

**TESTIMONY OF**  
**CHRIS ISRAEL**  
**U.S. COORDINATOR FOR INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT**

**BEFORE THE**  
**SENATE COMMITTEE ON THE JUDICIARY**

**“EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS”**

**NOVEMBER 7, 2007**

Chairman Leahy, Ranking Member Specter and members of the Committee, I am pleased to join you today to discuss the U.S. Government’s intellectual property enforcement coordination efforts.

I want to thank this Committee for its continued support and leadership on issues concerning the protection intellectual property. I look forward to the opportunity to work together to ensure that the heart of America’s innovation economy, its intellectual property, is effectively protected around the world.

Combating piracy and counterfeiting is a top priority for the Bush Administration. This prioritization is evident in the leadership shown by President Bush. He has consistently raised IP enforcement with foreign leaders, placed the issue on the agenda of the G8, the US-EU Summit and the Security and Prosperity Partnership with Canada and Mexico. He has also discussed our ongoing concerns with leaders of critical markets such as China, Russia and India. He has directed his Administration to address this issue actively, aggressively and with a results-oriented approach.

We are leveraging the capabilities and resources of the United States to promote effective, global enforcement of intellectual property rights. Under the leadership of the White House, my office works to coordinate the international IP enforcement efforts of the Office of the U.S. Trade Representative, the Department of Commerce – which includes the U.S. Patent and Trademark Office and the International Trade Administration; the Department of Homeland Security – which includes Customs and Border Protection and Immigration and Customs Enforcement; the Department of Justice – including the FBI; and the State Department, among others. Our combined efforts are extensive, and this allows us to bring even greater focus, energy and prioritization to our IPR efforts.

I appreciate the opportunity to discuss this leadership, to address the growing problem of counterfeiting and piracy around the world, and provide information regarding the Federal Government’s efforts to help protect American intellectual property and our industries.

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**Leadership and Prioritization:**

The reasons for the Administration’s leadership on IP enforcement and for its prioritization are clear.

First, few issues are as important to the current and future economic strength of the United States as our ability to create and protect intellectual property. U.S. IP industries account for over half of all U.S. exports. They represent 40% of our economic growth and employ 18 million Americans, who earn 40%

more than the average U.S. wage.<sup>1</sup> The 2006 Economic Report to the President states that IP accounts for over 1/3 of the market value of all publicly-traded U.S. corporations, an amount equal to almost half of our GDP.<sup>2</sup>

Even more, intellectual property is central to our competitiveness in today's global economy. Last week, the World Economic Forum released its annual Global Competitiveness Report, and this report has the U.S. in the top ranking. Two of the main reasons cited for this jump were our high level of intellectual property protection and strong innovation policy. Any theft of American intellectual property strikes at the heart of one of our greatest comparative advantages – our innovative capacity, so our ability to ensure a secure and reliable environment for intellectual property around the world is critical to the strength and continued expansion of the U.S. economy.

Finally, the enforcement of intellectual property rights also carries great implications for the health and safety of consumers around the world. In recent months, we have experienced a rash of substandard imports, many of which were counterfeit goods. Also, the World Health Organization estimates that 10% of all pharmaceuticals available worldwide are counterfeit. The U.S. Federal Aviation Administration estimates that 2% of airline parts installed each year are counterfeit – or about 520,000 parts. We have seen counterfeit circuit breakers that overheat and explode, brake linings made of wood chips and cardboard, and counterfeit power cords. In the world of today's sophisticated criminal IP operations, if a product can be easily counterfeited, has an immediate demand and provides a good profit margin, it will be copied. Consumer safety and product quality are concerns obviously not on the minds of global IP thieves.

It is apparent that counterfeiting and piracy threaten our safety and our economic growth. And, our prosperity is secured by an economy which promotes and protects its innovative spirit. It is innovation—the innovation of independent inventors, universities, creative artists, or small, medium and large corporations—that leads to new opportunities and greater prosperity.

I truly believe the world is a much better place due to these efforts. We have delivered life-saving drugs and products that make people more productive. We have developed entirely new industries and set loose the imaginative power of entrepreneurs everywhere. We set trends and market best-of-class products to nearly every country in the world.

A thriving, diversified and competitive economy must protect its intellectual property rights. Commerce Secretary Gutierrez has said that, “IP is what we do for a living in the U.S.” This Administration has been committed to creating a business and legal environment that encourages entrepreneurship and protection of intellectual property.

We value our heritage of innovation and exploration – it is not only part of our history; it is the key to our future. This future—a future of innovation, exploration and growth that benefits the entire world—rests on a basic, inherent respect for intellectual property rights and a system that protects them.

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<sup>1</sup> Stephen E. Siwek, “Engines of Growth: Economic Contributions of the US Intellectual Property Industries,” Economists Inc. commissioned by NBC Universal, 2005

<sup>2</sup> Council of Economic Advisers’ calculation based on “The Economic Value of Intellectual Property” by Shapiro and Hassett (USA for Innovation) and “Measuring Capital and Technology: An Expanded Framework,”

## Strategy, Organization and Focus:

As this Committee clearly understands, the problem of global piracy and counterfeiting confronts many industries, exists in many countries and demands continuous attention. With finite resources and seemingly infinite concerns, how we focus our efforts is crucial. We took on this challenge of defining priorities and focusing our resources in 2004 with the establishment of the Strategy for Targeting Organized Piracy (STOP!) initiative. STOP! rests on clear leadership that includes the White House and Cabinet officials. It has set out 5 primary goals that continue to define our efforts and provide a basis for broad internal coordination.

The primary goals of the Strategy for Targeting Organized Piracy are:

1. Empower American innovators to better protect their rights at home and abroad.
2. Increase efforts to seize counterfeit goods at our borders.
3. Pursue criminal enterprises involved in piracy and counterfeiting.
4. Work closely and creatively with U.S. Industry.
5. Aggressively engage our trading partners to join our efforts.

STOP! is the most comprehensive initiative ever advanced to fight global piracy where it starts, block bogus goods at America's borders and help American businesses secure and enforce their rights around the world. STOP! has made significant progress, and we continue to build on this success. STOP! is an attempt to play offense in the global fight against piracy and counterfeiting.

The message that we are delivering is: the United States takes the issue of IP enforcement very seriously, we are leveraging all of our resources to address it and we have high expectations of all of our global trading partners.

I am happy to have the opportunity to provide an update on our progress under each of STOP!'s key goals.

### **1. To help American innovators secure and enforce their rights across the globe, we have new federal services and assistance:**

We created a hotline (1-866-999-HALT), which is staffed by specialized USPTO attorneys who counsel businesses on how to protect their intellectual property rights (IPR) and work with callers on how to best resolve problems. In cases where the individual or company has properly registered its rights, its issue can then be referred to a trade compliance team that will monitor their case and work to see what next steps can be taken. In FY 2007, the STOP! Hotline received over 1,700 calls.

Our comprehensive website, Stopfakes.gov, provides information and guidance to rights holders on how to register and protect their IP in markets around the world and serves as a reference point for all U.S. Government IP enforcement activities. Stopfakes.gov has been recently updated to include even more information for U.S. rights-holders and has seen a dramatic surge in traffic – the number of visitors jumped from 44,000 in 2006 to 76,000 in 2007, a 75% increase.

Stopfakes.gov provides downloadable "IP toolkits" to guide businesses through securing and enforcing their rights across the globe. These toolkits cover key trading partners such as China, Russia, India, Mexico, South Korea, Malaysia and Taiwan. Additionally, the Department of Commerce conducts a series of well-received "webinars" on protecting and enforcing intellectual property rights in China.

We are continuing to expand our successful IP attaché program in China and have positioned attachés in Brazil, Russia, India, Thailand and the Middle East. Having IP attachés stationed in these countries has

enhanced our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IP in those markets.

In 2006 the USPTO established the Global Intellectual Property Academy (GIPA) at their headquarters in Alexandria, VA to educate leaders from around the world on intellectual property issues. GIPA has brought foreign leaders to the U.S. to learn about IP issues from patent examination procedures to enforcement best practices. Since inception, GIPA has instructed more than 1,200 foreign officials.

The USPTO has also been aggressive in reaching out to American businesses and innovators through a series of programs held in cities throughout the U.S. These “USPTO Road Shows” and “USPTO China Road Shows” meet an important need in reaching American companies, particularly small and medium-sized enterprises (SMEs). The Road Shows provide practical advice on IP which can help these companies protect themselves in a global marketplace which often does not respect their intellectual property. USPTO has conducted 26 road shows in the two and a half years, reaching approximately 3,500 individuals.

## **2. Next, we have increased our efforts to stop fake and counterfeit goods at America’s borders:**

The Department of Homeland Security (DHS), through the enforcement efforts of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), is a key player in the STOP! Initiative, working to stop counterfeiting and pirating criminals from smuggling prohibited or IPR violative merchandise into the United States. At the mid-year point in fiscal year 2007, DHS had seized 7,245 shipments of counterfeit and pirated goods valued at more than \$110.2 million, increases of 22% and 141% respectively over the mid-year point in FY2006. Since 2002 CBP has made over 50,000 seizures of piratical and counterfeit goods.

China was the top source of IPR seizures at mid-year FY 2007 with a domestic value of \$89.2 million, accounting for 81% of the total value seized. Footwear was the top commodity seized at mid-year FY 2007 with a domestic value of \$39.7M, which accounted for 36% of the entire value of infringing goods. Watches and parts, pharmaceuticals, footwear, and consumer electronics all had significant increases in domestic value at mid-year FY 2007 over mid-year FY 2006 values.

CBP has implemented a new risk assessment model and technologies to cast a wider, tighter net on counterfeit and pirated goods and to stop these goods at our borders. CBP’s new risk assessment model uses several sources of data, including historical seizure information, to target high-risk cargo while facilitating the flow of legitimate goods. With post-entry verification (IPR audits), CBP added a new IPR enforcement tool to complement traditional physical examination of goods at the border. We are issuing penalties on imports of fakes uncovered during IPR audits and working with businesses to develop internal control systems to prevent imports of counterfeit and pirated goods. As a result of an audit of a technology company, CBP issued a penalty in excess of \$4.3 million. CBP has issued more than \$6 million in total penalties for audit-related investigations.

Additionally, CBP has developed an online recordation tool for rights holders to record their trademarks and copyrights with CBP. Recordation provides a higher level of protection for trademarks and copyrights and makes it easier for CBP to identify fake goods at our borders. CBP’s online recordation tool is linked to the U.S. Patent and Trademark Office’s website, as well as the Copyright Office’s website. To date, CBP has received 3,500 e-recordations from industry.

We are working with our trading partners to share information and improve our capabilities to assess and anticipate risks. We are already seeing early results of this effort with the European Union. In 2005 President Bush and then EU President Barroso committed to expand information sharing of customs data

and information. As we have shared data since this agreement, we have begun to see opportunities for potential joint seizures.

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's Federal Bureau of Investigation (FBI), two of the lead investigative agencies in the fight against both domestic and international IP crime, work together through the ICE-led National IPR Center. The Center identifies and addresses developing IPR issues and trends and advances that information through outreach and training with foreign governments. Additionally, the FBI serves as the co-chair for Interpol's IPR international training subcommittee, and in that role provides regular training to officials overseas on IP enforcement.

The IPR Center's responsibilities include: (1) coordinating the US Government domestic and international law enforcement activities involving IPR issues; (2) serving as a collection point for intelligence provided by private industry, as well as a channel for law enforcement to obtain cooperation from private industry (in specific law enforcement situations); (3) integrating domestic and international law enforcement intelligence with private industry information relating to IPR crime; (4) disseminating IPR intelligence for use in the appropriate investigative and tactical use; (5) developing enhanced investigative, intelligence and interdiction capabilities; (6) serving as a point of contact for all U.S. Government Agencies, the Administration, Congress and media outlets regarding IPR related issues.

Between fiscal years 2002 and 2006, ICE agents arrested more than 700 individuals for IPR violations and dismantled several large scale criminal organizations that distributed counterfeit merchandise to nations around the globe. At the same time, ICE investigations into these networks has resulted in 449 criminal indictments and 425 convictions. Together, ICE and CBP seized more than \$750 million worth of counterfeit goods from fiscal year 1998 through fiscal year 2006. In fiscal year 2006 alone, ICE investigations resulted in 219 arrests, 134 indictments and 170 convictions in IP violations.

The tools and relationships developed under STOP! have produced real results. For example, ICE special agents working in conjunction with the Chinese government and U.S. industry conducted the first ever joint US-Chinese enforcement action on the Chinese mainland and disrupted a network that distributed counterfeit motion pictures worldwide. More than 210,000 counterfeit DVDs were seized. Chinese authorities also destroyed three warehouses that were being used to store the counterfeit DVDs that would have been distributed worldwide.

### **3. Law enforcement must play a leading role in dismantling criminal enterprises that steal intellectual property:**

U.S. law enforcement agencies are also working closely with industry to gather information, develop cases and bring convictions against the criminals who steal their IP. We need to be as sophisticated and creative as the criminals. It is important that government and industry work together with coordinated efforts.

The Department of Justice (DOJ) plays a key role in dismantling criminal enterprises that steal intellectual property, improving international enforcement efforts, and ensuring that there is a strong legal regime for the protection of IP throughout the world. To that end, as part of the STOP! Initiative, the Attorney General formed an Intellectual Property Task Force to examine how it could maximize its efforts to protect intellectual property rights. In October of 2004 the first Task Force Report was released, and it included a comprehensive set of recommendations on steps that the Department of Justice could take to better protect IP. U.S. law enforcement agencies, the Justice Department in particular, have achieved significant results as discussed below. A subsequent report, released in June of 2006, announced implementation or ongoing implementation of 31 separate recommendations to improve the Department's IP enforcement efforts. In addition, the Department is currently at the halfway point in a

two-year plan to increase the enforcement of IP laws in the United States and around the world. The plan consists of strategic objectives derived from goals set by the Intellectual Property Task Force.

DOJ's efforts have already yielded substantial increases in Federal investigations and prosecutions of IP violations. Through the dedicated efforts of U.S. Attorney's Offices, the Criminal Division, and law enforcement across the country, the Department filed 217 intellectual property cases in FY 2007, representing a 7% increase over the number of cases charged in FY2006 (204), and a 33% increase over cases charged in FY2005 (169). Also in FY2007, 287 defendants were convicted and sentenced on IP charges, representing a 35% increase over FY2006 (213) and a 92% increase over FY 2005 (149).

The FY 2007 increase in prosecutions reflects a continuing upward trend at the Department of Justice. For example, in FY 2006, federal prosecutors convicted 187 defendants of criminal copyright and trademark offenses alone – an increase of 57% over the previous year. And in the year before that (FY 2005), the Department of Justice prosecuted twice the number of defendants for intellectual property violations than it had in 2004.

ICE also plays a key role in investigative law enforcement activities. ICE is not only active in seizing and forfeiting violative merchandise, both at the border and within the interior of the country. ICE also actively identifies, investigates and dismantles large scale international IPR violative manufacturing, smuggling, and trafficking organizations. ICE's efforts substantially reduce the amount of violative merchandise being smuggled into the U.S. For instance, ICE utilizes its unique tools and authorities to coordinate with private industry and domestic and international law enforcement partners to investigate violators; seize and forfeit violative merchandise; pursue civil and criminal monetary penalties; and, most significantly, pursue criminal prosecution. ICE has also created specialized groups of agents who investigate IPR crimes on a full time basis. ICE has a substantial network of attachés around the world who facilitate transnational IPR smuggling investigations and cooperation with foreign governments.

### **Improving International Law Enforcement**

The Justice Department recently deployed an IP law enforcement coordinator (IPLEC) for Asia, who is stationed in Bangkok, Thailand. This individual is working closely with prosecutors in the Department's Computer Crimes and Intellectual Property Section (CCIPS) and Office of International Affairs to oversee IP law enforcement training and assist U.S.-based enforcement efforts in the region.

In October 2007 DOJ hosted—along with the Association of Southeast Asian Nations (ASEAN), USPTO, and the State Department—a regional conference in Bangkok of approximately 60 key law enforcement officials from over a dozen nations in Asia, with the aim of developing an international network targeting large-scale intellectual property crimes. High-level police and customs officials and prosecutors from the United States, China, Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Philippines, Singapore, South Korea, Thailand and Vietnam took part in the conference, taking first steps toward increasing cross-border cooperation in the fight against intellectual property theft through the establishment of an IP Crimes Enforcement Network (IPCEN).

Based upon the input and positive response of the participants, the IPCEN will serve two primary functions in the future. First, it will operate as a forum to exchange successful investigation and prosecution strategies in combating piracy and counterfeiting crimes. In closed sessions during the conference, panels of law enforcement experts shared best practices and lessons learned in addressing retail counterfeiting and piracy, the mass production and distribution of counterfeit goods, Internet-based intellectual property theft, and border enforcement. Second, the IPCEN will strengthen communication channels to promote coordinated, multinational prosecutions of the most serious offenders.

In addition, DOJ has executed agreements to implement obligations of the US/EU Mutual Legal Assistance and Extradition Agreements. Once they enter into force, these agreements will ensure cooperation regarding intellectual property crimes with Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Bilateral discussions with China on criminal IP enforcement launched in 2006 have led to the establishment of a bilateral law enforcement experts group on IP – the IP Criminal Enforcement Working Group (“IPCEWG”) – under the auspices of the U.S.-China Joint Liaison Group, which is co-chaired by the Department of Justice and China’s Ministry of Public Service (“MPS”). Dedicated to improving the operational cooperation and coordination in joint cross-border investigations, the IPCEWG has already yielded encouraging results: this past summer, the U.S. and China announced ‘Operation Summer Solstice,’ a joint investigation by the FBI and MPS in which both sides worked closely by sharing information to jointly investigate multinational conspiracies by criminal syndicates that manufacture and distribute counterfeit software products around the world. This unprecedented cooperative effort led to the arrest of 25 individuals in China, the search of multiple residential and business locations, the seizure of more than 290,000 counterfeit software CDs and COAs (Certificates of Authenticity) valued at more than \$500 million.

We are also working closely with other member countries in a G8 IP Experts working group, and will soon be proposing and pursuing specific IP enforcement projects in the G8 Lyon-Roma Group on Crime and Terrorism.

### **Strengthening Laws**

The Bush Administration is working with Congress to strengthen laws and penalties related to intellectual property rights enforcement, including the:

- *Stop Counterfeiting in Manufactured Goods Act, H.R. 32 (March 2006)*
  - Prohibits the trafficking of counterfeit labels, emblems, containers or similar labeling components that may be used to facilitate counterfeiting; provides for forfeiture of articles bearing or consisting of a counterfeit mark and proceeds of any property derived from proceeds of, or used in the commission of, a violation; expands the definition of "trafficking" for certain counterfeiting crimes and clarifying that trafficking in counterfeit goods or labels includes possession with intent to traffic in such items.
- *Family Entertainment and Copyright Act, S. 167 (April 2005)*
  - Outlaws cam-cording in movie theaters and provides a new 3-year felony for the distribution of a pre-release work by making it available on a publicly-accessible computer network. Recognizes the premium value of copyrighted works before they are released to the public.
- *Anti-Counterfeiting Amendments of 2004, H.R. 3632 (December 2005)*
  - Allows law enforcement officials to seize material and equipment used to make counterfeit products and labels.
- *Intellectual Property Protection Act of 2007*
  - The Department of Justice transmitted to Congress the Administration’s proposed legislation entitled the “Intellectual Property Protection Act of 2007,” a comprehensive reform package that would toughen penalties for intellectual property crimes, expand criminal intellectual property protections, and add investigative tools for criminal and civil intellectual property rights enforcement.

#### **4. Working closely and creatively with U.S. industry:**

We are conducting extensive outreach with U.S. industry and trade associations and want to hear their stories. Companies need to be aggressive advocates of their own IP. They are our eyes and ears on the ground and know better than anyone how inadequate IP enforcement affects their bottom lines. We will continue to work together to find solutions and lead enforcement efforts.

We continue to work with domestic and international trade associations such as the American Bar Association, American Chamber of Commerce in China, Business Software Alliance, Entertainment Software Association, International Chamber of Commerce, International Intellectual Property Alliance, International Federation of Phonographic Industries, Motion Picture Association, National Association of Manufacturers, The Pharmaceutical Research and Manufacturers of America, Quality Brands Protection Committee, The Recording Industry Association of America, U.S. Chamber of Commerce and the U.S.-China Business Council, to name just a few.

Working with companies vulnerable to IP violations, we help them improve their business practices by conducting post-entry verifications (IPR audits). U.S. Customs and Border Protection (CBP) uses the post-entry verifications of importing companies to detect discrepancies and systemic weaknesses in the area of IPR protection. We then work with audited companies to devise solutions and remedies for deficient and vulnerable areas.

Immigration and Customs Enforcement (ICE) also actively engages industry to improve their law enforcement efforts. ICE has developed IP rightsholders' investigative teams who work solely on IP cases. ICE routinely shares information and works together on a variety of law enforcement activities with industry.

Additionally, we work closely with the Coalition Against Counterfeiting and Piracy (CACP), a U.S. Chamber of Commerce and National Association of Manufacturers led association with over 380 member companies and associations.

Through our work with the CACP and its members, as well as other industry IP experts, companies, and associations, we have included their insight and expertise into initiatives and working groups which we convene with our partnering nations. Our partnership with the private sector has enabled us to develop important goals to combat IP crimes, and helped to launch successful initiatives such as specialized training programs, legal advisory assistance for small and medium-sized enterprises (SMEs), and public awareness campaigns.

We have also partnered with the CACP to host our "IP Roadshows" around the country. This year we partnered with CACP on seven roadshows to teach SMEs how to secure and protect their rights and where to turn for federal resources and assistance, and are currently working to continue these programs next year.

#### **5. Promoting International Engagement:**

The last element of the STOP! Initiative is the work we are doing to engage our trading partners in the fight against counterfeiting and piracy. The U.S. has an established position of clear global leadership on IP enforcement. We work with nearly every country and within multiple international organizations to develop strong laws, policies and enforcement practices. We continue to face daunting challenges around the world, but our efforts have provided notable progress and led to some innovative approaches:

**ACTA:** On October 23, 2007 U.S. Trade Representative Ambassador Susan Schwab launched efforts to begin negotiations on an Anti-Counterfeiting Trade Agreement (ACTA). ACTA will be a landmark agreement for nations who take theft of IP seriously. The agreement will bring together a group of



countries who recognize the importance of IP and are dedicated to protecting the works of innovators and entrepreneurs. Our initial partners in this Agreement are the European Union, Japan, Korea, Mexico, Canada, New Zealand and Switzerland.

**G8:** At the 2005 G8 Summit, President Bush secured an agreement from his fellow leaders to focus on IP enforcement. In 2007 the G8 reached consensus on working together to improve customs and border enforcement cooperation, cooperation on combating serious and organized IPR crime, and better coordination on technical assistance to developing countries. The U.S. Government, led by the State Department, is working to focus work within the G8 on technical assistance pilot plans for developing countries, new results-oriented (business to business) collaborative approaches to promote and protect innovation and better border enforcement, especially against hazardous counterfeit goods.

In addition, the Department of Justice led an initiative within the G8 Lyon-Roma Anti-Crime and Terrorism Group to develop a framework for cooperation on intellectual property crime investigations, “Principles and Recommendations for Cooperative Investigation and Prosecution of Serious and Organized Intellectual Property Rights Crime,” which set forth a foundation for future cooperation on criminal IP enforcement among the G8 members. In June 2007 the G8 Leaders endorsed the Principles and Recommendations at their annual Summit in Munich, Germany.

**US-EU IP Enforcement Action Strategy:** In January 2006 we met with European Union officials at the White House to design a new joint effort to address global piracy and counterfeiting. In June 2006 President Bush, along with his E.U. counterparts, announced the U.S.-EU IP Enforcement Action Strategy. We are breaking new ground and have begun to expand our cooperation with the EU: key areas for work include third-country and multilateral cooperation, technical customs cooperation, and partnerships with industry on public awareness, training and enforcement.

In the most recent meeting of the IP Working Group in September, CBP and EU customs officials shared IPR best practices and enforcement information. The Department of Commerce is working with the Commission’s Enterprise Directorate to develop programs to promote the protection of IPR through public awareness efforts, trade fair cooperation, and small business education. The first half of 2008 will see joint efforts at trade fairs in Europe and China. The Office of the U.S. Trade Representative successfully continues to build on and expand its cooperation with the European Commission, through coordinated messaging and information exchange, to improve IPR enforcement in third countries.

**SPP:** The Administration has also launched a cooperative effort under the Security and Prosperity Partnership (SPP) with Canada and Mexico to develop a strategy for combating piracy and counterfeiting throughout North America. Work is underway through a trilateral task force and efforts are focusing on enhancing detection and deterrence of counterfeiting and piracy and expanding public awareness of the need to protect and enforce intellectual property rights. We have developed an Intellectual Property Rights Action Plan, which leaders announced at the SPP Summit in Montebello, Canada in August 2007. The Action Plan constitutes a strategy for governments and the private sector to combat piracy and counterfeiting in North America. Canada, Mexico, and the United States have agreed to take action in three areas: detect and deter trade in counterfeit and pirated goods, increasing consumer awareness of the adverse effects of counterfeiting and piracy, and measuring the depth and scope of counterfeiting and piracy. The group’s efforts involve not only cooperation among the governments, but between the governments and our private sectors as well. Projects in progress include joint public awareness efforts, sharing of border enforcement best practices, and joint law enforcement training programs.

**APEC:** Through U.S. efforts, the Asian Pacific Economic Cooperation (APEC) endorsed the Anti-Counterfeiting and Piracy Initiative which paved the way for the adoption of a number of U.S. led proposals. These initiatives include five Model Guidelines on reducing trade in counterfeit and pirated

goods, protecting against unauthorized copies, preventing the sale of counterfeit goods over the Internet, raising public awareness on IPR protection and enforcement and securing supply chains; drafting a paper on innovative techniques for IPR border enforcement; and making statements by leaders and ministers on the need for APEC economies to do more in addressing markets that sell counterfeit and pirated goods and in combating signal theft. The Department of Commerce is working to foster growth and development of Small and Medium Enterprises throughout APEC by providing education and capacity building on IP and by identifying best practices on IPR for SMEs among the APEC members by creating, distributing, and collecting an IPR Checklist from 18 of the 21 APEC economies. Each IPR checklist contains information on IPR measures in each economy that specifically affect SMEs. The checklists are designed to increase SME's market access in other APEC members' markets. The checklists have been compiled and are available at the APEC website

**FTAs:** Constant, high-level engagement to improve enforcement of IPR has been a vital part of U.S. trade policy for many years. The importance of intellectual property enforcement is reflected, for example, in the provisions of U.S. trade agreements and in the Administration's utilization of the "Special 301" provisions of U.S. trade law. The Bush Administration makes IP enforcement a priority when negotiating new free trade agreements. Our free trade agreements provide cutting-edge protection for IP with strong rules to combat counterfeiting and piracy.

For example, as a result of the United States-Australia FTA, Australia strengthened its laws to combat internet piracy and signal piracy. As a result of the United States-Singapore FTA, Singapore amended its Copyright Act to criminalize the installation and use of pirated software and then used that law to criminally prosecute an end-user for the first time. If the United States-South Korea FTA is approved and goes into effect, South Korea will be obligated to change its laws to provide greater authority to its police and customs authorities, to outlaw the recording of movies playing in theaters ("movie cam-cording"), and to increase its focus on fighting book piracy.

**Training and Capacity Building:** The U.S. has conducted several hundred IP training and capacity building programs around the world to improve criminal and civil IPR protection. As previously mentioned, the growth of USPTO's Global Intellectual Property Academy has dramatically increased the effectiveness of the U.S. Government's training and capacity building programs. Also, agencies throughout the federal government—from USPTO and the State Department to CBP and ICE—regularly send senior officials around the world to collaboratively train government officials in foreign countries.

Additionally, the U.S. Government and the World Intellectual Property Organization (WIPO) are developing a technical assistance pilot plan to combat trade in counterfeit and pirated goods and to strengthen IP enforcement in Indonesia and will be reaching out to other G8 members to support it with joint or complementary actions. Other G8 members volunteered to coordinate pilot plans in South Africa and the Tri-Border Region of South America. We are also working through the G8, as well as other bilateral and multilateral mechanisms, to help developing countries establish effective institutions to protect and promote innovation, including strengthening customs and law enforcement; ensuring legal production of safe and effective medicines, foods, and consumer products; and improving critical government IP functions.

Highlights of our Training and Capacity Building Programs:

- Brazil - Since 2001, the U.S. government has sponsored 15 IP-related programs involving Brazilian government officials, nearly half of which took place in Brazil.
- Russia - Since 2001, the U.S. government has conducted well over 15 training and capacity building programs involving Russian government officials.

- India - The U.S. government has conducted over 20 IP training and capacity building programs with Indian officials and we continue to conduct conferences to train Indian academics and officials on IP enforcement and WTO TRIPS obligations.
- China - Since 2001, the U.S. government has conducted well over 50 training programs involving Chinese government officials.

**Addressing Bilateral IP Enforcement Issues:**

We clearly face IP enforcement challenges in a number of critical markets around the world. These challenges demand that we fully utilize the trade tools at our disposal, engage in high-level dialogue, develop targeted enforcement activities and collaborate extensively with industry:

**China:** The U.S. government is working on many fronts to engage China on IPR concerns.

First, and most prominently, we are making effective use of all of our trade tools. In April of 2007, U.S. Trade Representative Schwab announced the Administration had made two requests before the WTO for dispute settlement consultations with China: one over deficiencies in the Chinese legal regime for enforcing copyrights and trademarks on a wide range of products. The request focuses on provisions of Chinese law that create a substantial “safe harbor” for distributors or sellers of pirated and counterfeit products in China. The U.S. IP enforcement consultation request also focuses on the rules for disposal of infringing goods seized by Chinese customs. The third IP enforcement issue concerns Chinese copyright law’s apparent denial of copyright protection for works poised to enter the market but awaiting Chinese censorship approval. In the same vein, we have discussed with China in detail the harm to U.S. industries, authors and artists who produce books, journals, movies, videos, and music caused by limiting the importation of these products to Chinese state-owned entities, and the problems caused by Chinese laws that hobble the distribution of foreign home entertainment products and publications within China. These products are favorite targets for IP criminals, and the legal obstacles standing between these legitimate products and the consumers in China give IP criminals the upper hand in the Chinese market.

A WTO panel has been established for the IPR Case, and USTR is requesting a WTO dispute resolution panel for the Market Access Case. Both WTO disputes will be moving forward toward resolution in the coming months.

Second, we seek to work collaboratively with the Chinese through the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the Strategic Economic Dialogue (SED) to secure bilateral IP commitments. In the last two years within JCCT, we negotiated a comprehensive set of commitments from the Chinese government to reduce counterfeiting and piracy. These include: increasing criminal IP prosecutions and customs enforcement; using only legal software in government offices and enterprises; shutting down illegal consumer markets in China; and joining the World Intellectual Property Organization Internet Treaties. As a result of a JCCT commitment, the Chinese government has mandated that all imported personal computers have legal operating software pre-installed.

At the May 2007 meeting of the SED, CBP worked with the Chinese and signed a Memorandum of Cooperation (MOC) with China Customs to strengthen enforcement against exports in China that may contain IPR infringing goods. This landmark agreement provides for the exchange of nominal information relating to IPR seizures in both countries with the requirement that specific actions be taken against entities involved in IPR violations in each country. The MOC also calls for the sharing of both seizure information and best practices related to IPR enforcement between CBP and China.

Since the MOC was signed with China, CBP has accomplished two of its goals already: (1) they have already conducted two training trips to China this year and a third is planned for the near future; and (2)

CBP has also provided information they collected to from seizures in U.S. ports to their Chinese counterparts for action and should be receiving an update from them.

In the months following our announcement of the WTO cases, the Chinese have backed away from previous commitments to engage in discussions regarding IP enforcement within the context of the JCCT and SED. In addition, we have seen less day-to-day collaboration with the Chinese Government on IP matters that is led by U.S. officials based in China.

We find this development to be disappointing and challenging, however we continue to seek effective ways to address our specific IP concerns with China and do recognize that they have made progress in certain areas.

One encouraging area of progress to note are the efforts between U.S. law enforcement and their Chinese counterparts to establish greater cooperation and coordination on joint criminal investigations and prosecutions.

In March 2007, the Justice Department's Criminal Division hosted and chaired the inaugural meeting of the Intellectual Property Criminal Enforcement Working Group ("IPCEWG") of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation ("JLG"), which included 15 Chinese law enforcement officials and the Ministry of Public Security's ("MPS") Vice Director General of the Economic Crimes Investigation Department, as well as officials from the FBI and U.S. Immigration and Customs Enforcement. The IPCEWG focuses on the development of more U.S.-China joint operations to combat transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety. The Department's leadership on the IPCEWG is already yielding unprecedented results, as mentioned previously with Operation Summer Solstice

And finally, we work actively with the private sector to address their concerns and learn from their experience. We are expanding the tools and remedies that we offer industry – from recording their trademarks with U.S. Customs and Border Protection, to educating small businesses and referring specific infringement cases to Chinese officials. In addition, they are critical advocates for progress in China as active participants in that market.

Ambassador Clark T. Randt, Jr. at our Embassy in Beijing holds an annual IPR Roundtable which brings together senior U.S. and Chinese officials and U.S. business representatives. The Roundtable gives U.S. rights holders the opportunity to discuss the problems they are facing and find the solutions that they need. At the most recent Roundtable, hosted by Ambassador Randt on October 23-24, a number of U.S. industries provided specific recommendations for action the U.S. Embassy's IPR team can take to address ongoing IPR concerns in China.

Our Embassy and Consulate officers on the ground are a valuable asset for U.S. companies. They play a critical role as IPR "first responders" helping U.S. businesses resolve cases when their rights are violated.

**Russia:** The U.S. is working with Russia to strengthen IP protection and enforcement. Russia is experiencing high rates of piracy. According to USTR's Special 301 Report, poor enforcement of IPR in Russia is a pervasive problem. The report notes that prosecution and adjudication of IP cases remains sporadic and inadequate in Russia; there is a lack of transparency and a failure to impose deterrent penalties. Russia's customs administration also needs to significantly strengthen its enforcement efforts. However, Russian authorities have initiated some enforcement actions in 2006, which included raids on some optical disc production facilities and investigation of Internet sites.

Our Bilateral Market Access Agreement with Russia, concluded in November 2006, includes a letter setting out important commitments that will strengthen IPR protection and enforcement in Russia. Under the terms of the agreement, Russia will take action to address piracy and counterfeiting and further improve its laws on IPR protection and enforcement. The agreement sets the stage for further progress on IP issues in ongoing multilateral negotiations concerning Russia's bid to enter the WTO. This year's Special 301 Report also continues heightened scrutiny of Russia by maintaining Russia on the Priority Watch List and announcing plans for an Out-of-Cycle Review.

Also, the work of the U.S.-Russia IP Working Group remains a high priority, as the United States—through USTR—and Russia work to address a number of IPR-related issues and steps that need to be taken.

**India:** In March 2006, during President Bush's visit to India, a joint statement was released stating that the U.S. and India would work together to promote innovation, creativity and technological advancement by providing a vibrant IP regime, and to cooperate in the field of intellectual property rights to include capacity building activities, human resource development and public awareness programs.

I have led two inter-agency delegations to India to discuss issues of IP policy, enforcement and trade. Our delegations met with Indian government officials – at both the Central and State Government level; and engaged both American and Indian private-sector stakeholders, academics and legal practitioners to continue our efforts to promote increased trade and economic development through effective IP protection. While in India, we discussed a broad framework for engaging India on intellectual property and trade promotion. This plan revolves around three key areas, which include: bilateral cooperation, education and engaging both U.S. and Indian industry. Bilaterally, we are working with India on IP through our Trade Policy Forum, High Technology Cooperation Group and the Commercial Dialogue. With the placement of a U.S. Government IP Attaché in New Delhi in 2006, we are continuing our capacity building and educational outreach efforts with the Indian Government and Industry.

We remain concerned about inadequate IP protection and enforcement in India. We have urged India to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents, as well as protection against unfair commercial use for data generated to obtain marketing approval. We have encouraged India to implement the WIPO Internet Treaties, strengthen its copyright laws, and improve its IPR enforcement system, including by enacting and implementing an effective optical disc licensing scheme to combat optical disc piracy. Piracy of copyrighted works remains rampant in India. India's criminal IPR enforcement regime remains weak, with improvements needed in the areas of expeditious judicial dispositions for copyright and trademark infringement, border enforcement against counterfeit and pirated goods, police action against pirates and counterfeiters, and imposition of deterrent sentences for IPR infringers. The United States has urged India to strengthen its IPR regime, and stands ready to work with India on these issues during the coming year.

India has made some progress, and we are committed to continuing to work with India as they fine-tune their IP legal framework and develop an effective system to enforce intellectual property rights.

### **The Importance of Coordination**

To better execute the key objectives laid out in the Administration's STOP! initiative, we have revitalized an existing interagency body that Congress established in 1999 to coordinate IP enforcement, the National Intellectual Property Law Enforcement Coordination Council (NIPLECC).

The Council is comprised of the Department of Justice (Assistant Attorney General of the Criminal Division), the Commerce Department (Under Secretary for Intellectual Property and Director of the

Patent and Trademark Office and Under Secretary for International Trade), the Office of the U.S. Trade Representative (Deputy USTR), the Department of Homeland Security (Commissioner of Customs and Border Protection and Assistant Secretary for Immigration and Customs Enforcement) and the State Department (Under Secretary for Economic, Business and Agricultural Affairs).

The Council has made a number of valuable contributions since its creation in 1999, including the development of a comprehensive database that includes all recent IP law enforcement training provided by the U.S. government to developing and least developed nations as well as delivering legislative suggestions to improve national IP laws related to enforcement.

We have also developed a new, internal performance survey to measure the U.S. Government's progress on IP enforcement. My office leads in collecting data each quarter for the U.S. Government's Quarterly Report on IP Enforcement, which we publish so that all stakeholders can be up to date on the work we are doing to protect IP.

Our office also leads NIPLECC's annual reporting process. In January of 2008, we will provide our Annual Report to the President and Congress on Intellectual Property Enforcement. Last year, we retooled NIPLECC's annual report to include a broader view of the coordination that the Administration has brought to the U.S. Government's IP enforcement efforts, and this year's report will continue in this model, while showing many of the results of now two years of coordination under my office's leadership.

Since the creation of the Coordinator's office in 2005, the Council has developed an Administration-wide communications strategy for U.S. government officials, especially Cabinet members. Working with the White House, we are leveraging opportunities for senior Administration officials to address IP enforcement and communicate similar themes. As part of this communications strategy, we have prepared background papers and developed the Bush Administration's strategies for countries like China and India.

As Coordinator, I have led inter-agency delegations to China, Russia, Mexico, India, and the European Union to discuss critical IP issues with my government counterparts overseas and with industry.

With each initiative and project that the Council puts into motion, we are able to move the ball that much further for U.S. Industry, and we send a clear message to our trading partners and others that the Bush Administration considers the protection of intellectual property to be a top economic and international trade issue.

As the Bush Administration continues its efforts, and in my role as the head of the Council, I look forward to working with this Committee to ensure that we maximize our current capabilities and expand our efforts, where necessary, to promote strong intellectual property rights protection for American businesses and entrepreneurs around the world.

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Members of the Committee, the Bush Administration is committed to stopping intellectual property theft and providing businesses the tools they need to flourish in the global economy. As I work to coordinate the U.S. government's intellectual property enforcement, trade and education efforts and with your continued support and the partnership of this Committee, we will be able to do even more to provide American businesses and innovators with the protection they need. America's intellectual property is important not just for her national security, but it is also a critical component in ensuring continued U.S. economic growth and technological leadership. We must take advantage of the opportunity to work together to better protect the knowledge industries of today so that we may continue to see the innovations of tomorrow. Thank you very much.