

**TESTIMONY OF**  
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**BEFORE THE**  
**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT**

**Finding and Fighting Fakes: Reviewing the Strategy  
Targeting Organized Piracy**

June 14, 2005

Chairman Voinovich and members of the Committee, thank you for the opportunity to address your concerns over the protection of American intellectual property rights (IPR) under the Administration's Strategy Targeting Organized Piracy, or STOP! initiative.

As Ambassador Portman stated recently in reference to STOP!, "The protection of intellectual property is the cornerstone of an innovative and creative marketplace." Erosions to these protections cause American businesses, innovators and manufacturers to lose countless billions of dollars in lost revenue, investment, future sales and growth opportunities. Unfortunately, the global trade in fakes is growing. Interpol estimates that 7 percent of global trade in 2004 involved counterfeit goods, a figure equivalent to \$512 billion that customs officials and industry experts anticipate will reach record levels at the end of this year.

We recognize that the trade in fakes is more than just a commercial problem. Consumer health and safety is threatened when cheap and unregulated goods are used, whether it is fake auto and airplane parts, household or other consumer products. A case in point, the World Health Organization estimates that up to 10 percent of medicines worldwide are counterfeit. In today's global production and distribution chain no country is immune. And, oftentimes consumers are paying top dollar for non-authentic products. It is in part for these reasons that Ambassador Portman has taken an active interest on IPR issues since being confirmed in April.

We are undertaking a comprehensive, multi-faceted approach to address the complexity of the global counterfeit and piracy problem. Aside from our participation in STOP!, we have been vigorously employing other tools in coordination with the interagency process to address global IPR theft. Noteworthy is our work with other agencies on the annual Special 301 Report, our Free Trade Agreements, usage of WTO mechanisms and various tariff preference programs such as the Generalized System of Preferences (GSP).

I am here today because Ambassador Portman and this Administration are committed to strengthening IPR protection and enforcement at home and abroad. We understand the growing frustration within the business community and Congress concerning the lack of enforcement of

IPR by some of our trading partners. We are working diligently to address this situation. Through STOP!, Administration agencies are coming together with common purpose, focus and leadership to combat the trade in fakes as a complement to our existing efforts. We are excited about the prospects for STOP! and are enthusiastic participants on the team.

### *The STOP! Initiative*

Announced in October of last year, the STOP! initiative is designed to bring together all the major players – the federal government, private sector and our trade partners – to take concerted action in cracking down on piracy and counterfeiting of tangible goods.

As a supplement to our existing IPR enforcement efforts, the Administration developed the STOP! initiative to combat the trade in fakes. STOP! has an international and a domestic focus. Eight federal agencies are actively engaged in STOP!, including USTR, the Departments of Commerce (along with the U.S. Patent and Trademark Office), Homeland Security (both Customs and Border Protection, and Immigration and Customs Enforcement), Justice, State, and the Food and Drug Administration.

Pursuant to the Administration's overall policy, USTR assists in the coordination of STOP! activities. We serve as a conduit for information sharing and promote collaboration on issues of relevance to STOP!. In this role we have facilitated outreach activities and sought to ensure that the STOP! team's core competencies were useful in wider IPR policy matters. On the international front, we and other STOP! agencies are encouraging other governments to coordinate their IPR efforts more effectively by designating a central focal point to cooperate with the U.S. agencies on STOP!. We and other STOP! agencies are working with these contacts to follow-up on items from bilateral meetings and have developed action plans with these countries to advance IPR enforcement and cooperation.

Since the announcement of STOP!, we have been coordinating with agencies on the STOP! team, working with the private sector, reaching out to stakeholders and taking comprehensive actions to realizing our October goals. Administration agencies have been hard at work. Building on domestic actions underway against IPR theft and enforcement and seizure problems prevalent in the global trade of infringing products, the STOP! team developed a strategy based upon its collective resources and a series of proposals to enhance international cooperation with other countries engaged in combating this growing global threat.

In early April, as members of the STOP! team, we began our international outreach efforts to explore how to increase cooperation, improve coordination, and open information exchange avenues. Key to these discussions has been the exchange of ideas. We have made clear to our counterparts that we are open to solutions. Our outreach has yielded results. We have gained insight into some of the key problems and host country solutions being pursued on a practical level to combat the trade in fakes. We anticipate that through greater dialogue, we will develop a common understanding with our trade partners of the problems requiring action. This understanding will in turn form the basis for further discussions on how to cement cooperation later this year.

We have met with our counterparts in Singapore, Hong Kong, Japan, Korea, Germany, the European Commission, France and the United Kingdom, and representatives of the private sector in our initial outreach efforts. The reception has been positive and we believe there is potential for further cooperation. Among the 17 proposals we've shared, a number have generated interest and fruitful discussions. Some examples of the proposals discussed include:

- Networks that will enable police to better work with each other to investigate and arrest those who trade in fakes.
- Analytical supplements to border targeting and post-entry verification methods to identify businesses at high risk for IPR infringement.
- Best practices guidelines for government enforcement to stop the trade in fakes.
- Coordinating capacity building programs used to fight the trade in fakes so as to better utilize resources and deliver needs.
- Adoption of public awareness campaigns as a means to educate large audiences on the harmful effects of counterfeiting and piracy.
- Partnering with industry to develop a "No Trade in Fakes" program to keep the supply and distribution chain free of counterfeits.
- Improvements to the trademark application process by making it more common among participating countries.

In addition to our outreach efforts to Asia and Europe, we are in the process of exploring interest from Canada and Mexico. We hope to meet with our Canadian and Mexican counterparts in the near future. In the meantime, we will continue our close collaboration and further seek out other like-minded countries in the fight against the trade of pirated and counterfeit goods so as to determine their interest in cooperative activities.

We have tentatively planned that countries receptive to cooperation on STOP! will be invited to attend a meeting in Washington, DC (likely in the Fall of 2005) designed to formalize their participation and finalize a work plan for greater international cooperation.

Aside from our bilateral efforts on STOP!, the Administration is also coordinating our IPR efforts in support of the Administration's objectives in the G-8, the Asia-Pacific Economic Cooperation forum (APEC), the Organisation for Economic Co-operation and Development (OECD), various regional summits and in relevant daily activities we undertake on intellectual property matters. There are two recent examples of our success on this front:

- APEC – Less than two weeks ago, APEC trade ministers endorsed an anti-counterfeiting and piracy initiative jointly proposed by the United States, Japan, and Korea to strengthen intellectual property protection in the region.

- OECD – Last month, OECD members agreed to the U.S. proposal for the OECD to update its 1998 study on the Economic Impacts of Counterfeiting and develop credible data to help governments make the case for strong action against IPR theft.

We've also witnessed successes stemming from our other activities, particularly actions associated with our Special 301 Report and the development of the FTAs.

#### *Other Enforcement Efforts*

Our FTAs reflect the level of protection and enforcement of IPRs in the United States. We recognize that in order for these relevant FTA provisions to be effective, provisions that provide for tighter border controls, and expeditious *ex parte* searches to gather evidence and higher damage awards (in particular statutory damages), to name a few, must be properly implemented and enforced. As a result, we ensure that the implementation process of our FTAs is a priority on par with their development and negotiation, and that adequate safeguards are provided for the enforcement of the agreement.

In the past year, we have worked closely with Australia and Singapore to ensure that their implementing legislation fully meets their FTA obligations to protect and enforce IPR. Currently, we are working very closely with Morocco to undertake similar efforts, and have added action plans for the implementation of FTAs in our current negotiations. We will continue to work closely with our trading partners and our industry on implementation of the FTAs.

Since the Bipartisan Trade Promotion Authority Act of 2002, we have completed and received Congressional approval of FTAs with Chile, Singapore, Australia and Morocco, have concluded negotiations with Bahrain and CAFTA-DR and have launched FTA negotiations with 13 more countries (Panama, Thailand, the Andeans, United Arab Emirates, Oman, and South African Customs Union countries). We will remain vigilant – with support and cooperation from our embassies and industry – to quickly respond to concerns over the possible lack of compliance or enforcement of FTA obligations that may arise in the future.

As we do in April of each year, USTR issued the Special 301 Report cataloging the IPR problems in dozens of countries worldwide. A country's ranking in the report sends a message to the world and potential investors about a country's commitment to IPR protection. The Special 301 has been a successful in encouraging countries to institute reforms or come forward with reform proposals to avoid elevation on the list. For example:

- Korea – After elevating Korea to PWL last year, Korea took significant steps earlier this year months to strengthen protection and enforcement of IPR such as, introducing legislation that will explicitly protect sound recordings transmitted over the Internet (using both peer-to-peer and web casting services); implementing regulations to address film piracy; and increasing enforcement activities against institutions using illegal software.
- Taiwan – In response to our out-of-cycle review last year, Taiwan's legislature approved a number of amendments to its copyright law that provide greater protection for

copyrighted works and increase penalties for infringers. In addition, Taiwan authorities made permanent an IPR-specific task force that has increased the frequency and effectiveness of raids against manufacturers, distributors, and sellers of pirated products.

Mention in the Special 301 Report and the issues raised in it oftentimes remains unresolved for years, while other times a mention in the report compels authorities to take immediate enforcement action. Such cases are best exemplified by the longstanding and serious problems of optical media piracy in Pakistan, Malaysia and the Philippines, where both Malaysia and the Philippines have made measurable progress and Pakistan has undertaken recent IPR enforcement actions. The Philippines, for example, recently passed legislation on optical discs, and we are currently monitoring the enforcement of that law. Pakistan, one of the world's worst offenders, has shown movement through the closure of six well known plants that have been churning out millions of pirated optical disks for years.

### *Conclusion*

We appreciate the Committee's interest in and will continue to work closely with Congress in the battle against the trade in fakes. Stopping this illicit trade requires a comprehensive, intensive and sustained effort. We recognize there are many challenges to overcome. We will press forward with the tools and resources provided us in addressing these concern with the goal of improving the situation for American owners of IPRs worldwide. We will continue to work with other federal agencies, coordinate with our stakeholders and reach out to our trade partners to develop mechanisms to comprehensively combat IPR theft through all means at our disposal. Stopping the trade in fakes and making the environment more welcoming to our right holders is a top priority.

Mr. Chairman and members of the Committee, thank you for providing me with the opportunity to testify. I appreciate the guidance you've provided and the vigilance this committee has shown toward tackling the important issue of IPR protection. I look forward to working with you and your staff to continue to devise solutions for dealing with problems of piracy and counterfeiting. I look forward to your questions.