece of catfish for the rest of my life. But this is just the kind of thing that we are not aware of, and this happened to me a couple of months ago. Thank you.

And what is the reaction of the Chinese when you approach them on some of these issues?

Ms. ESPINEL. Well, with respect to the catfish story for a moment. My husband's family is from Louisiana, and I am deeply attached to Louisiana, so you know, catfish is something near and dear to me as well.

Mr. SIRES. I said Vietnam, not Louisiana. I will buy that.

Ms. ESPINEL. With respect to China, it is clear Chinese needs to take this more seriously. Regardless of what their sort of official reaction is, they need to be doing more, and that is a priority for us to make that happen.

Mr. SIRES. Just tell your husband to put on it Louisiana grown. Thank you.

Chairman BERMAN. The time of the gentleman has expired. I guess it is choice of Vietnamese sewage or American oil on the catfish.

The gentleman from Massachusetts.

Mr. DELAHUNT. Well, Mr. Chairman, you can always come to New England where things are clean and clear and tasty.

You know, I agree clearly it is about jobs and it is about balance of things and it is about the economy, but at one level it is really about our national security, and I think we should not lose sight of that, and I think it is clear from the comments that we hear there is an anger, justifiable anger that exists, and I think it is also clear that it is perceived that China is the most significant aspect of this problem, and that it would appear that you don't have the tools to motivate the Chinese from rhetoric to action.

I think it is absolutely essential that the administration propose to the Congress those tools or those mechanisms that will get the attention of the Chinese and actually motivate them to match their actions with their rhetoric. I am sure different moments there have been optics as far as enforcement is concerned, but this conversation has been going on every since I came to Congress and that is some 14 years, and it is getting to the point where it is just totally unacceptable.

I think we are losing credibility as well as jobs because we have not taken hard sufficient action. There has to be real consequences, and if they are not it is just simply going to continue. I bet if you took a vote of this committee, that would receive unanimous support, and it is up to this administration now to move expeditiously in a way that is respectful but if we do not respond forcefully and hard against China until they clean up their act it is going to send a message to the rest of the world that, you know, we are just spinning our wheels.

I applaud the good efforts that are being made. I think task force comments headed by task for concepts headed by ICE, the work that you are doing is fine, but it is going to require something of a different order of magnitude. I think we ought to consider this economic terrorism. We are at risk if we do not address this problem, and I think you are hearing that, you know, from both sides, Republic and Democrat. This has got to become a high priority right up there with job creation and health care, and all of the other issues that we are confronting. If we do not do something about protecting our intellectual property, we are at risk. Care to make a comment?

Ms. ESPINEL. I fully agree with that. I appreciate your suggestion about proposals to Congress because I look forward to working with you and with the committee as a whole to figure out more what we can do there.

Mr. DELAHUNT. Let me just get to Mr. Poe's idea about withholding visas, but, first of all, we want them to come here so that they will spend some money here. I want those students to come to schools in New England because for every international student it generates 50 trips from overseas by family members and friends which helps our economy.

So this has got to be directed along the lines that were suggested earlier by the chairman, about having clear countervailing tariffs that are painful and will keep Chinese goods from coming into this country. My instinct tells me that is the answer. You know, jobs are leaving China now going to other countries that are undercutting, so it is not like there is not a market out there. That, I think, is a suggestion that should be taken up expeditiously.

Chairman BERMAN. The time of the gentleman has expired. Others are saying no more small ball, but the fact is, Ms. Espinel, you are unwavering in a number of things that are going to make incremental improvements, and the question is, is there something bigger? And we appreciate you being here, and what you are doing, and thank you very much. We will now have a second panel. We will hear from Mr. Morton who will talk about what ICE has done that have some real consequences.

We have our second panel. Our first witness will be Assistant Secretary John Morton, Assistant Secretary of Homeland Security for the U.S. Immigration and Customs Enforcement, known as ICE. In this capacity, he directs the principal investigative component of the Department of Homeland Security, the second largest investigative agency in the Federal Government.

Mr. Morton has an extensive background in Federal law enforcement. He has held a variety of positions within the Department of Justice, including those of trial attorney, special assistant with the general counsel in the former INS, and counsel to the deputy attorney general. Mr. Morton received his law degree from the University of Virginia, School of Law.

Our second witness is Chris Israel. He is the former U.S. Coordinator for International Intellectual Property Enforcement, which was located then at the Department of Commerce.

Appointed by President Bush in 2005, Mr. Israel was responsible for coordinating resources within the Federal Government to defend intellectual property rights domestically and internationally. Prior to this appointment Mr. Israel served in the Department of Commerce, first as deputy assistant secretary for technology policy, and later as deputy chief of staff to two commerce secretaries. Prior to that time he was deputy director for international policy at Time Warner. Mr. Israel has a B.A. from the University of Kansas and an MBA from the George Washington University.

Thank both of you for being here today, and Secretary Morton, why don't you start.

STATEMENT OF THE HONORABLE JOHN T. MORTON, ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MORTON. Well, Mr. Berman, and Ms. Ros-Lehtinen, and Mr. Sires, thank you very, very much for inviting me here today to appear before you. This is my first time, Mr. Chairman, before the committee and I very much appreciate the invitation, and the ranking member as well.

Let me just note for the committee how much I have enjoyed working with Victoria in her short time. She has brought a lot of

energy and enthusiasm to her job, and it is very much appreciated. We are lucky to have her as the IPEC.

I also want to thank the work of the Department of Justice. We have worked very, very closely recently with the United States Attorney offices, the Computer Crime and Intellectual Property Section in the Criminal Division led by Assistant Attorney General Lanny Breuer, and they have been good partners.

And a final note of thanks before I get started to the industry that has been victimized and has worked with us on a number of our enforcement efforts. The motion picture industry, the music industry, and the pharmaceutical industry, in my view, a strong partnership between the affected businesses and government is essential if we are going to make any headway in bringing real consequences to people who violate the law.

Mr. Chairman, let me just be direct. We need to focus on strong intellectual property enforcement from Los Angeles to Asia. Simply put, American business is under assault from criminals who knowingly pirate copyrighted material or counterfeit and trademark goods. American ideas, American products are being stolen and sold. Sold on the corner of 4th and Main, sold over the Internet. From the counterfeit pharmaceuticals and electronics, to pirated movies and software, organized criminals are undermining the United States economy on a grand scale.

Why should we care? Well, here is why. American jobs and American innovation are being lost. Public health and safety are at risk. Pirates and counterfeiters don't pay wages or taxes. They don't fund pensions and health care plans. They don't invest in new movies or TV shows. They don't develop new drugs to cure diseases. They don't invent the next iPhone or flat-screen TV. They don't employ Americans. They don't make America great. Counterfeiting and piracy hurt American workers and American industry, pure and simple.

Take the music industry, for example, home to extraordinary American talent and creativity over the years. In the past 10 years, the industry has experienced a dramatic decline in legitimate sales and employment due to piracy and counterfeiting, hurting our major music capitals like Nashville, New York and Miami.

So what do we need to do in the face of this crime, Mr. Chairman? In my view, we have to change the face of intellectual property enforcement. We can't just seek marginal changes. Incremental improvements, a few extra cases here or seizures there are welcome but they are ultimately a losing cause. We have to think through and address the root causes and the long-term cures. In short, we need enforcement marked by innovation and by energy.

Intellectual property enforcement is a central part of what we do at ICE. Last fiscal year, we arrested a record 265 violators and we made 1,750 seizures. This fiscal year, we are well on our way to setting new records in both categories of arrests and seizures, and we are going to open over 1,000 cases, the most we have ever done by a long shot in a given year. In short, our enforcement efforts have greatly increased, and they will continue to strengthen while I am assistant secretary, I promise you.

Intellectual property is also a central part of the broader DHS mission. Our sister agencies, Customs and Border Protection and

the United States Secret Service, play a very important IP enforcement role, and Secretary Napolitano has been a strong proponent of IP enforcement during her entire tenure at DHS.

We pursue intellectual property enforcement through three ways: Through our domestic offices, through our international offices, and through the Intellectual Property Rights Coordination Center that is based just across the river near National Airport in Arlington, Virginia, which ICE leads.

Let me say very quickly about the IPR Center. We have a total of 12 partners from all over the Federal Government and elsewhere. It includes ICE, the FBI, CBP, FDA, the Postal Inspection Service, and the Patent and Trademark Office, Defense Criminal Investigative Service, the Naval Criminal Investigative Service, the Army Criminal Investigation Command, and GSA IG's office. They have all just joined to help bolster our efforts in the defense supply chain. We also have for the first time international partners in Mexico and Interpol.

At the IPR Center we receive leads, we generate cases, and we de-conflict enormous efforts. This last year has been particularly busy with successful initiatives being undertaken against counterfeit holiday goods, counterfeit pharmaceuticals and pirated movies. Let me briefly focus on one such initiative focused on the Internet, which you will see here on the monitors what is called Operation In Our Sites.

At the end of June, the IPR Center launched Operation In Our Sites, a new initiative aimed at counterfeiting and piracy. During the first phase of this initiative, ICE agents working with the United States Attorney's Office for the Southern District of New York seized domain names of seven Web sites offering first run movies, often within hours of their theatrical release. These sites on the screen now is a view of what one of them looked like prior to June 30, allowed visitors to stream or illegally download current and highly popular television shows and movies. You could also on some of them buy counterfeit software.

On June 30, over the course of one of the investigations agents observed links to more than 200 movies and more than 300 television programs. I mean, everything is available. On June 30, more than 75 ICE agents participated in the enforcement action, resulting in the seizure of assets from bank accounts, from PayPal, investment and advertising accounts.

Our efforts successfully disrupted the ability of criminals to purvey pirated films over the Internet. Industry experts tell us that Internet piracy takes about 9 to 15 months when you start a new site to develop enough traffic to yield the ad revenue that produces a profit. So although these sites can come back up again, it takes time to get the advertisers back on board and get the necessary traffic.

The domain names discovered during this operation are now controlled, not by the pirates, but by the United States Government, namely, ICE. Instead of pirated content, the Web sites now feature a banner announcing the seizure of the site by the government, ICE and the Department of Justice, and an explanation of the Federal crime and punishment for copyright theft and distribution. So

if you were to go to the sites today, instead of the original site you would see this banner.

Here is an interesting part of this, Mr. Chairman. As the new owners of the domain name, ICE has been able to determine the number of visitors these sites have received since the seizures. Within 2 days of ICE's enforcement action against these pirating Web sites, over 1.7 million visitors saw just one banner on one site. This number is substantially more than the total number of hits the sites were receiving when they were selling pirated goods, and that was substantial. One site to date has seen over 20 million views, people coming to see the government's seizure banner.

In other words, we believe the government's warning banners have gone viral and Internet users by the millions are actually seeking a Web site out to view what the government has been doing because the government hasn't been doing a lot of it, and now all of a sudden the government is doing it and doing it forcefully.

And so it has been a silver lining unanticipated—I had no idea this was going to happen—consequence to our enforcement action, so we are getting tremendous——

Chairman BERMAN. Can you sell advertising? [Laughter.]

Mr. MORTON. We are going to do it for free. We are all about being neutral for the taxpayer.

Operation In Our Sites not only targets Web sites offering pirated films and music, but we are going to go after everything on the Internet.

Very briefly, we have domestic offices in every State in the Union, Mr. Chairman. We are going to put the full weight of those offices to doing this kind of work. Just 6 days ago, we arrested in New York two individuals involved in the distribution of counterfeit footwear and other products.

Internationally, we have 63 offices in 44 countries wherein nine of the 11 countries on the USTR's priority watch list. We have opened an office in Brussels to work directly with the WCO on this, and we have got an office, two offices as a matter of fact, in China, and we are working hard. It is tough work. Obviously, we have heard numerous comments already on how much and deep—how deep the challenges are, but we have had some success.

We have worked with the Chinese in Operation Spring Cleaning. They actually extradited an individual from China to the United States to face prosecution. The person was sentenced to 4 years in prison and ordered to pay almost $900,000 in restitution to the Motion Picture Association of America, and we have had similar successes in China.

We are also looking to start efforts in Africa. That is the next unfortunate wave of IP problems facing us. We are working with the State Department.

Let me just close by saying this, Mr. Chairman. I really want to thank you and the other members of the committee for having this hearing and, frankly, highlighting the need for IP enforcement. It is an area in my view that has long needed more attention. It isn't a particularly partisan issue from my perspective. It is a problem that has been around for decades. It is very serious, and in these

times of economic pressure in the United States it is a problem I think we as a nation can ill-afford to ignore. Thank you.

[The prepared statement of Mr. Morton follows:]

U.S. Immigration and Customs Enforcement

STATEMENT

OF

JOHN MORTON
ASSISTANT SECRETARY

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

REGARDING A HEARING ON

"PROTECTING U.S. INTELLECTUAL PROPERTY OVERSEAS: THE JOINT STRATEGIC PLAN AND BEYOND"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS

Wednesday, July 21, 2010

INTRODUCTION

Chairman Berman, Ranking Member Ros-Lehtinen, and distinguished Members of the Committee: Thank you for the opportunity to highlight the important role U.S. Immigration and Customs Enforcement (ICE) plays in combating intellectual property (IP) theft in today's global economy.

Simply put, American business is under assault from those who pirate copyrighted material and produce counterfeit trademarked goods. Criminals are stealing American ideas and products and selling them over the Internet, in flea markets, in legitimate retail outlets and elsewhere. From counterfeit pharmaceuticals and electronics, to pirated movies, music, and software, these crooks are undermining the U.S. economy and jeopardizing public safety. American jobs are being lost, American innovation is being diluted and the public health and safety of Americans is at risk -- and organized criminal enterprises are profiting from their increasing involvement in IP theft.

The Administration is responding to this organized criminal activity through a first-of-its-kind aggressive, coordinated, and strategic offensive that targets counterfeiters and those who pirate copyrighted material. This offensive involves multiple departments and agencies within government coming together in an ICE-led task force, the National Intellectual Property Rights Coordination Center (IPR Center), and the effort is being coordinated by the first ever presidentially appointed Intellectual Property Enforcement Coordinator (IPEC), Victoria Espinel, with whom I have had the great privilege to work. ICE and the IPR Center contributed and consulted frequently with the IPEC on the creation of the first-ever Joint Strategic Plan on Intellectual Property Enforcement.

I am pleased to have the opportunity to highlight for this Committee the role ICE plays in combating IP theft.

BACKGROUND OF THE PROBLEM

America's entrepreneurial spirit and integrity are embodied by the creativity and resourcefulness of our workforce. Intellectual property rights and the ability to enforce those rights encourage American companies to continue the tradition of American innovation and develop products, ideas, and merchandise. This tradition of innovation and productivity has given America an advantage in the global economy.

Intellectual property rights are intended to discourage thieves from selling cheap imitations of products, which are often far less safe or reliable than the original products. More importantly, intellectual property rights protect our nation by preventing the proliferation of counterfeit pharmaceuticals, preserving national and economic security, and ensuring consumer safety. Violators depress investment in technologies needed to meet global challenges and also put consumers, families, and communities at risk. They unfairly devalue America's contributions, hinder our ability to grow our economy, and compromise American jobs.

Intellectual property rights protect consumer trust and safety, as counterfeit products pose significant risks to: our communities by threatening public health through the introduction of substandard or unapproved products meant for public use or consumption; our military members through untested and ineffective components; our transit systems through auto parts of unknown quality that play critical roles in security passengers; and our health care systems through suspect pharmaceuticals and semiconductors used in life-saving defibrillators. Intellectual property rights also protect the actor, director, writer, musician and artist from having a movie, manuscript, song or design illegally sold by someone who had no part in the artistry of creating it.

As the members of this Committee well know, globalization provides boundless opportunities for commerce. But it also brings a growing set of challenges, especially in combating the theft of intellectual property.

In a global economy, enforcement of intellectual property rights is crucial to ensuring that legitimate manufacturers and companies can expend capital developing overseas markets, exporting goods and creating jobs as opposed to fighting counterfeiters.

The following are several trends in IP theft and counterfeiting that ICE and the IPR Center recognize as a backdrop to ICE's current efforts to combat IP theft.

- The primary source country for the manufacture and distribution of counterfeit merchandise is China. In FY 2009, ICE and Customs and Border Protection (CBP) seized at U.S. ports of entry IPR violative goods from China with a domestic value (as opposed to manufacturer's suggested retail value) of more than $204.7 million. These seizures accounted for approximately 80 percent of the total domestic value of counterfeit merchandise seized by DHS.

- According to the World Health Organization, approximately "eight percent of the bulk drugs imported into the United States are counterfeit … and $21 billion" of global pharmaceutical commerce involves counterfeit drugs.

- Over the last 10 years, the Internet's growth as a global commerce medium has caused it to develop into a key means for facilitating IP theft. The 2010 Cisco Visual Networking Index forecasts that global IP traffic will quadruple by 2014 -- a four-fold increase. Moreover, Cisco notes in its annual Index report that download speeds of DVD quality movies have been reduced from three days 10 years ago to just around two hours this year; an MP3 audio download time has been reduced from three minutes to about five seconds. The report also predicts that global Internet video traffic will surpass global peer-to-peer traffic by the end of 2010.

- This increase in access to the Internet, while of great benefit for global communication and commerce, represents a very real threat to America's film and music industries. Their products are extremely susceptible to Internet piracy,

especially as bandwidth increases. As a result of this growing concern, ICE counterfeiting and piracy investigations are increasingly directed to web-based criminals.

- IP theft cases have grown in both magnitude and complexity. A crime previously viewed as limited to luxury goods — such as high-priced handbags, apparel and watches – has quickly grown to include all types of products and consumer goods at every price point. Criminal networks have expanded the playing field tremendously, leading to more multi-faceted and complex IP theft and by extension, more challenging and involved investigations. Multimillion-dollar seizures of counterfeit goods are now a common occurrence.

- There are more criminals engaged in IP theft than ever before. As international criminal organizations have yielded huge profits through trafficking in counterfeit goods, they have opened their existing criminal infrastructures and smuggling routes to the flow of counterfeit merchandise. Based upon intelligence gleaned from undercover interaction and suspect debriefs, ICE has learned that many individuals and criminal organizations engaged in IP theft believe the existing criminal penalties for commercial fraud violations are less severe than traditional drug or weapons trafficking offenses, and many view IP theft as a relatively "low risk" method for commanding huge gains. As a result, ICE is working closely with international law enforcement partners to facilitate global investigations and crack down on international criminal organizations.

- Finally, IP thieves have repeatedly demonstrated that they will counterfeit any product they can sell or market without regard for the welfare of consumers. While we take all IP theft seriously, the increase in counterfeit drugs, medical equipment, aircraft and automobile parts, computer hardware, military components, and electrical safety devices is particularly troubling. These illicit products represent a significant threat to public safety, as they do not adhere to any standards for testing, quality or operation.

ICE'S ROLE

ICE has a legacy of engagement in IP theft enforcement – stretching from our past years as U.S. Customs Service investigators to our present role as Homeland Security investigators. ICE is a leading agency in the investigation of criminal intellectual property violations involving the illegal production, smuggling, and distribution of counterfeit and pirated products, as well as associated money laundering violations. We target and investigate counterfeit goods entering the U.S. through our ports from various countries overseas and we seize for forfeiture goods associated with these investigations, such as those that infringe on trademarks, trade names, and copyrights. Because of the many challenges posed by the trends I outlined above, ICE has become increasingly innovative in how we combat counterfeiting and piracy. We have done this not because we are interested, frankly, in marginal increases in enforcement or small successes, but

rather in sustained achievements that produce tangible results for American consumers and businesses.

ICE recognizes that no single law enforcement agency can succeed against IP theft. Rather, it is essential that all relevant federal agencies work together and with industry to confront this challenge. ICE therefore initiated the IPR Center to leverage compatible government resources to combat IP theft.

IPR CENTER

U.S. Customs began the IPR Center in 2000, but following 9/11, priorities were reshuffled and the IPR Center was not adequately staffed. ICE re-started it in 2008, and the IPR Center has genuinely matured over the last two years.

The mission of the IPR Center is to address and combat predatory and unfair trade practices that threaten our economic stability and national security, restrict the competitiveness of U.S. industry in world markets, and place the public's health and safety at risk. The IPR Center brings together key domestic and foreign investigative agencies to increase the efficient and effective leverage of resources, skills and authorities to provide a comprehensive response to IP theft.

The IPR Center, housed in Arlington, Virginia, is a task force that involves 12 relevant federal partners, and the Department of Justice as a participant, prosecuting for all partners. The IPR Center includes embedded team members from, among others, CBP, the Food and Drug Administration, the Federal Bureau of Investigation (FBI), the Postal Inspection Service, the Department of Commerce, and the U.S. Patent and Trademark Office. Last year, the Government of Mexico joined the IPR Center as our first international partner. Recently, the IPR Center welcomed four new partners — the Defense Criminal Investigative Service, the Naval Criminal Investigative Service, the Army Criminal Investigations Command Major Procurement Fraud Unit and the Inspector General's Office from the General Services Administration — to strengthen investigations related to IP fraud in the federal procurement process, especially in the defense supply chain. The IPR Center also recently welcomed the International Criminal Police Organization (INTERPOL) as a partner. Together, the partners have created a one stop shop for industry and victims of IP theft, reducing duplication and allowing us to leverage and benefit from our different areas of expertise.

Last December, the IPR Center led a bilateral, multi-state, multi-agency enforcement effort entitled Operation Holiday Hoax. We worked with many different agencies - including CBP, DOJ's Computer Crime and Intellectual Property Section (CCIPS) and the Government of Mexico's Treasury and Customs – and industry, including the Recording Industry Association of American (RIAA), to target importers and distributors of counterfeit goods. This operation was specifically timed to coincide with U.S. and Mexican consumers' increased purchasing during the winter holiday season.

Operation Holiday Hoax was a tremendous success. Over the course of six days, 700,000 counterfeit items were seized in 37 U.S. cities in 23 states and Puerto Rico. Items seized included children's toys, DVDs, CDs, clothing, footwear, handbags, sports items, perfume, cosmetics, electronics, hygiene products, and pharmaceuticals. The aggregate manufacturer's suggested retail price (MSRP) of the seized products was more than $26 million. In Mexico, our customs partners seized more than 274 tons of counterfeit merchandise during focused operations at three seaports and 14 checkpoints across Mexico City.

When multiple governments focus their efforts and join forces, even more can be accomplished. ICE and the IPR Center have teamed with the World Customs Organization (WCO) and its member countries in several multilateral enforcement operations targeting counterfeit goods. Our partnerships with international customs organizations and industry create an essential international front in combating IP theft in the global economy.

Although I cannot yet announce the results, ICE and CBP have recently completed the U.S. portion of Operation Global Hoax, a three-month multilateral enforcement action proposed by the IPR Center and coordinated with the WCO. Global Hoax is the first-ever worldwide enforcement action targeting counterfeit DVDs and CDs as they are shipped around the world. Global Hoax involves customs and law enforcement agencies from 42 countries and INTERPOL working together in an unprecedented campaign against counterfeit goods that harm the entertainment industry. Representatives from the Motion Picture Association of America (MPAA) and RIAA assisted participating customs authorities with focused training, targeting and analyses of certain interdicted parcels. This operation was specifically timed by the IPR Center to coincide with the movie industry's summer releases, when the biggest blockbusters are illegally recorded, reproduced on DVDs, shipped around the world and sold on street corners and in other markets. By attacking the problem when the goods are being shipped, Global Hoax will combats IP theft at one of the critical stages of distribution. Upon conclusion of the operation, I look forward to providing you with details regarding its success.

During Operation Pangea II last November, the IPR Center coordinated U.S. efforts in a global operation targeting illegal pharmaceutical sales over the Internet. This led to the inspection of more than 21,200 packages at postal hubs, ports and airports around the world. In addition, it resulted in the suspension of at least 90 web sites and domain names associated with selling drugs and controlled substances to consumers without prescriptions. Internationally, nearly 1,000 packages were seized and more than 167,000 illicit counterfeit pills were confiscated.

ICE initiated Operation Apothecary in 2004 to address, measure, and attack potential vulnerabilities in the entry process at international mail and express courier/consignment facilities that might allow for the smuggling of commercial quantities of unapproved, counterfeit, and/or adulterated pharmaceuticals purchased via the Internet. In FY 2009, ICE and CBP inspected over 14,427 parcels and made approximately 1,824 seizures and

detentions while conducting Apothecary enforcement surges at facilities across the nation.

Beyond pharmaceuticals, there are a wide variety of counterfeit goods that pose a significant risk to the health and safety of the American public. ICE's Operation Guardian is an ICE-led multi-agency initiative that focused on targeting, interdicting, and investigating substandard, tainted or counterfeit goods imported into the United States. Since its inception in 2008, Operation Guardian has resulted in more than 350 investigations and 1,250 seizures of goods valued at more than $21 million. Through Operation Guardian, ICE and our law enforcement partners have protected the public from purchasing or consuming dangerous items such as substandard and counterfeit electrical devices, aircraft and car parts, toys, and human and pet food products.

ICE'S INTERNATIONAL EFFORTS

ICE Homeland Security Investigations International Affairs (HSI-IA) represents DHS's largest investigative law enforcement presence abroad and strongest protection beyond the border. HSI-IA has the broadest international footprint in DHS with 63 offices in 44 countries, including representatives at seven combatant commands, staffed by more than 300 personnel. The mission of HSI-IA is to protect the United States by enhancing its security through international investigations involving transnational criminal organizations responsible for the illegal movement of people, goods, and technology, and through strong and integral intelligence and removal programs. There are 11 countries on the U.S. Trade Representative's Priority Watch List as part of its annual review of the global state of intellectual property rights protection and enforcement, ICE maintains a presence in nine of these countries, with a total of 14 offices.

Cooperation with our international law enforcement partners is critical in addressing copyright infringement overseas and effectively protecting and enforcing American intellectual property rights holders. ICE Attachés work with international organizations and foreign law enforcement counterparts to build capacity, strengthen relationships, and conduct joint enforcement activities. ICE is recognized as a worldwide subject matter expert on criminal customs matters, and holds positions as Vice Chair for the Enforcement Committee and Chair of the Commercial Fraud Working Group with the World Customs Organization (WCO).

In July, 2009, ICE opened an office in Brussels to work directly with the WCO, and we have already spearheaded multilateral operations addressing bulk cash smuggling and explosives precursor chemicals. ICE also works with INTERPOL, the Asia-Pacific Economic Cooperation Forum, and the Departments of State, Commerce and Justice on a variety of initiatives, including providing training in IPR enforcement to our international law enforcement partners. We leverage Customs Mutual Assistance Agreements and other agreements with police to build capacity and conduct joint investigations.

ICE has a presence in central and southern coastal China with offices in Beijing and Guangzhou. These two offices deal largely with commercial fraud and IP. Moreover, the ICE office in Guangzhou is working with the consulate on a project to make Shenzhen the first IPR city in China. The project is still in its infancy, but the goal is to make Shenzhen a model city in which rights holders are able to obtain enforcement and control the IP problems there. If this project is a success, the Ambassador hopes the initiative will spread throughout China. ICE has made a commitment to work with the Consulate on this project and provide training to the Chinese Public Security Bureau on IP investigation and enforcement.

In September, I will travel to China for meetings with Chinese law enforcement counterparts, including the Ministry of Public Security (MPS), and will sign a cooperation agreement specifically dedicated to joint investigations of IP theft. Recently, the IPR Center added an MPS liaison from the Chinese Embassy in Washington, who has already worked to develop investigative strategies with IPR Center partners.

ICE previously worked with China in September 2003 when ICE initiated Operation Spring, a joint IPR investigation by ICE agents and Chinese authorities that resulted in the extradition and conviction of DVD pirate Randolph Guthrie, who was sentenced to 48 months incarceration and ordered to repay $878,793 in restitution to the MPAA.

In addition, Chinese authorities carried out enforcement actions in China that resulted in the arrest of six individuals, including two U.S. citizens, one being Guthrie. China seized more than 210,000 counterfeit motion picture DVDs and approximately $67,000 in U.S. currency as well as ¥222,000 in Chinese Renminibi (RNB) currency. Chinese authorities also located and, pursuant to Chinese law, destroyed three warehouses that were being used to store counterfeit motion picture DVDs for distribution around the globe, including to the United States.

Another joint ICE-Chinese investigation resulted in four arrests in the United States and the seizure of over $100 million in counterfeit computer software and approximately $4 million in counterfeit cigarettes.

More recently, ICE worked with Korean partners in Seoul to combat IP violations occurring in Asia. On April 6, 2010, the ICE Attaché office in Seoul assisted Korea Customs Service (KCS) and Korea National Police Agency officers with the execution of search warrants resulting in the arrest of five Korean nationals for manufacturing and distributing counterfeit goods. The search warrants, which were served at a manufacturing facility and two warehouses in Busan, Korea, led to the seizure of over ten tons of counterfeit Louis Vuitton, Chanel, Hermes, Bulgari, Prada and other luxury brand products valued at approximately $40 million. This enforcement action was based on ICE Attaché Seoul information regarding numerous Korea-based companies suspected of manufacturing and distributing counterfeit luxury name brand products in the United States.

ICE'S CONTRIBUTIONS TO FOREIGN TRAINING AND CAPACITY BUILDING

In May 2009, the IPR Center initiated the U.S. interagency "IPR in Africa" Working Group, with participation by the Departments of State, Justice, and Commerce, the U.S. Agency for International Development, the U.S. Patent and Trade Office and various U.S. Embassies, to improve coordination of the U.S. government's IP training and resource commitments in Africa. In coordination with these U.S. agencies, the WCO and INTERPOL, the IPR Center serves as a subject matter expert in IPR training specifically focused on strengthening enforcement and investigations. The IPR Center is also working to increase direct cooperation with the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) on Africa IPR issues and fully supports INL funding proposals submitted by DOJ CCIPS to support training for investigators, prosecutors and judges in Africa on the dangers of counterfeit goods.

ICE is an active member of the U.S. delegation negotiating the Anti-Counterfeiting Trade Agreement (ACTA). The goal of ACTA is to work with other countries interested in promoting strong enforcement of IPR. ACTA aims to strengthen legal frameworks to bridge existing gaps between laws and dedicated enforcement, and to foster ongoing cooperation among ACTA participants.

ICE helps to educate on IP theft enforcement and interact with foreign officials worldwide through our participation in the Department of State International Law Enforcement Academy (ILEA) program. The mission of the ILEAs — located in Budapest, Gaborone, San Salvador, Bangkok, and Lima — is to help protect U.S. interests through international cooperation and the promotion of stability by combating crime. In April 2009, a week-long, specialized course entitled "Intellectual Property Rights" was presented at the ILEA regional training center in Lima, Peru. A multidisciplinary team from ICE, CBP, and the U.S. Attorney's office in Houston, together with several rights holders, provided training to participants from Brazil, Paraguay, and Peru. During the training, participants were introduced to IPR protection systems, including techniques for conducting investigations and interdicting items in violation U.S. law.

STATE AND LOCAL TRAINING AND OUTREACH

ICE and the IPR Center submit that an aggressive enforcement strategy must include state and local law enforcement participation as force multipliers. On April 26, designated as World IP Day, I announced the creation of 22 local IP Theft Enforcement Teams, or as we call them, IPTETs. The IPTETs are essentially localized IPR Centers with ICE-trained federal, state and local law enforcement partners, including sworn personnel from police and sheriffs departments and local prosecutors. The IPR Center has been conducting training for the IPTETs around the country.

RECENT ENFORCEMENT SUCCESSES

Last month, the IPR Center launched Operation In Our Sites, a new initiative aimed at Internet counterfeiting and piracy. During the first enforcement action as part of this initiative, ICE agents, working with the U.S. Attorney's Office for the Southern District of New York, seized domain names of seven websites offering first-run movies, often within hours of their theatrical release. These sites allowed visitors to stream or illegally download current and highly popular television shows and movies. Over the course of one of the investigations, agents observed links to more than 200 movies and more than 300 television programs. On June 30, more than 75 ICE agents participated in this enforcement action, which resulted in the seizure of assets from 15 bank, PayPal, investment, and advertising accounts.

ICE's efforts through Operation In Our Sites successfully disrupted the ability of criminals to purvey pirated films over the internet. Industry experts in Internet piracy have concluded that it takes nine to fifteen months for a pirating website to develop enough traffic to yield ad revenue that produces a profit. The domain names discovered during this operation are now controlled by the U.S. government. We have substituted on those web sites a banner announcing the seizure of the site by the government and an explanation of the federal crime and punishment for copyright theft and distribution.

Interestingly, as the new owners of the domain name, ICE has been able to determine the number of visitors these sites have received since the seizures. Within two days of ICE's enforcement action against these pirating web sites, over 1.7 million visitors saw the banner. This number is more than the daily total of "hits" the sites were receiving when they offered pirated movies and music. In other words, the government's warning banners have "gone viral," and Internet users are actually seeking the web site out to view the banners themselves. The resulting public education about pirating is a significant result of this enforcement operation.

Operation In Our Sites not only targets websites offering pirated films and music, but other infringing items distributed over the Internet such as software, electronics, games and products that threaten public health and safety, especially counterfeit pharmaceuticals.

As the Operation continues to confront these web sites, we are working directly with Victoria Espinel and the IPEC to assess current efforts to combat such sites and develop a coordinated and comprehensive plan to address them.

In March and April 2010, ICE Homeland Security Investigations agents in Baltimore seized more than one million counterfeit items from a criminal organization smuggling counterfeit shoes and luxury goods through the Port of Baltimore, with an estimated MSRP of more than $219 million. Eight conspirators were arrested by ICE in the United States and one remains a fugitive. ICE was able to develop evidence on a parallel operation in the United Kingdom, and our ICE Attaché in London passed on the information to relevant UK law enforcement. This resulted in six arrests, seizures of

50,000 counterfeit luxury items and approximately $617,000 in U.S. currency equivalent, making it one of the largest IP theft enforcement cases in UK history.

In April 2010, the IPR Center coordinated Operation Spring Cleaning, a national IP theft enforcement operation in 22 domestic ICE offices targeting the manufacture, distribution and retail sale of counterfeit goods. The efforts of Spring Cleaning partners, including ICE, CBP, DEA, FBI, and 38 state and local law enforcement agencies in the IP Theft Enforcement Teams, resulted in 45 arrests and the seizure of 700,000 counterfeit items with an estimated MSRP of more than $44 million.

In June, the IPR Center coordinated Operation Mercury II, an ICE-proposed and WCO-approved five-day surge operation to combat the importation and distribution of substandard and counterfeit pharmaceuticals being shipped internationally. This operation enabled WCO members to exchange nominal information, postal markings and other data contained within or on the parcel, to allow for possible enforcement action. Participating customs administrations are still finalizing data and enforcement statistics for final submission to the WCO.

Earlier this year, the IPR Center partnered with the NFL, NBA, NHL, NCAA, industry and local law enforcement to conduct operations targeting counterfeit sports merchandise sold during the Super Bowl, NBA All-Star Game, Stanley Cup championship, and NCAA Final Four and Frozen Four tournaments. These operations resulted in seizures of over 14,000 counterfeit items valued at more than $760,000.

ICE remains steadfast in ensuring that IP theft is not used to support those who would harm the United States or our interests abroad. Last November, ICE and the FBI, worked with New Jersey State Police and elements of the Philadelphia FBI Joint Terrorism Task Force (JTTF) on a case that identified a three-cell criminal organization; a U.S.-based stolen property and counterfeit goods group; an overseas procurement group; and an international group tied to Hezbollah procuring weapons, counterfeit money, stolen property, and counterfeit goods. Ultimately, the investigation resulted in 25 indictments, with 15 criminal arrests, 10 red notices in INTERPOL and 15 administrative arrests.

ICE's IP theft enforcement efforts have continued to escalate in the past 18 months under this Administration. ICE initiated 643 IP theft cases during the entire FY 2008. In FY 2009, 806 IP theft cases were initiated and thus far in the first two quarters of FY 2010, ICE has initiated 560 IP theft cases. ICE is on pace to increase IP theft enforcement by 40 percent over FY 2008 and 20 percent over FY 2009.

PARTNERSHIP WITH THE PRIVATE SECTOR

The IPR Center recognizes that law enforcement cannot fight IP theft alone and we look to partner with private industry in our efforts. In a market economy, no one has a greater incentive for protecting intellectual property rights than private industry. Companies

want to protect their investments in research, development, manufacturing, sales, marketing and product distribution.

To help enhance and facilitate productive partnerships within both the public and private sectors, the IPR Center launched Operation Joint Venture in 2008. Operation Joint Venture (OJV) provides industry with valuable information about ICE's efforts to combat the importation of hazardous and counterfeit products, and it provides points of contact in ICE HSI field offices that industry can use to provide ICE with leads and tips. Since July 2008, the IPR Center and Joint Venture-trained ICE agents have conducted approximately 453 outreach efforts, to include formal presentations and meetings, speaking with approximately 26,046 people.

Through Joint Venture, the IPR Center is improving and expanding its relationships with rights holders, who are the victims of IP theft. As part of this initiative, in March 2010, ICE hosted a meeting with industry representatives in Hong Kong, where we discussed developing opportunities to address enforcement in China. A similar meeting was held jointly with DOJ's Criminal Division at the IPR Center in December 2009 and with the film industry in January 2010.

In May, ICE hosted the first meeting of the IPR Center's Informal Advisory Working Group where IPR Center management and industry representatives discussed issues and identified opportunities to jointly tackle IP theft.

PUBLIC AWARENESS

ICE believes the only way for us to be truly successful in our efforts against IP theft is to change public perception of IP crimes. Too many individuals believe buying knock-off goods or downloading films or songs from piratical sites is not wrong – that it is not harming Americans. One contributing factor to this public misperception, I believe, is that those of us in government responsible for enforcement and policy do not accurately convey what IP protection and IP theft enforcement is in simple terms. Counterfeiting, piracy, and diversion are theft. Theft of innovation, jobs, and revenue that sustains jobs, advances American business, funds health insurance, and supports industrial growth and economic stability. It is a form of theft that affects every sector – from pharmaceuticals, aircraft parts and toothpaste to electronic components, cosmetics and medical devices.

The IPR Center is leading an effort to educate the public and other audiences about IP theft and international organized crime connections. Last month, the IPR Center hosted a Symposium titled "IP Theft and International Organized Crime and Terrorism: The Emerging Threat." Panels of academics, industry leaders and domestic and international government officials discussed links between international organized crime, terrorism and IP theft. Attendees included congressional staff, domestic law enforcement, media, and others. The IPR Center, along with INTERPOL, also hosted the 2010 Certification Industry Against Counterfeiting North America conference at the IPR Center, and led a detailed discussion on the threat posed to this vital sector by IP theft.

CHALLENGES AHEAD

I am regularly asked what challenges lie ahead in IP theft enforcement -- what tools or new laws are needed. As ICE conducts multiple enforcement operations, some of which I described above, we observe trends in IP theft and we have made a number of critical observations.

First, most of our investigations are leading to criminal operatives and organizations overseas. The challenges of overseas investigations include having "boots on the ground" to work with foreign law enforcement. Existing and productive relationships with the foreign host government are often critical to success. Building these relationships takes time, and ICE continually revisits its presence in foreign countries to support investigations that will have the greatest impact.

Second, the use of the Internet and, increasingly, the use of multiple servers have created a challenge for criminal investigators because of the complexity of collecting electronic evidence. Approximately 250 of ICE's nearly 7,000 agents are classified as Computer Forensic Agents (CFAs). These agents are highly-trained by ICE's Cyber Crimes Center in Fairfax, Virginia in an eight-week, hands-on classroom curriculum that costs approximately $40,000. The recent Operation In Our Sites enforcement action saw the deployment of five percent of ICE's CFAs on one day to secure the electronic evidence from nine websites, and they will be heavily involved in sorting through the evidence for potential prosecutions.

U.S. Customs used to control smuggling by use of large cutter ships patrolling the coast for pirating ships and others. Now, the tools we need to use are highly-trained individual computer forensic agents piercing computer security of internet pirates. We are adapting to the challenge. However, ICE has competing priorities for the services of the CFAs including ongoing national security, child exploitation, financial crime, and other investigations.

Third, while ocean-crossing shipping containers are necessary to move bulk quantities of counterfeit items such as handbags, shoes, batteries or holiday lights, other high value items including counterfeit pharmaceuticals, mobile phones, computer network components, micro-chips, MP3/4 Players, pirated DVDs/CDs and others are being smuggled in smaller quantities through mail and/or express courier parcels. IP thieves are taking advantage of the lack of advance information or formal entry process at mail and courier facilities to smuggle products into the United States. ICE and CBP, using our Customs authorities, will need to increase surge operations at foreign mail and courier facilities to generate seizures, controlled deliveries, intelligence and investigative leads.

Another challenge we face is that criminals are now willing to counterfeit and market any product if it will sell, regardless of whether it could result in serious and significant injury to consumers or the public. ICE has investigated cases involving counterfeit toothpaste

that contained a component found in antifreeze. In 2007, ICE and the FDA arrested Kevin Xu, one of the world's most prolific counterfeiters of pharmaceuticals, after luring him to meet an undercover ICE agent in Thailand. Xu has been linked to distribution of counterfeit narcotics such as Plavix, Zyprexa, and Casodex that are used, respectively, to treat blood clots, schizophrenia, and prostate cancer, respectively. ICE and the FBI, along with DOJ, investigated the potential sale of counterfeit Cisco Gigabit Interface Converters (GBICs) to the U.S. Department of Defense for use by U.S. Marine Corps personnel operating in Iraq. The computer network for which the bogus GBICs were intended is used by the U.S. Marine Corps to transmit troop movements, relay intelligence and maintain security for a military base west of Fallujah. Failure of these counterfeit devices on the battlefield would have endangered the lives of American service members. The defendant's profit would have been only approximately $120,000, showing the callousness with which many counterfeiters treat human life. I am pleased to report the defendant was recently sentenced to more than four years in prison.

These cases are troubling and demanding of attention from criminal investigators and regulatory agencies. They also mean that investigative resources must be prioritized. At a recent industry open house hosted by the IPR Center, more than 15 disparate industries were represented that collectively employ hundreds of thousands of Americans and produce substantial revenue in sales and taxes. This included pharmaceutical companies, electronics manufacturers, luxury goods corporations, software and electronic game developers, footwear and apparel producers, and entertainment conglomerates. Each of these industries believes that they have the most compelling case for government assistance in IP theft enforcement and would like to be first in line for their criminal case referral to be investigated. ICE's priorities in IP theft enforcement are protecting health and safety, the warfighter, and the American economy.

CONCLUSION

Thank you once again for the opportunity to appear before you today to discuss the work of U.S. Immigration and Customs Enforcement in protecting U.S. intellectual property rights. This is an issue of critical importance as the IP theft jeopardizes health and safety and harms the American economy. I would be pleased to answer any questions that you may have at this time.

Chairman BERMAN. Mr. Israel.

STATEMENT OF THE HONORABLE CHRIS ISRAEL, CO-FOUNDER AND MANAGING PARTNER, PCT GOVERNMENT RELATIONS LLC (FORMER U.S. COORDINATOR FOR INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT)

Mr. ISRAEL. Thank you, Chairman Berman, Ranking Member Ros-Lehtinen, and members of the committee. I really appreciate the opportunity to appear before you today and discuss the importance of American intellectual property.

As the chairman noted, from May 2005 to March 2008, I had the privilege of serving as the U.S. Coordinator for International Intellectual Property Enforcement. That previous effort and those we are here to discuss today reflect the critical role that IP plays in the competitiveness and growth of the U.S. economy. Many of the statistics that back this up are well known. Some of them have been discussed today, but they certainly deserve noting.

Particularly relevant to this committee, IP intensive industries in the U.S. create an average $14.6 billion in trade surplus each year. U.S. IP is worth between $5 trillion and $5.5 trillion, more than the Gross Domestic Product of any other single country. In States that are represented by Representatives of congressional districts of this committee, the movie industry alone supports 520,000 jobs and provides over $33 billion in direct annual wages. Finally, the number of U.S. patents for clean and renewable energy sources has risen from 720 in 2002 to 1,125 in 2009.

For policymakers seeking to support our creative and cutting edge industries and workers, few things are as important as a strong commitment to the protection of their intellectual property.

Unfortunately, as we are discussing, we are confronting an environment in which counterfeiting and piracy have become sophisticated global enterprises that threaten entire industries, put U.S. consumers at risk, and often provide a source of revenue for criminal organizations.

The Obama administration's 2010 Joint Strategic Plan on Intellectual Property and Enforcement lays out a thoughtful and comprehensive approach to tackling a number of difficult IP policy and enforcement challenges. For instance, the strategy recognizes the global proliferation of Web sites that traffic in huge volumes of pirated material, and as Assistant Secretary Morton just went through in compelling detail, Operation In Our Sites led by ICE and DOJ and a number of Federal agencies does really provide a compelling example of how law enforcement and industry can collaborate to address the problem.

Likewise, the strategy recognizes that better cooperation among a range of industry players, as Coordinator Espinel mentioned this morning, is necessary, and ultimately legislation, as the chairman noted in his opening comments, may indeed be required to have a meaningful impact on online piracy.

The strategy also addresses the significance of the Anti-Counterfeiting Trade Agreement. This is a major policy initiative that will substantially improve the global climate for IP protection. The administration's strategy also promises to take the government's own coordination to a new level in terms of agencies involved and their

ability to tackle difficult challenges like counterfeit medicines and supply chain management.

Finally, the importance of sound and relevant data is of tremendous importance to policymakers and industry, and can be sometimes tedious in detail but I think it is a very important thing to consider, and the strategy envisions new government data that will quantify the true value of IP to our economy.

The U.S. confronts a range of domestic and international IP issues at any given time. However as we discussed this morning, China and Russia do present very unique challenges.

The U.S. has made some progress with China by working bilaterally attempting to enforce trade rules and attacking criminal organizations, but it is clear that we are probably treading water at best. The WTO cases brought by the United States against China in 2007 may ultimately improve some enforcement efforts and provide additional market access for U.S. content, but we are quickly reminded that nearly four out of five software applications running on Chinese computers, the biggest PC market in the world by the way, are pirated.

And late last year China significantly raised the stakes for U.S. industries from IT to Clean Tech with more aggressive implementation of its indigenous innovation strategy. These policies would exclude U.S. companies from large parts of the Chinese market and compel transfers of intellectual property as the price of entry when they are let in. As Robert Holleyman, CEO Of the Business Software Alliance recently put in the Washington Post, "This squeezes us at both ends, shutting many of our innovative products out of the market and stealing the rest."

As has been the case for several years, Russia's desire to join the WTO is directly tied to its IP enforcement record. Presidents Obama and Medvedev announced at their summit last month that they hoped to conclude Russia's outstanding WTO commitments by September 30th of this year. In terms of IP enforcement this means Russia must make a range of criminal, civil and customs enforcement improvements that they first committed to in very excruciating detail back in 2006.

Given the scope of these commitments, it seems to be quite a heavy lift. However, the administration has indicated that interactions with Russia have intensified on IP issues of late.

Mr. Chairman, it has become very clear in recent years that our ability to protect and promote intellectual property is a critical component of our overall foreign policy and important goals such as addressing our competitive issues with countries like China, reducing our dependence on foreign energy sources, promoting exports, and incentivizing foreign investment in the United States all depend on our intellectual capital. It is one of our most valuable resources and competitive advantages.

Again, I appreciate the opportunity to come here before you today, and I am honored to have this opportunity, and I very much look forward to your questions.

[The prepared statement of Mr. Israel follows:]

Written Statement of Chris Israel
Co-Founder and Managing Partner
PCT Government Relations LLC
(Former U.S. Coordinator for International Intellectual Property Enforcement)

"Protecting U.S. Intellectual Property Overseas:
The Joint Strategic Plan and Beyond"

House Committee on Foreign Affairs

Wednesday, July 21, 2010

Chairman Berman, Ranking Member Ros-Lehtinen and members of the Committee, I appreciate the opportunity to appear before you to discuss the promotion and protection of American intellectual property overseas and the Obama Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement.

(Please note that this statement reflects my own personal views and is not given on behalf of my firm or any of its clients.)

The Significance of Intellectual Property Enforcement

From May 2005 to March 2008 I had the privilege of serving as the U.S. Coordinator for International Intellectual Property Enforcement. Our mission was to coordinate and leverage the resources of the U.S. federal government to protect American IP at home and abroad.

That previous effort, as well as those currently being led by the Obama Administration, reflect the critical role that intellectual property plays in the competitiveness and growth of the U.S. economy.

Many of the statistics that back this up are well known, but deserve repeating:

- IP-intensive industries in the U.S. create an average $14.6 billion in trade surplus each year.[1]
- U.S. intellectual property is worth between $5.0 trillion and $5.5 trillion—more than the nominal gross domestic product of any other country.[2]
- In the states represented by the Members of this committee, the movie industry alone supports nearly 520,000 jobs and provides over $33 billion in direct wages.[3]

These numbers give us a *snapshot* of what IP means to our economy today.

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[1] http://www.theglobalipcenter.com/sites/default/files/reports/documents/NDP_IP_Jobs_Study_Hi_Res.pdf
[2] Robert J. Shapiro and Kevin A. Hassett, "The Economic Value Of Intellectual Property," USA For Innovation, October 2005
[3] http://mpaa.org/policy/state-by-state

Other facts also point to very important *trends*:

- The number of U.S. patents for clean and renewable energy sources has risen from 720 in 2002 to 1,125 in 2009.[4]
- Over the same period of time venture funding of these technologies in the U.S. has risen from $900 million to $5.8 billion last year, and 2009 was clearly a difficult time for new investments.[5]
- It is estimated that IP-intensive industries account for nearly half of all U.S. exports. This includes over $125 billion in foreign sales for U.S. copyright industries and over $28 billion in sales for the U.S. pharmaceutical sector.[6]

For policymakers seeking to support our most creative and cutting-edge industries, few things are as important as a strong commitment to the protection of their intellectual property.

Unfortunately, we are confronting an environment in which counterfeiting and piracy have become sophisticated, global enterprises that threaten entire industries, put U.S. consumers at risk and often provide a source of revenue for criminal organizations:

- In 2009, U.S. Customs officials made 14,841 seizures of counterfeit and pirated goods at our borders – this is up from a little over 8,000 seizures in 2005.
- According to a report by the Federal Trade Commission, counterfeiting is estimated to cost the U.S. auto parts industry $3 billion in lost sales a year, potentially putting up to 250,000 manufacturing jobs at risk.
- Illegal file-sharing and other forms of online piracy are eroding investment, creativity and sales of local music in major markets. For example, not one new Spanish artist made the charts in that country last year[7].
- Counterfeit drug sales could reach $75 billion globally in 2010, an increase of more than 90% from 2005.[8]
- Senior U.S. Government law enforcement officials, as far back as Department of Homeland Security testimony before this committee in 2003, have consistently pointed to the connection between IP crimes and financing for criminal and terrorist organizations.[9]

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[4] Clean Energy Patent Growth Index: http://cepgi.typepad.com/heslin_rothenberg_farley_/

[5] Cleantech Group

[6] *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, by Stephen E. Siwek of Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), June 2009, available at www.iipa.com.

[7] International Federation of the Phonographic Industry, Digital Music Piracy Report 2010, January 2010.

[8] Counterfeiting Facts and Stats," Protection from Brand Infection, CMO Council. 28 April 2009.

[9] "The Department of Homeland Security has not established a direct link between profits from the sale of counterfeit merchandise and specific terrorist attacks in the United States, but we do have credible and specific intelligence which indicate

The Importance of the Joint Strategic Plan on Intellectual Property Enforcement

The 2010 Joint Strategic Plan on Intellectual Property Enforcement recently released by the Obama Administration lays out a thoughtful and comprehensive approach to tackling some of the toughest IP policy and enforcement challenges that we face now and will confront in the future.

While a number of critical actions proposed within the Strategy focus on government process and expanded enforcement activities, it also addresses some significant policy matters that will improve the environment for American rights holders.

For instance, the Strategy recognizes the alarming proliferation of websites that traffic in huge volumes of pirated material, and the recent *Operation In Our Sites* led by ICE and DOJ provides a compelling example of how federal law enforcement and industry can collaborate to address this problem. Likewise, the Strategy recognizes that better cooperation among a range of industry players is necessary and, ultimately, legislation may be required to have a meaningful impact on online piracy.

The Strategy also stresses the significance of the Anti-Counterfeiting Trade Agreement. This is a major policy initiative that will substantially improve the global climate for IP protection.

The Administration's Strategy also promises to take the government's own coordination to a new level in terms of the agencies involved and their ability to tackle difficult challenges like counterfeit medicines and supply chain management.

Finally, the importance of sound and relevant data is of tremendous importance to policy makers and industry, and the Strategy articulates a range of new economic indicators the Administration will seek to quantify the true value of IP to our economy.

The Unique Challenge of China and Russia

The U.S. confronts a range of domestic and international IP issues at any given time, however, China and Russia present large and unique challenges.

The U.S. has made some progress with China through bilateral efforts such as the Strategic & Economic Dialogue and the Joint Committee on Commerce and Trade, attempting to enforce trade rules and attacking criminal organizations, but it is clear that we are probably treading water at best.

The recent WTO cases brought by the U.S. against China may improve some enforcement efforts and provide additional market access for U.S. films, but we are quickly reminded that nearly 4 out of 5 software applications running on Chinese computers – the biggest PC market in the world by the way – are pirated.

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that intellectual property crimes and terrorist organizations are linked." Testimony of Asa Hutchinson, Under Secretary for Border and Transportation Security, House Committee on International Relations Hearing: Are Proceeds from Counterfeited Goods Funding Terrorism, July 16, 2003.

The music industry, unfortunately, is facing even longer odds, with nearly 99% of the marketplace for foreign music in China being unauthorized. There is little room for optimism either, as recent court rulings in China have sided with Chinese national champion Baidu despite the fact that its massive indexes of music carry no legitimate licenses from copyright owners.

And, as has been the case for many years, over 80% of the counterfeit goods seized at U.S. borders come from China. We are also seeing more sophisticated and potentially dangerous fake goods leaving China including counterfeit computer routers, medical devices, auto and aircraft parts, and pharmaceuticals. Professional counterfeiters in China are moving up the value chain and into high-margin, high-demand products such as these.

Late last year China significantly upped the stakes even further for U.S. industries from information technology to clean tech with the introduction of its "indigenous innovation" strategy. These policies would exclude U.S. companies from large parts of the Chinese market and compel transfers of intellectual property as the price of entry when they are let in. As Robert Holleyman, CEO of the Business Software Alliance put it recently in the Washington Post, "This squeezes us at both ends -- shutting many of our innovative products out of the market and stealing the rest."

As has been the case for several years, Russia's desire to join the WTO has become a focal point for U.S. efforts to improve IP enforcement there. Presidents Obama and Medvedev announced at their summit last month that they hope to conclude Russia's long outstanding WTO commitments by September 30th of this year. In terms of IP enforcement, this would mean Russia must make a range of criminal, civil and customs enforcement improvements they committed to as part of the U.S.-Russia Bilateral Agreement in 2006. Specifically, the Intellectual Property Side Letter, which was part of that Agreement, articulated a number of steps that the Government of Russia would take to address flaws in its IP enforcement rules and process. It also committed to be fully compliant with the WTO Trade Related Aspects of Intellectual Property Agreement (TRIPs) upon accession to the WTO.

Given the scope of these commitments and the work that remains left to do, completing this effort by September 30th seems to be a heavy lift. For its part, the Obama Administration has maintained the position of the Bush Administration that the U.S. supports Russia's accession to the WTO, however this support is contingent upon Russia's fulfillment of the commitments it made to address outstanding legislative gaps and enforcement standards as set forth in the 2006 IP Side Letter. USTR and other members of the U.S. delegation to the U.S.-Russia IP Working Group have recently reported that their Russian counterparts have intensified efforts to reach agreement on outstanding IP issues.

Russia may indeed now have more incentives to complete the WTO process. The top Russian political leadership is supporting the growth of an innovative economy and technology development, with the goal of expanding its economy to reduce its reliance on natural resources exports. WTO membership would increase foreign investor confidence in Russia, which will be needed to realize the government's economic policy objectives. Having a strong IP legal regime and effective enforcement practices will be vital to attracting foreign investors and technology.

As we consider the Administration's Joint Strategic Plan on Intellectual Property Enforcement and assess our relationships with key trading partners such as China and Russia, it is very clear that our ability to promote and protect American intellectual property is a critical component of our overall foreign policy. Important goals such as addressing our competitive issues with countries like China, reducing our dependence on foreign energy sources, promoting exports and incentivizing foreign investment in the U.S., all depend upon our intellectual capital. It is one of our most valuable resources and competitive advantages.

I thank you again for the opportunity to appear before the Committee and discuss these important issues.

Chairman BERMAN. Thank you very much, and I will give myself 5 minutes for a few questions.

The seizing of a domain name, what does ICE have to do to make that happen?

Mr. MORTON. We work with the United States Attorney's Office. We demonstrate that the particular Web site in question is engaged in the illegal distribution of copyrighted material, and then we go to the United States District Court, we get a seizure order to cease the domain name as an instrument of a crime, and we then put up a banner to the world saying we now own this. And because the domain registries are largely in the United States and are controlled by the intellectual property it is a very effective way for us to have a short-term, quick enforcement effort.

It is important to note that the domain name is different than the content that may be hosted on the server, and so you can get a new domain name. The server may be overseas. The contents may be overseas. That is more of a long-term challenge for us. But we go into court and we seize them.

Chairman BERMAN. I take it the one short-term benefit of this process is for people who know that name there is a lag time between them picking up what the new domain name is and shifting, although practically speaking do you have any sense that that does cut down on the piracy, or are there just so many different alternatives that if one is back they are immediately going to one of the other ones that people who do that are totally familiar with?

Mr. MORTON. First of all, you are right. It makes it more difficult. I mean, all the individual users have their favorite sites and their favorites list. You now have got to change all of that. You have got to know what the new one is. If there are contractual arrangements with PayPal or with the advertisers, those all have to be changed. So it takes—it is definitely a serious hindrance. It obviously shuts the site down. They can start up again, but it is even more complicated.

We saw with a few of the Web sites that we seized the domain name they didn't get all of the links within the new site right and so there would be portions of the site of the new site, and if you clicked on a link, for example, their policy or about us it would take you back to the original site, and it would take you to the government's seizure banner. So it definitely hurts their ability to do it.

Time will tell on the second portion of your question, Mr. Chairman. What we are trying to do in Operation In Our Sites is not just seize one site here, one site there. We are trying to do a whole wave of sites. We are going to follow those sites. If they reappear, we are going to follow them. We are going to seize those domain names as well, and we are going to try to do it across whole categories, and just get in the business of letting these folks know we are going to follow you wherever you go and we are going to take these domain names. We are going to follow you and we expect you to try to pull up again and start a new site, but you can expect us to be right on your heels.

Chairman BERMAN. Thank you. Great.

Mr. Israel, Ms. Espinel is now in a new place and with some new authorities has a position you held. Could you describe a couple of the most serious challenges you faced? Any thoughts you have of how she might overcome those challenges?

Mr. ISRAEL. Thank you for the question, Mr. Chairman. She is off to a great start in clearing the strategy. They have really articulated a number of very key issues. She seems to have great cooperation and collaboration across the range of industries. I personally never found that to be a huge problem. I think there was a perception that there were massive stove pipes and heels dug in across the Federal Government. I personally found that the people wanted to collaborate, wanted to tackle the problem. You are dealing with very eclectic and very different agencies, all the way from trade negotiators to Federal investigators and prosecutors. It is a challenge to pull all those people together in a way that provides leadership and adds value to it.

I think the biggest challenge that we are facing, and I will equate it maybe to China in a strange way, we need to institutionalize our IP enforcement, priorities, methodologies, strategies, and tactics in a way that expands beyond just those issues we are talking about at the hearing today. They are going to be manning the front line today, and this really has to be a long-term systemic effort for the U.S. Government. In the way that we see other countries go after IP, we have to go after it just as aggressively. That is a huge challenge facing us.

Chairman BERMAN. Thank you very much. My time has expired. The ranking member.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman, and thank you, gentlemen, for excellent testimony. I will bunch my questions together and let you answer.

Secretary Morton, you are heading to China in September to discuss intellectual property piracy with Chinese officials and to sign a new cooperation agreement. Why do you believe that these new discussion and yet another agreement will produce different results than the ones in the past, and isn't the Chinese approach to promise cooperation and then do the minimum, throw us a bone to keep us quiet?

And then, Mr. Israel, on China and Russia you had discussed briefly real action that we can take to stop the piracy and to stop the theft. Could you elaborate a bit? I wasn't quite satisfied with the previous answer of our previous witness of how we can bring

sufficient pressure to bear on both of these countries to have them do the right thing?

Thank you, Mr. Chairman.

Mr. MORTON. I don't have any illusions about the trip that I am going to take to China. I think it is important, though, because we have had a number of conversations with the Chinese here. I try to be fairly straightforward in my dealings as a law enforcement agency. The Chinese know my views, and we have had a number of successful operations with the Chinese, and we have very good cooperation with Chinese authorities in Hong Kong. Now, obviously, Hong Kong has a separate charter and status right now.

And so I, while not underestimating the challenge, and it is sobering, my view is while I am in this job I need to do everything I can as part of a larger coordinated effort to bring about a change result and meaningful consequences. I am all about meaningful consequences for criminals who are stealing American products and services. And we have had some successes with the Chinese.

I am going to try to push those successes to particularly where we have found the Chinese to be willing to work with us where there is an international component to the case, where there are Americans involved as well as Chinese, and I am going to do everything in my power to increase the number of cases that we are working to, and take it as far as I can.

Ms. ROS-LEHTINEN. I believe that you will. Thank you, Mr. Secretary. Mr. Israel?

Mr. ISRAEL. Thank you for the question.

I think in terms of China, as Assistant Secretary Morton mentioned, the impression I always receive from speaking to our law enforcement officials who are working directly with China is that when you got to the actual level of enforcement officials, cops working with cops, the rest of China, the level of cooperation is pretty good.

The risk that China runs with this strategy is that at some point they are dealing with criminal organizations that are engaging in this high-level, sophisticated intellectual property theft. That is a problem and a threat to them internally as well. I mean, it is kind of a hard thing to manage, so I think working directly with their law enforcement agencies to bring cases, to go after transnational crime is a compelling place, an important place to start and remain.

The international groups, the G–8, Lyon-Roma infrastructure, we initiated some things working through there, working through Interpol, I think attacking it as a criminal problem; the issue of, you know, potentially looking into what types of cases we might be able to bring to the WTO to create the authority to bring the type of countervailing duty based on IP losses to the United States that some members were speaking about earlier certainly is an interesting theory to pursue, an idea to pursue.

This is at the end of the day in economic security issue for China, and I think we need to make sure that we try to find leverage points that will recognize that.

With Russia, I think this seems to have all crystallized in the WTO question. I do think that is a point of leverage for us. I do think there appears to be tremendous consistency between the

Bush administration and the Obama administration on the question of holding to the line on WTO accession for Russia and making sure they complete commitments that have been on the table now for a very long time. I think that is important to remain consistent there.

There seems to be some renewed incentive in Russia. They are trying to evolve their economy into a more innovative place so they are compelled by that, I think.

Ms. ROS-LEHTINEN. Thank you very much. Thank you, gentlemen. Thank you, Mr. Chairman.

Chairman BERMAN. Mr. Manzullo, 5 minutes.

Mr. MANZULLO. Thank you. The first time I went to China was in 1997 with Congressman Behrider, Congressman Hastings, and actually Rick Kessler was along with a group, and we met with a Chinese group called Moffet, which was the—I don't know if they call it the same—the intellectual property protection agency that was set up at the time, and I returned to China several times after that. Nothing gets done.

You know, I don't think it's a matter of political will. Perhaps Mr. Sherman said it correctly that there is a high priority to do nothing, and my question is, in terms of the remedies has anybody ever thought about the fact that if a country stands by and knowingly sees the private sector engage in a crime, in this case the pirating of most especially movies and songs of that nature, does it ever reach a point when the inactivity of a government leads to the criminal activity of the private sector being imputed to the government for purposes of enforcement?

Mr. MORTON. I am unaware of any circumstance in which that has happened in the intellectual property world, and in the case of China there have been a number of enforcement actions over the years, joint enforcement actions between the United States and government authorities to shut down offending factories and to arrest and prosecute individuals. It is a small number, far fewer than we want, and I am not going to challenge Mr. Israel's characterization of us treading water, which is what you have observed yourself, but I am not aware.

Mr. MANZULLO. Well, it may be more drowning than treading water. The area that I represent is so heavily involved in manufacturing intellectual property—the Chinese will take something and they will do a knock off in such a short period of time. I was told that one of the reasons we have no golf club manufacturers in this country, with the exception, I think, of PING that does some assembly here, is that they will come out with a real great golf club and within 12 hours there is a knock off being manufactured in China.

I just don't know how we are going to be able to get our arms around this thing. You know, we talk about how there is no political will on the part of the Chinese. I just don't think private property rights are within their vocabulary. It is not in their culture.

Mr. ISRAEL. Indeed, Congressman, private property is a new concept in China, and I think we are still in the process of that being fully adopted into the rule of law and through the judicial system in China, and I think what we see in the indigenous innovation proposals that are coming out of China that are drawing such ap-

propriate scrutiny because we are seeing the intellectual property policies, weakness in enforcement tied directly to an overt economic strategy. It is clearly designed to promote domestic champions. It is clearly designed to build those domestic champions upon the innovation and input of primarily U.S. companies, but other global companies as well, in position in a way in which they are directly competitive to——

Mr. MANZULLO. But when the Olympics were in China they knew how to protect their trademarks of everything associated with the Olympics. I mean, I don't know how long this system can be gamed like this, and you wonder how much we are going to lose to China. If you lose on an even playing field, that is competition. I know you don't have an answer for me and I am not expecting one, but I just want to thank you guys for all the hard work that you put in on this.

Chairman BERMAN. The time of the gentleman has expired. You know, the ranking member, in her first round of questions, raised this issue of the leverage point, and in this case she was talking about Russia, and accession to WTO. One does start to think that we didn't drive a tough enough bargain when we let China into WTO in terms of not just laws but enforcement of those laws. I mean, there is an acceptance of a certain culture in WTO that China did not have to incorporate in order to get into that organization.

You talked about a footprint, I am just going to finish up and then anybody else who wants, but you talked about a footprint in other countries. We are not talking here about people meeting with top government officials and heads of enforcement agencies.

Are you talking about people who are doing enforcement and how do they operate in another country? Run around and seize stuff?

Mr. MORTON. No. Mr. Chairman, we have a very large footprint overseas, the largest in the Department of Homeland Security, and it is because we are essentially a criminal investigative agency dedicated to transnational crime. That is our business—investigating the illicit movement of people, money, goods into the United States and out of the United States in efforts to steal our goods and services, whether it is export control or intellectual property.

So, we have special agents. They are investigators posted throughout the world. They obviously do not have direct law enforcement authority in the country in question, so their job is to work very, very closely with their law enforcement counterparts to educate them, to train them, and wherever possible, to engage in joint investigations. Some countries we have a great deal of success, others we don't have so much success.

China is a fascinating study in that we have a lot of work to do in mainland China. We have a tremendously good working relationship on intellectual property with Hong Kong authorities. So it is critical to us—one of the things I am very interested in, we don't receive a specific appropriation for intellectual property, although that may change because this year for the first year the President's budget calls for specific investigative agents in ICE for this purpose, in creating a dedicated corps of overseas ICE investigative attaches that line up with the IP resources of USTR and the State

Department in those countries that are not only the areas of concern, but also the countries where we have some like-minded views and an ability to carry out additional enforcement.

Chairman BERMAN. I thank both of you very much. Very interesting, very important and I appreciate your being here and sharing your thoughts with us, and with that the committee hearing is adjourned.

[Whereupon, at 12:12 p.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

FULL COMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

Howard L. Berman (D-CA), Chairman

July 14, 2010

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov)**:

DATE: Wednesday, July 21, 2010

TIME: 10:00 a.m.

SUBJECT: Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond

WITNESSES: **Panel I**
The Honorable Victoria A. Espinel
U.S. Intellectual Property Enforcement Coordinator
Executive Office of the President

Panel II
The Honorable John T. Morton
Assistant Secretary
U.S. Immigration and Customs Enforcement (ICE)
U.S. Department of Homeland Security

The Honorable Chris Israel
Co-Founder and Managing Partner
PCT Government Relations LLC
(Former U.S. Coordinator for International Intellectual Property Enforcement)

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF FULL COMMITTEE HEARING

Day *Wednesday* Date *7/21/10* Room *2172 RHOB*

Starting Time *10:05 A.M.* Ending Time *12:14 P.M.*

Recesses [ ] (_____ to _____)

Presiding Member(s) *Howard L. Berman (CA), Chairman*

CHECK ALL OF THE FOLLOWING THAT APPLY:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]

Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING or BILLS FOR MARKUP: *(Include bill number(s) and title(s) of legislation.)*
Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond

COMMITTEE MEMBERS PRESENT:

See attached

NON-COMMITTEE MEMBERS PRESENT:

n/a

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] No [ ]
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Written statment from the American Association of Independent Music;
Fox Filmed Entertainment letter dated 7/20/10 to Chairman Howard L. Berman.

ACTIONS TAKEN DURING THE MARKUP: *(Attach copies of legislation and amendments.)*

RECORDED VOTES TAKEN (FOR MARKUP): *(Attach final vote tally sheet listing each member.)*

Subject	Yeas	Nays	Present	Not Voting

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *12:14 pm*

Doug Campbell

Doug Campbell, Deputy Staff Director

Attendance - HCFA Full Committee Hearing:
Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond
Wednesday, July 21, 2010

Howard L. Berman (CA)
Donald Payne (NJ)
Brad Sherman (CA)
William D. Delahunt (MA)
Albio Sires (NJ)
Gerald E. Connolly (VA)
Theodore E. Deutch (FL)
Sheila Jackson-Lee (TX)
David Scott (GA)
Jim Costa (CA)

Ileana Ros-Lehtinen, (FL)
Christopher H. Smith (NJ)
Dana Rohrabacher (CA)
Donald Manzullo (IL)
Ted Poe (TX)

COMMITTEE ON FOREIGN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C. 20515

STATEMENT OF

THE HONORABLE ENI F.H. FALEOMAVAEGA

CHAIRMAN

SUBCOMMITTEE ON ASIA, PACIFIC AND THE GLOBAL ENVIRONMENT

before the

COMMITTEE ON FOREIGN AFFAIRS

"Protecting U.S. Intellectual Property Overseas:

The Joint Strategic Plan and Beyond"

JULY 21, 2010

Mr. Chairman,

Enforcement of intellectual property laws gives innovators, inventors and creators security in that it promises that their creations will be recognized as their own, and that their creativity will not be exploited by others. Moreover, as a study done in 2007 by the World Intellectual Property Organization and the United Nations University showed, there is a positive correlation between the strength of a country's intellectual property system and its economic growth.

Not only does stronger protection fuel economic growth, it also prevents economic loss. The majority of the work force in the motion picture industry is comprised of middle- and working-class employees, and they lose over $100 million in contributions to their health and pension funds due to intellectual property theft.

Industries related to intellectual property account for over 60 per cent of U.S. exports, and exports are vital to generating the growth that will power the American economy in coming decades. Indeed, President Obama has called for a doubling of U.S. exports over the next five years as a fundamental element of his economic policy.

In a report released on April 30, 2010, eleven countries were highlighted as the most egregious violators of United States intellectual property rights, including many major trading partners such as Canada, Mexico, Spain and Brazil. Moreover, countries such as China and

Russia fail to offer any meaningful protection against copyright infringement. And Baidu, a search engine in China, is wholly dependent on providing access to copyrighted music.

These countries' reckless disregard for intellectual property rights should not be allowed to continue. As a society, we are dependent on innovations for progress; as an economy we are dependent on innovation for growth. Simply put, we must protect our innovators and their creations for our prosperity. Thank, Mr. Chairman, for convening this hearing.

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-03)
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

Hearing on
Protecting US IP Overseas: The Joint Strategic Plan and Beyond
July 21, 2010, 10:00 a.m.
2172 Rayburn House Office Building

Chairman Berman and Ranking Member Ros-Lehtinen, thank you for holding this hearing regarding U.S. intellectual property rights. I appreciate the attention that is being given to this topic and hope that we can work towards securing these important rights for all Americans.

As a Member also sitting on the Science and Technology Committee, I distinctly appreciate America's role as a global leader in developing new and innovative technologies. In my district, St. Louis is at the forefront of the biotechnology industry. Leading in initiatives to advance biofuels and biomedical research, the biotechnology sector is vital to the local and regional economy, as well as our nation's overall competitiveness in these fields.

The U.S. economy depends on the ability of our nation's inventors and artists to develop new technologies that generate job growth and increase our exports of new products and services around the globe. When piracy threatens our ability to produce, market, and sell new products, it puts American jobs and our overall economic security at risk.

Recent trends indicate that piracy is a constantly evolving threat which continues to pose new challenges to law enforcement. The types of goods subject to counterfeiting are expanding, as well as the number of labels and components for these products. Online sales allow piracy to reach a global market from remote jurisdictions, and the volume of counterfeit products sold online now rivals that of traditional markets.

I am encouraged that the Administration has recognized the importance and complexity of securing intellectual property rights with the establishment of its Joint Strategic Plan on Intellectual Property Enforcement, which outlines enforcement strategies for the eight federal agencies dealing with intellectual property protection in this country and abroad. I look forward to hearing from the witnesses today on the steps the Administration has taken to prioritize intellectual property rights enforcement in U.S. trade policy, and the status of its efforts to combat piracy from the worst offending nations – China, Russia, Mexico, Canada, Brazil, and Spain.

The American economy is driven by the innovation and creativity of its people, and we must protect this comparative advantage that makes us successful. Indeed, our founding

fathers had the foresight to place intellectual property rights protections within the confines of the U.S. Constitution, giving Congress the discretion to establish laws to promote science and artistic creativity "by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." I am eager to work with my colleagues on this committee to seek new, innovative ways to protect the intellectually property rights of all Americans.

In closing, I'd like to thank the panelists for their testimonies and presence here today. I hope that your answers and opinions will further our understanding of the challenges to combating piracy and safeguarding our intellectual property rights.

The Honorable Gerald E. Connolly (VA-11)

Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan & Beyond
Wednesday, July 21, 2010
10am

The Administration's 2010 Joint Strategic Plan on Intellectual Property (IP) Enforcement lays out several positive strategies to protect the copyrighted property of American companies. These strategies include: increasing transparency in enforcement policy, ensuring coordination among all levels of law enforcement, asserting our rights internationally, and securing our supply chain. These are all welcome steps in preventing a crime which costs U.S. businesses billions of dollars per year. Moreover, intellectual property theft stifles innovation, places rule breakers on unfair footing, and exposes consumers to faulty products.

Negative aspects of lax enforcement overseas are most easily seen in China. According to the U.S. Trade Representative's Special 301 Report for 2010, "China's IPR enforcement regime remains largely ineffective and non-deterrent." The same report states, "The share of IPR-infringing product seizures at the U.S. border that were of Chinese origin was 79 percent in 2009, a small decrease from 81 percent in 2008."[1]

Piracy in China is harmful to U.S. business in multiple ways. Not only does the original U.S. company lose profit, but when it comes to goods like software, there is an additional concern. Non-Chinese companies, which rightfully pay for goods like software, must compete with Chinese companies, which do not pay for these goods. In March of this year, Robert Holleyman of the Business Software Alliance told this Committee that, "China's 80 percent software piracy rate means that 4 out of 5 enterprises in China can compete unfairly with enterprises in the US that are paying for the software they use to run their businesses and improve productivity."

American businesses are not the only entities harmed by copyright violations and IP theft. An April report from the Government Accountability Office (GAO) listed several counterfeit products which U.S. consumers have encountered. The counterfeit goods include "pharmaceuticals, automotive parts, electrical components, toys, and household goods."[2] The most troubling characteristic of these goods "is that U.S. consumers are likely to have been deceived about the origin of the product."[3] This means that counterfeiters can take faulty products that have not passed inspection by U.S. consumer authorities and place the logos of reputable brands on those faulty products, endangering our citizens' health and safety.

In addition to stifling innovation, endangering consumers through faulty products, and siphoning away rightful profit from American companies, IP infringement often benefits crime syndicates and terrorist groups. For example, Hezbollah has profited from film piracy in the Tri-Border Area (TBA) of Argentina, Brazil, and Paraguay. And "in 2002, authorities estimated that the Provisional Irish

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[1] Both quotes can be found on p. 19 of the report.
[2] *Intellectual Property; Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods* (Government Accountability Office), p. 10.
[3] Ibid., 10.

Republican Army (PIRA) made about $1.5 million a year from piracy alone."[4] Similarly, a criminal organization with links to South Asian terrorist group Lakshar-e-Taiyiba had "a highly profitable enterprise" due to "a large counterfeit DVD operation."[5] The consequences of IP theft are far-reaching, and the notion that it's a victimless crime is patently false.

Fortunately, the United States has recognized the importance of addressing unfair practices due to IP theft by formulating the Joint Strategic Plan—a thorough and ambitious document. I want to give credit to the Intellectual Property Enforcement Coordinator (IPEC)—Victoria Espinel—and her staff for their work on this document. I look forward to listening to the testimony of all our witnesses today to see how we can move forward in protecting the intellectual property of American companies.

[4] Gregory F. Treverton, Carl Matthies, Karla J. Cunningham, Jeremiah Goulka, Greg Ridgeway, Anny Wong *Film Piracy, Organized Crime, and Terrorism (*RAND Corporation, 2009) p. 86.
[5] Ibid, 92.

The Honorable Michael E. McMahon
Committee on Foreign Affairs
Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond
July 21, 2010
10:00 AM,
2172 RHOB

Statement for the Record

Thank you, Mr. Chairman.

Mr. Espinel, Mr. Morton, Mr. Israel, thank you for being here today and addressing this important topic.

I have the honor and privilege of representing Staten Island and Brooklyn, New York.

My hometown of New York City is the proud home to many of the world's greatest creative minds – writers, filmmakers, musicians, songwriters, software developers – you name it.

All of us here agree that the theft of Intellectual Property is far from a victimless crime. IP theft is often a vehicle used to fund a wide range of criminal activity, even including terrorism – and is a great concern.

The internet continues to fuel growth of the "IP theft industry" and we now depend on organizations like U.S. Immigration and Customs Enforcement to lead the effort in identifying, investigating, and bringing perpetrators to justice.

It all seems like a bad game of "whack-a-mole": as you stop one criminal effort, another starts up, often in a different country. With thousands of sites operating internationally, supporting expanded international agreements to protect IP is vital for the U.S. to help solve this difficult problem.

IP theft continues to have a significantly negative effect on my constituents and New York businesses. There is no doubt in my mind that tomorrow's jobs will depend upon intellectual property so combating IP theft is extremely important.

Thank you Mr. Chairman and yield back the balance of my time.

Questions from Chairman Howard L. Berman
Committee on Foreign Affairs hearing:

Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond

Wednesday, July 21, 2010

Questions for Assistant Secretary Morton:

Question:
Mr. Morton, as I mentioned, we are exploring legislative ways to expand upon Operation "In Our Sites." As is clear from the hearing, a number of my colleagues support your efforts and are equally interested in expanding on it. Can you give us a sense of what we might do to scale the program to cover more sites, and take action against these rogue sites more quickly?

Is there a reason you choose movie only sites – can it be expanded to enterprises that facilitate the theft of music, books , videogames, and other products prone to counterfeiting?

How many agents were involved in doing this – I understand it was some 75. That number of agents seems to illustrate how labor intensive the process of identifying and investigating may be – can you describe the process more fully? In addition to a dedicated team of agents or prosecutors are there other ways to other ways to more efficiently carry out these types of investigations and prosecutions?

Response:
ICE is addressing the problem of websites that are used to sell pirated goods through both short- and long-term investigations. The short-term investigations attempt to identify and seize domain names for criminal violations. The long-term investigations target domain names, information stored on servers, counterfeit goods, and bank accounts. The information developed during the long-term investigations may also be used to obtain search, arrest, and seizure warrants.

Although the initial phase of Operation In Our Sites targeted film and music websites, this operation is not limited to those industries. Operation In Our Sites was created to target violations involving multiple industries. ICE is especially interested in targeting counterfeit products that threaten the health and safety of the public.

The initial enforcement actions for Operation In Our Sites included approximately 67 ICE special agents, task force officers, and Dutch law enforcement officers. To conduct such an operation, agents must first identify violative websites. Next, agents must establish probable cause to believe that the sites are being used to engage in illegal activity. Undercover agents may download violative material or purchase counterfeit

goods from the sites to establish the probable cause. Agents will also attempt to identify the people who own/operate the sites as well as identify and trace the illicit proceeds generated from the illegal transactions. Agents will then seek the appropriate warrants from a federal judge. Because each case is different, ICE agents and U.S. Department of Justice attorneys coordinate to determine the most efficient and effective course of action for each investigation.

Question:
How do you think we might deal with the "whack-a-mole" or "progeny" problem – that sites that we take down today will spring up with new names, and in new jurisdictions, tomorrow?.

Is there a reason that the majority of the sites you selected in the first round were located inside the United States?

With regard to the "whack-a-mole problem," is it possible for a court to issue an order that gives ICE prospective authority to take action against the progeny of sites against which a court issued an order? Is their a role for the victim or rights holder to take against the progeny of sites against which a court has issued an order?

Response:
The best way to deal with the "whack-a-mole" problem is to seize website content and to arrest the violators.

The majority of the websites targeted during Operation In Our Sites were based in the United States because they are subject to U.S. law.

ICE can take action against a progeny website only once probable cause has been established indicating that the site was involved in illegal activity and a court order has been issued.

Victims or rights holders may take civil actions against violators of the victims' intellectual property rights.

Question:
Many of these sites used domain names that were maintained here -- notably ".com" and ".net." Is there any way to "seize" a domain name whose registration is maintained outside the US -- e.g., in Russia (".ru") or China (".cn")? If not, do you have any recommendations about dealing with pirate sites maintained outside the U.S.?

Response:
Domain names registered in foreign countries can be seized by law enforcement officials in that country in accordance with the country's laws. To address the problem of foreign-based websites being used to sell pirated and counterfeit goods, the ICE Office of International Affairs works closely with its international partners to identify suspect

websites and to coordinate possible enforcement actions that can be taken against the websites and the people selling the illicit goods.

Cooperation with our international law enforcement partners is critical to addressing copyright infringement overseas and effectively protecting and enforcing American intellectual property rights holders. ICE attachés work with international organizations and foreign law enforcement counterparts to build capacity, strengthen relationships, and conduct joint enforcement activities. ICE agents are recognized as worldwide subject matter experts on criminal customs matters, and hold the positions of Vice Chair for the Enforcement Committee and Chair of the Commercial Fraud Working Group with the World Customs Organization (WCO).

In July, 2009, ICE opened an office in Brussels to work directly with the WCO, and has already spearheaded multilateral operations addressing bulk cash smuggling and explosives precursor chemicals. ICE also works with INTERPOL, the Asia-Pacific Economic Cooperation Forum, and the Departments of State, Commerce and Justice on a variety of initiatives, including providing training in IPR enforcement to our international law enforcement partners. We leverage Customs Mutual Assistance Agreements and other agreements with law enforcement to build capacity and conduct joint investigations.

Question:
Pirate sites succeed only because computer users can access them – which bring us to the internet service providers (ISPs). Once a court authorizes the seizure of a domain name, I'd like to see US ISPs block access to the sites -- and to their progeny. This is especially necessary if the name is registered in a foreign jurisdiction and a court can't order the foreign registrar to turn over the domain name to the US Government. Have you met with the ISPs to find out whether they can support a lawful court order, or what they might do to prevent the circumvention of a lawful court order?

Response:
The National Intellectual Property Rights Coordination Center has worked with multiple U.S.-based Internet service providers (ISPs). All of the ISPs have been very supportive in enforcing lawful court orders.

U.S. Immigration and Customs Enforcement (ICE) initiated the National Intellectual Property Rights Coordination Center to leverage compatible government resources to combat intellectual property theft. Cooperation with our international law enforcement partners is also critical in addressing this issue. ICE attachés work with international organizations and foreign law enforcement counterparts to build capacity, strengthen relationships, and conduct joint enforcement activities.

Question:
Many websites offering the pirated material are offering the goods for sale and therefore need either payment processors like Visa and Mastercard, or advertising. How do we ensure that once a court has enjoined the use of a domain name, legitimate parties terminate their affiliation with – and facilitation of – a pirate site?

Response:
Currently, there is no mechanism to ensure that relationships between legitimate parties and web sites selling pirated goods are terminated after court orders are issued to seize domain names. The National Intellectual Property Rights Coordination Center is/has met with payment processors and the Interactive Advertising Bureau to receive their cooperation in this matter.

Question:
Have you or ICE received any letters or comments from the public that were critical of the actions taken through Operation "In Our Sites?" If so, please explain or provide copies of written correspondence.

Response:
The National Intellectual Property Rights Coordination Center has not received any letters or comments critical of the actions taken as part of Operation in Our Sites.

QUESTION FOR THE RECORD
THE HONORABLE RUSS CARNAHAN (MO-03)
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

Hearing on
Protecting US IP Overseas: The Joint Strategic Plan and Beyond
July 21, 2010, 10:00 a.m.
2172 Rayburn House Office Building

Questions for Ms. Espinel:

- The U.S. Trade Representative has noted several recent trends in counterfeiting and IPR piracy. Among them, the USTR indicates that counterfeiters are exploiting free trade zones to facilitate distribution and assembly of their products. The USTR also lists both Canada and Mexico on the Priority Watch List as "countries that have the most onerous or egregious acts, policies, or practices with the greatest adverse impact on U.S. IPR products." How has NAFTA impacted Mexico and Canada's ability to infringe upon U.S. IPR, and what mechanisms is the U.S. government utilizing with respect to these important trading partners to better enforce IPR standards?

Addressing intellectual property infringement abroad, including in Mexico and Canada, is a significant part of our enforcement efforts. In addressing these concerns, the U.S. Government utilizes all available tools of trade policy, including bilateral dialogues and problem-solving, communicating U.S. concerns clearly through reports such as the Special 301 Report on the adequacy and effectiveness of U.S. trading partners' protection of intellectual property rights (IPR), proactively monitoring and seeking improvement in foreign government compliance with intellectual property provisions in existing trade agreements, committing our trading partners to enforce intellectual property rights through trade agreements currently under negotiation, such as the Anti-Counterfeiting Trade Agreement (ACTA), and, when necessary asserting our rights through the World Trade Organization dispute settlement process.

Beyond trade policy tools, the Strategic Plan lays out a number of action items to enhance intellectual property enforcement abroad, including in Mexico and Canada. These include improving foreign law enforcement cooperation, coordinating the efforts of our law enforcement, diplomatic and economic agencies to stop Internet piracy, better coordinating U.S. personnel stationed outside of the U.S., and focusing international capacity building and training.

- Germany is currently considering legislation that would make Internet Service Providers (ISP) responsible for the illegal distribution of protected content over their networks. To what extent would a similar law help the U.S. protect and enforce IPR?

As demonstrated in the Strategic Plan, the Administration is committed to protecting American intellectual property rights. We encourage cooperation among private sector parties to address online infringement, while we continue to explore the many options available to the U.S. Government, including vigorously investigating and prosecuting criminal activity. With respect to legislation being considered abroad, it is critical that countries have effective systems to address online piracy. We will continue to monitor such legislation, policies and practices in other countries related to online infringement f intellectual property rights.

QUESTION FOR THE RECORD
THE HONORABLE RUSS CARNAHAN (MO-03)
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

Hearing on
Protecting US IP Overseas: The Joint Strategic Plan and Beyond
July 21, 2010, 10:00 a.m.
2172 Rayburn House Office Building

Questions for Assistant Secretary Morton:

Question:
The U.S. Trade Representative has noted several recent trends in counterfeiting and IPR piracy. Among them, the USTR indicates that counterfeiters are exploiting free trade zones to facilitate distribution and assembly of their products. The USTR also lists both Canada and Mexico on the Priority Watch List as "countries that have the most onerous or egregious acts, policies, or practices with the greatest adverse impact on U.S. IPR products." How has NAFTA impacted Mexico and Canada's ability to infringe upon U.S. IPR, and what mechanisms is the U.S. government utilizing with respect to these important trading partners to better enforce IPR standards?

Response:
(Please note that while Canada is on the USTR's Priority Watch List, Mexico has received a Watch List designation.)

NAFTA, and more broadly, our very deep and extensive economic, cultural and geographic ties with Canada and Mexico have all been factors that have helped to deter intellectual property rights (IPR) infringement through more comprehensive IPR legislation, new enforcement tools, and cooperation among and within the three countries to combat IPR piracy.

Regional economic integration has made IPR enforcement more of a shared problem as criminals have taken advantage of the differing laws and priorities the United States, Canada, and Mexico in enforcing IPRs.

U.S. Immigration and Customs Enforcement (ICE) has conducted numerous seminars and participated in trade conferences in Mexico, Canada, and the United States to educate industry and law enforcement partners and to foster cooperation among the three countries. Mexico's receptiveness to combating IPR violations led to an embedded Mexican Customs Officer with ICE agents in the Deputy Special Agent in Charge (DSAC) office in Laredo, Texas. This close cooperation allows agents to verify Mexican Pedimentos (Mexican export documents) for validity and subsequently create leads for investigations. This practice has resulted in significant arrests and seizures. Having a Mexican officer working daily with ICE agents was so well received that ICE and Mexican officials expanded the program to embed Mexican Customs Officers in ICE offices in McAllen, Texas; El Paso, Texas; Los Angeles, California; and at the National Intellectual Property Rights Coordination Center (IPR Center) in Arlington, Virginia.

ICE recognizes that no single law enforcement agency can eradicate IPR violations. Rather, it is essential that all relevant Federal agencies work together and with industry to

confront this challenge. ICE, therefore, expanded the IPR Center to leverage compatible government resources to combat IPR violations.

The IPR Center task force model is just one vehicle to promote strong IP enforcement in both Canada and Mexico. Other mechanisms include public and industry outreach, IP capacity building programs, and joint initiatives and operations with other law enforcement agencies.

When multiple governments focus their efforts and join forces, even more can be accomplished. ICE and the IPR Center have teamed with the World Customs Organization (WCO) and its member countries in several multilateral enforcement operations targeting counterfeit goods. The IPR Center's partnerships with international customs organizations and industries create an essential international front in combating IP theft in the global economy.

The IPR Center is actively engaged in global IPR training programs, with personnel participating in Department of State, Department of Commerce, and INTERPOL-sponsored events. The IPR Center also regularly hosts government and law enforcement officials and industry representatives from Canada and Mexico. This includes a meeting with the Mexican representatives of U.S. right holders in February 2009. The focus of this visit was to allow the representatives greater insight into the U.S. IP enforcement system and to provide the representatives with ideas in developing tools they can use to assist the GoM in enforcing IP theft.

In April 2009, the IPR Center also hosted 20 Mexican prosecutors as part of a Department of Justice capacity building program. The program focused on developing the participant's skill in investigating and presenting IP cases. IPR Center personnel, including representatives from the relevant partner agencies, presented sessions on the IPR Center's mission and capabilities, best practices, and interagency cooperation.

The IPR Center also sponsors educational programs. For example, in June 2010, the IPR Center and INTERPOL, in partnership with the Certification Industry Against Counterfeiting (CIAC), co-hosted the 2010 North American CIAC Summit. The theme for the event was "Raising Awareness and Converting Information into Action." The summit's primary mission was to increase information sharing among the certification industry and, in turn, form an international alliance that could appropriately respond to growing health and safety issues that are inherent in some counterfeit merchandise (e.g., counterfeit batteries and chargers). The summit organizers also sought to quantify the IP threat within the certification industry, on both the national and international scale. To achieve this goal, experts from industry, government, law enforcement, and certification organizations throughout North America openly discussed the implications of counterfeit certification marks in the global market. Presenters included the Director of the Royal Canadian Mounted Police's Federal Enforcement Branch.

In September 2008, the IPR Center created Operation Joint Venture, an initiative that uses outreach and training to increase information sharing between the U.S. Government and the public and private sectors. The resulting partnerships are used to educate and facilitate the exchange of information on current trends, patterns, and methodologies used by criminal organizations. Operation Joint Venture field agents provided training to public and private entities in their local area that have a direct tie to the IP community, to include customs brokers, freight forwarders, the U.S. Chamber of Commerce, and more. Additionally, IPR Center personnel and joint venture field contacts regularly participate

at industry trade shows in an attempt to educate both the public and private sector about the dangers of IP theft. Through Operation Joint Venture, the IPR Center has designated 65 domestic ICE agents and 13 ICE attachés, including Ottawa and Mexico City, as local points of contact for outreach and training.

Finally, the IPR Center promotes joint operations between the U.S. Government and our international partners. In December 2009, the IPR Center led a bilateral, multi-state, multi-agency enforcement effort titled, "Operation Holiday Hoax" (Holiday Hoax). As part of Holiday Hoax, the IPR Center worked with various U.S. Federal, State, and local law enforcement agencies, the GoM's Treasury and Customs, and industry, to target importers and distributors of counterfeit goods. This operation was specifically timed to coincide with United States and Mexican consumers' increased purchasing during the winter holiday season.

Question:
Germany is currently considering legislation that would make Internet Service Providers (ISP) responsible for the illegal distribution of protected content over their networks. To what extent would a similar law help the U.S. protect and enforce IPR?

Response:
As demonstrated in the Strategic Plan, the Administration is committed to protecting American intellectual property rights. We encourage cooperation among private sector parties to address online infringement, while we continue to explore the many options available to the U.S. Government, including vigorously investigating and prosecuting criminal activity. It is critical that countries have effective systems to address online piracy. ICE will continue to monitor such legislation, policies and practices in other countries related to online infringement of intellectual property rights.

The Honorable Michael E. McMahon
Committee on Foreign Affairs
Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond
July 21, 2010
Questions for the Record

1. Ms. Espinel: What additional tools, if any, do you need from Congress to assist you in your efforts? How can this Committee be most helpful to your office and the goals provided in your Joint Report?

I very much appreciate the support that I have received from Members of Congress in my new role. Your continued effort to bring attention to the issue of intellectual property enforcement is very helpful.

We will conduct a comprehensive review of existing intellectual property laws to identify any gaps that exist, and may need Congress' help to address those deficiencies. I look forward to working with you as we implement the Strategic Plan. If you have suggestions or concerns as we move forward, please let me know. Effectively improving our enforcement of intellectual property will take some time to accomplish, and I look forward to working together cooperatively in the future.

2. Ms. Espinel, in your report, you encourage "cooperative efforts within the business community to reduce internet piracy." Where would you like to see greater cooperation among the business community? What results do you believe can be accomplished through such cooperative efforts?

Private sector cooperation is essential to reduce acts of intellectual property theft now occurring on the Internet. As set out in the Strategic Plan under "Facilitating Cooperation to Reduce Intellectual Property Infringement Occurring Over the Internet," the Administration calls on "content owners, Internet service providers, advertising brokers, payment processors and search engines" to work together to reach carefully crafted and balanced agreements that effectively address repeated acts of infringement.

Each of these groups can play a critical role in reducing infringement. Content owners make the desirable works that are so widely distributed over the Internet, and they can provide incentives to those who want to distribute those works. Internet services providers provide access to this content, search engines make it easier to find, and advertising brokers and payment processors generate revenue for those websites that provide digital content. These entities can act to reduce infringement occurring over the Internet, and each has a separate but important role to play in that process. It is critical that there is cooperation to take down illegal content, prevent access to illegal content, and eliminate the financial incentives for those offering illegal content over the Internet. It is also important that these efforts take into account the need for fair process and the need to preserve legal uses of the Internet. And while we strongly encourage pursuit of such cooperative efforts, the Administration will continue to pursue additional solutions to the problems associated with Internet piracy including vigorously enforcing our criminal laws. We look forward to working with you to address this and other developing issues related to intellectual property enforcement.

The Honorable Michael E. McMahon
Committee on Foreign Affairs
Protecting U.S. Intellectual Property Overseas: The Joint Strategic Plan and Beyond
July 21, 2010
Questions for the Record

Question:
Mr. Morton: What do you see as some of the emerging challenges in counterfeiting and piracy? Do you believe that our laws are keeping pace with the problem?

Response:
With regard to emerging challenges, the 2010 Joint Strategic Plan on Intellectual Property (IP) Enforcement highlights how the Internet and other technological innovations have revolutionized how consumers obtain information and purchase products. Unfortunately, the proliferation of Internet use also allows criminals and criminal organizations to make counterfeit and pirated products available to a vast audience. The counterfeit and pirated products can range from pharmaceuticals to movies currently in theaters. This information highway covers the globe and makes it easy for the IP criminals, and their organizations, to operate within the United States while residing outside of U.S. law enforcement jurisdiction. U.S. Immigration and Customs Enforcement will capitalize on new technologies to increase efforts in detecting rogue web sites and identifying their operators.

Another emerging challenge to law enforcement combating IP crime is the entry process into the United States of foreign manufactured goods. For example, ocean containers are used to move bulk quantities of counterfeit items such as handbags, shoes, batteries or holiday lights. Other high-value items such as counterfeit pharmaceuticals, mobile phones, computer network components, micro-chips, MP3/4 players, and pirated DVDs are being smuggled in mail parcels and express consignment operation entries. ICE and CBP will jointly enhance targeting efforts at international mail and courier facilities to detect and disrupt contraband smuggling activities, utilizing seizures and controlled deliveries where appropriate to develop investigative leads and generate actionable intelligence.

Law enforcement and the IP laws must also adapt to this new environment and technology as the global internet marketplace grows. ICE is committed to working with its law enforcement partners, the Administration, and Congress to identify those areas and laws that can be utilized to address the latest trends in IPR violations that were either not previously envisioned or not able to be committed with previous technology. Legal businesses supporting e-commerce for illegal purposes form an emerging area in IP enforcement. Currently there is no regulation that adequately addresses this new challenge in enforcing these types of IPR violations. While ICE encourages industries to take appropriate measures to self-police, ICE still needs appropriate laws available for the enforcement of new identifiable IPR violations.

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