

Remarks of

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AND  
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at the

**US/WIPO CONFERENCE ON INTELLECTUAL  
PROPERTY ENFORCEMENT IN A KNOWLEDGE-  
BASED ECONOMY FOR THE ASIA-PACIFIC REGION.**

**CHIANG RAI, THAILAND  
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# **INTRODUCTION**

Good morning.

It is my great honor to join Mr. Uemura and welcome you to the Conference on Intellectual Property Enforcement in a Knowledge-Based Economy for the Asia-Pacific Region. I want to thank our hosts here in Thailand for allowing us to have this conference in such a beautiful setting; their hard work and excellent organization are evident to all of us.

As Under Secretary of the United States Patent and Trademark Office, I am proud to represent the U.S. in our joint effort with the World Intellectual Property Organization.

And I know I speak for our entire delegation when I say that to have the opportunity to work with so many distinguished leaders is a privilege for us.

We recognize the significance of this regional conference.

We recognize the vital and vibrant growth that has flowered here, and we are pleased to be a part of the valuable dialogue that will take place in the next two days.

I am quite sure that as we meet, and exchange ideas, we will not only discover that we share the same goals, but that we share the same challenges.

And that is why, as our nations continue to rely upon the gifts of genius, we must press forward as partners, and as friends --for only then can we ensure that our good fortune will withstand the test of time.

It is an auspicious era for our community. Never before has society benefited so much from pure information. And, while we can't precisely measure this commodity, it is certainly a natural resource nonetheless.

In fact, in this day and age, it is our most valuable asset. But its very nature --fluid, intangible and ephemeral -- calls for strong protection. It is both difficult and necessary for us to defend seemingly fragile assets, but which in reality have become the driving force of our economies and which will define the 21<sup>st</sup> century.

This conference, and your presence here, signifies the increasing importance of collaboration as we enter into a new Millennium defined by information. Each person here is essential, and I thank you for coming.

Our work here is particularly relevant as we move farther into the Digital Age. And by bringing people together from throughout this region, we are confirming what has been evident for the better part of this decade: that we depend on one another.

Now more than ever.

Our commercial, educational, political and cultural ties become ever stronger as information technology continues to unite our interests.

To some, that may seem problematic, but I welcome this interdependence. I welcome it because the more we work together, and the more we share our experiences, and teach others what we have learned, the closer we come to guaranteeing opportunities and prosperity for each citizen of every nation.

And after many years of working in intellectual property, and as the current Under Secretary and Director of the United States Patent and Trademark Office, I have seen first hand what collaboration and strong intellectual property rights mean for global and domestic prosperity.

Evidence of this interconnectedness, and related prosperity, is especially clear when we look at the increase in trade between the United States and countries in the Asia-Pacific region. Right now, US exports to Asia are up 11.4% from a year ago, while imports from the region into the US have increased by 21.3%.

The truth of this is only increasing as our economies become ever more reliant upon the intangible ideas of our people. More and more of our exports are IP based.

This increase in trade in such goods and services continues to heighten the need for effective enforcement. And with this effective enforcement, we see goods flow and investment made and secured. Conversely, without effective enforcement, trade withers and investment is not made.

And while there are those who might believe that we have reached the threshold of discovery in digital and technological innovation, we know otherwise. We know that the Information Age is only just beginning.

In fact, I've heard our current era referred to as a "Big Bang" experience. We have no idea what our newfound inventions, what our exciting ideas will lead to.

And this is why we join together at this conference. Because in this mystery lies great change. And what is at the heart of great change, but great opportunity. We recognize the excitement of living during the beginning of a new universe, a universe of possibilities.

And while we may not know exactly where we are going, or where we will end, we do know that we must take the right path, together. That's why conferences like this one are turning into one of the most effective means of ensuring our future success. By defining and identifying the issues that we need to address, we move one step closer to solving them.

And by moving one step closer to solving these problems, we move one step closer to the total protection we all desire.

There couldn't be a better time for this. In the last decade, we've seen exponential growth in the global economy, and in digital technologies. New questions and concerns are blossoming right along with our innovations, and it is our hope—and our responsibility—to turn these challenges into opportunities.

That is our goal for this conference, and I know that with the unique perspectives and experiences we've brought here, that we will succeed in our efforts.

## **THE CONFERENCE**

Now, these next two days will be busy.

We have organized speakers and designated topics that deal with many different facets of intellectual property protection and enforcement in the digital age.

With panels focusing on the role of intellectual property in a knowledge-based economy, e-commerce, digital distribution and the technological threat to intellectual property rights, TRIPS and the WIPO Copyright treaties, international enforcement issues and Internet domain name problems, we're looking forward to coming up with solutions as creative as the technologies that have generated the questions.

And, with speakers from throughout the region, including top government officials from intellectual property offices and representatives from private industry, and from WIPO and from our office, our conference will benefit from the experiences of government officials, the legal community and private industry.

## **USPTO INTERNATIONAL ACTIVITY**

Of course, this symposium is just one of many key elements that we need to implement.

We must also work together to make sure that our IP policies work in tandem to protect our creators, that balkanization of IP protection policy is eradicated, and that every inventor, artist, and writer feels confident in the global marketplace.

At the USPTO, we are committed to the partnerships that promise to foster this environment.

Just last spring, I met with the heads of China's and Korea's intellectual property offices to explore ways that our offices could work together.

As you can see from our joint sponsorship of this Conference, we have also formed a very strong partnership with WIPO in assisting developing countries to meet international IP standards. And I'll talk a little more about that, and some of our other initiatives, later.

But let me say now that our work with Intellectual Property Offices throughout Asia, and the world, is something that as Under Secretary I am proud of.

### **GLOBAL PATENT**

We also want to continue our efforts regarding the establishment of a global patent system.

As global trade increases and multinational businesses grow, worldwide patent protection is becoming increasingly important, and we believe that many national and regional patent systems are simply too cumbersome and expensive.

This leads to duplicative and wasteful efforts in obtaining worldwide patent protection, which unquestionably deters and stifles trade.

I know no one wants to see that kind of development, and so I want to say today that in order to get to the point where the rights of inventors will be universally recognized, we need to tackle both procedural and substantive patent law issues.

These changes also make fiscal sense. We're all interested in decreasing costs, and adopting cost-saving measures, such as taking advantage of the search and examination results of other industrial property offices, will allow us to operate efficiently and effectively.

Similarly, advances in information and communication technology will not only allow us, but require us, to make our electronic systems converge, again a boon as we try to make our IP system as effective as possible.

### **PATENT LAW TREATY**

Another important issue the USPTO is working on is the Patent Law Treaty, or PLT.

In our efforts to secure this treaty, last spring I led the US delegation to the WIPO Diplomatic Conference held in Geneva. There we successfully concluded with the signing of the PLT by 43 WIPO member states, including the United States.

As many of you know, the PLT's principal goal is to provide uniform filing requirements and formal procedures among the member countries -- in order to reduce the high costs of complying with various (and sometimes inconsistent) national and regional requirements.

In so doing, the PLT would also reduce the risks incurred by the loss of potentially valuable IP rights due to filing errors.

Essentially, the PLT would take the requirement standards from the Patent Cooperation Treaty and transport them into national patent systems. These would then be the maximum formal obligations a PLT country could impose on patent applicants.

By providing more consistent treatment of applications and prosecution procedures, the PLT will allow applicants to develop worldwide protection with greater confidence and at reduced costs. Right now, the USPTO is in the process of preparing the ratification package for the PLT and is drafting the necessary implementing legislation.

## **PATENT COOPERATION TREATY**

We are also working to streamline the processing of international applications by revising the Patent Cooperation Treaty (PCT).

Although the PCT has had some success in providing patent protection in a number of worldwide markets, we believe that it's not living up to its full potential. The reason is that it's far too complicated and rule-bound.

As a practitioner myself, I know that many inventors and patent applicants in the United States refuse to use the PCT system because of its complexity and perceived inefficiency. That is why we are seeking to simplify and streamline the treaty and make the PCT more "user friendly."

Our reform proposal would allow applicants to prepare a relatively simplified patent application in a single format -- preferably in electronic form. This would be accepted by all patent offices, throughout the world, as a national patent application or an international PCT patent application.

Processing of such an application -- whether national, international or both -- could be accomplished in a much more seamless fashion, minimizing any distinctions between the two.

In addition, the system could move away from its current, non-binding patentability opinions and adopt procedures where substantive rights may eventually be granted through the PCT channel.

Our proposed changes to the PCT would be accomplished in two stages.

In the first stage, we propose that the PCT be amended to simplify certain procedures.

These revisions -- which could take place within the next five years -- include simplification of filing date requirements, residence and nationality requirements, and demand requirements.

They also include acceptance of fees for postponing national processing, electronic publication of applications and transmission of search and examination results.

The second stage of reform includes a much more comprehensive overhaul of the entire PCT system.

These measures -- a more long-term undertaking -- would incorporate the regionalization of current search and examination authorities and elimination of distinctions between national and international applications.

It would also include relaxation of timing for designated country processing, as well as adoption of positive examination results in originating countries or certain authorities that have agreed to be bound by these results.

Last fall in Berlin, I unveiled the United States' proposal to reform the PCT at a meeting with our Trilateral Partners in the Japanese and European Patent Offices.

I am pleased to report that it received a warm reception.

But of course we also need backing from our constituencies in the United States, and this past April we disseminated our finalized revised proposal to various U.S. industries, users, and bar groups for comment.

## **WIPO COPYRIGHT**

The WIPO Copyright Treaties are also important as we work towards global protection.

The WIPO Copyright Treaty (WCT) and The WIPO Performers and Phonograms Treaty (WPPT), make several small changes in the international copyright standards established by the Berne Convention, including clarifying copyright protection of computer software and databases.

We are well on our way to implementing these treaties, and the Asian-Pacific region's involvement was key in the negotiations of both.

That is an exciting development and clearly one of the most effective collaborative tools we have.

The United States has implemented these changes into our own law via the Digital Millennium Copyright Act, signed into US law in 1998, and our Secretary of Commerce deposited the U.S. instruments of ratification this past September.

We are proud to be a part of these treaties. And while internationally, we are still not completely unified on this point, I feel confident that we can answer our concerns together.

## **MADRID PROTOCOL**

New technology asks us not to forget trademarks, either; as our digital age moves forward, so does the necessity to provide streamlined registration for trademark applicants.

In this area, we're encouraged by recent developments regarding the Madrid Protocol Treaty.

In the U.S., our President has just sent the treaty to the Senate for approval. They, in turn, have heard testimony this past week concerning U.S. adherence to the Protocol, which means that the process is moving quickly, and we look forward to coming closer to our goal of becoming a full member of the Protocol.

The USPTO has worked very hard, along with numerous private sector intellectual property organizations, to bring the U.S. into the Madrid Protocol, and we continue to work with WIPO to ensure successful membership.

Its one-stop, streamlined registration process for trademark applicants is a necessity to ensure that our achievements in the digital age do not outpace our procedures.

### **AV TREATY**

But we also need to look towards the future. Although the WIPO Copyright Treaties are far reaching, they do not address Audio/Visual Performers rights. The WPPT covers only sound recordings -- that is, musicians.

So, since 1996, in the U.S. we have been working on this issue. The protection of these performers' right is important because, in the digital era, an actor's image can be cut and pasted digitally, manipulated, and inserted into works they had absolutely no involvement in; a clear violation of intellectual property rights.

At the USPTO, we are looking forward to addressing the Audio/Visual Performers Treaty when the USPTO attends the Diplomat Conference this December.

### **INTERNET ENFORCEMENT**

Of course, probably one of the most important issues that we are dealing with together here is the issue of enforcement as it relates to the Internet.

And it is appropriate that in talking about this, we are in Asia, a leader in Internet usage. Predictions have it that Internet users in Asia will increase by more than 400% over the next six years!

In the United States, we are experiencing a similar explosion.

We see in this exponential growth significant opportunities for expanding electronic commerce and for unleashing information and knowledge -- across borders -- unlike ever before. Clearly, the impact of the Internet on economic growth is, and will continue to be, immense.

The IP-intensive information and entertainment industries are already large users of the Internet for e-commerce.



And as their usage increases, they stand to reap significant benefits from worldwide commerce in their goods and services.

It doesn't take a specialist in IP issues to recognize the commercial power of the Internet. Let me give you a few numbers that highlight its impact in the United States.

According to a 1999 report prepared for the International Intellectual Property Alliance, or the IIPA, a private sector coalition in the U.S., which represents copyright-based industries, our core copyright industries areas such as music, motion pictures, and computer software -- accounted for \$348 billion in value added to our economy in 1997.

That's about 4.3% of our Gross Domestic Product (GDP). Taking all copyright industries together, they accounted for \$530 billion in value added, or approximately 6.53% of GDP.

Employment in our core copyright industries grew three times the rate of national employment growth between 1977 and 1997, employing about 7 million workers. Needless to say, that's a lot of people relying on intellectual property to make a living.

In addition, the core copyright industries generated an estimated \$67 billion in foreign sales and exports in 1997. That's the good news.

As we know, however, the technologies unleashed by the Internet -- and the sheer scope of the Web's reach -- provide an array of opportunities to pirate intellectual property. We face challenges in piracy and counterfeiting unlike ever before. These threaten to diminish the awesome power of our increasingly digital and global economy.

Not surprisingly, two of the U.S. copyright industries most intensely affected by piracy and the unauthorized use of their works on the Internet are the software and music industries. For example, two associations in the U.S., one of whom, the Business Software Alliance, is participating in this conference, and the Software and Information Industry Association, estimate losses to the worldwide software industry of \$12 billion from all types of piracy.

Another of our conference participants, the Motion Picture Association of America, or the MPAA, estimates that video piracy costs the American motion picture industry 2.5 billion dollars a year in lost revenues. And the Recording Industry Association of America reports losses of more than \$4 billion.

Overall, U.S. copyright industries losses to piracy worldwide are estimated at \$22 billion. That translates into lost income for authors, composers and other "creators," as well as lost jobs, revenues and foreign royalties for American workers and industry.

Clearly, these problems aren't just going to go away. And as you all know, they're not limited to just one country or one type of economy.

Given the realities of our digital age, the United States is attacking piracy head-on, working to equip American intellectual property owners and law enforcement authorities with better legal tools to protect their good and services here at home.

As I mentioned before, we have adopted the Digital Millennium Copyright Act, which brings our copyright law into the 21<sup>st</sup> century, and also the No Electronic Theft Act, which addresses a variety of illegal actions on the Internet.

We also are undertaking a new, formal inter-agency coordination effort on IP-related enforcement through the National Intellectual Property Law Enforcement Coordination Council. Consisting of the USPTO, the Justice Department, State Department, USTR, Customs, and the Department of Commerce, its mandate is to coordinate domestic and international intellectual property law enforcement among Federal and foreign entities. The Council also consults with the US Copyright Office on copyright and related rights enforcement issues.

We are hopeful that, in the future, the Council will serve as a vehicle through which Federal agencies can partner with industry to develop effective strategies for addressing Internet piracy.

Continued work with WIPO and the WTO is also key to fighting Internet related piracy, and if we are to establish similar legal norms of protection among our trading partners.

I touched on the two copyright treaties earlier, but I want to return to them because their relevance to Internet enforcement cannot be overstated, nor can compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPs.

The WIPO Internet Treaties are particularly important for dealing with the threats to core copyright industries I mentioned earlier. Both of the Treaties require 30 countries to ratify them before they become effective. So far, 19 countries, including the United States, have ratified the WCT and 16 countries have ratified the WPPT.

The United States is committed to working internationally to reach the 30 country threshold for each treaty.

The WIPO Internet Treaties, the TRIPs Agreement, and other legal norms are still not enough -- in and of themselves -- to combat piracy of intellectual goods. That is why the United States is also engaged in a number of efforts to ensure that our trading partners have the technical means and the political will to put these legal tools to work.

And that means enforcement.

International enforcement has become especially critical in recent months in the wake of the January 1st, 2000 deadline for all developed and developing countries who are members of the

WTO to have domestic laws and enforcement mechanisms in compliance with the standards set forth under the TRIPs Agreement.

As a result, the U.S. is receiving large numbers of requests for technical assistance in reviewing IP legislation and assisting developing countries to create an integrated enforcement system.

And by “integrated” we mean a system consisting of civil, criminal and administrative procedures and remedies, as well as border measures.

The assistance provided by the U.S. -- namely through the USPTO -- includes training government and law enforcement officials and participating in workshops sponsored by international and regional organizations. These workshops aid countries in meeting their obligations in two ways.

First, from a structural point of view, by having the laws and procedures in place to conform with TRIPs requirements.

And, second, from an effective enforcement point of view, by having the experience and capability to enforce IP rights using the structural mechanisms established in compliance with TRIPs.

In addition, because of the growing problem of Internet piracy, we are also being called upon to assist in developing enforcement mechanisms to deal with technological advances in IP protection and enforcement.

These countries will need assistance in understanding and implementing the WIPO Internet Treaties to establish the legal framework to combat piracy.

That is why the focus of our Internet-oriented efforts has been to assist countries in adapting the enforcement models appropriate for conventional hard goods – CDs, cassettes, floppy disks, etc. -- to the realities of cyberspace transmission of copyrighted works.

To meet our technical assistance requirements under TRIPs and to continue to assist developing countries in establishing IP protection regimes, we have continued to expand these activities to meet the heightened need for technical training generated by the year 2000 deadline for TRIPs compliance and other bilateral and multilateral treaties.

We are also targeting our enforcement training efforts to focus on problems of Internet enforcement in other regions where the usage is rapidly expanding.

### **USPTO I.P. ENFORCEMENT PROGRAMS**

Let me highlight a few examples of the work we have undertaken in this area.

This past May, the USPTO worked with WIPO to provide law enforcement and other government officials from developing economies with a week-long, Washington-based program on developing a TRIPs compliant and effective enforcement regime.

Participants included our gracious host country Thailand, China, Hong Kong, India, , the Philippines, Israel, Egypt and Nigeria.

In July, we again partnered with WIPO to provide law enforcement and other government officials from Africa with a week-long program in Dakar, Senegal on developing a TRIPs compliant and effective enforcement regime.

This program, like our program in Washington, grew from a similar one offered last year in Mombasa, Kenya. More recently, we hosted in Washington last month a Symposium for our neighbors in the western hemisphere on the topic of protecting intellectual property in the digital age.

These programs:

- Provide government officials with an in-depth review of the TRIPs standards for enforcing intellectual property rights;
- Assist government officials in developing effective IP enforcement systems based on an interdisciplinary approach in which civil, criminal, administrative and border measures work together and separately;
- and expose government officials to the challenges posed by enforcing IP on the Internet, and building the requisite legal framework in their domestic laws to meet the Internet challenge, including through implementation of WIPO Internet Treaties. This included a heavy focus on practical applications in the digital universe.

## **CONCLUSION**

But at the heart of the matter is the need to establish partnerships and facilitate the discourse so vital towards ensuring our prosperity. And without this discourse, the concepts of compliance, streamlining, and consensus building become obsolete.

That's why it's heartening to see so many people here today- each of you could have chosen not to attend, to work with your internal constituencies and only the problems that are right outside your door. That is tempting, I know. We sometimes tend to put international matters second to our domestic ones.

Of course, if history has taught us nothing else, however, we know that in reality, international matters, if ignored, quickly become domestic concerns. And that by promoting international

partnering, we are not only supporting global security, be it economic or otherwise- we are also contributing to our own domestic agenda.

That said, let me again say that we are very honored to be here, and we are eager to listen, to learn and to contribute.

Thank you, thank you to our hosts here in Thailand, and to our friends at WIPO.