

**INTELLECTUAL PROPERTY CRIMES:
ARE PROCEEDS FROM COUNTERFEITED GOODS
FUNDING TERRORISM?**

HEARING
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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JULY 16, 2003
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INTELLECTUAL PROPERTY CRIMES: ARE PROCEEDS FROM COUNTERFEITED GOODS FUNDING TERRORISM?

WEDNESDAY, JULY 16, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 9:32 a.m. in Room 2172, Rayburn House Office Building, Hon. Henry J. Hyde (Chairman of the Committee) presiding.

Chairman HYDE. The Committee will come to order. Today's hearing will examine whether or not terrorists are using intellectual property crimes as a means of funding terrorist organizations.

Everyone loves to make a deal or get a bargain, but these are the days where buyers should really beware, not only because the quality of the item being purchased may not be up to par, but because the counterfeit item you purchase from a street vendor or on the internet may be helping to finance terrorism.

It has been reported that intellectual property now represents the largest single sector of the American economy. With the ease of reproduction of goods and creative works due to emerging technologies, counterfeiting is on the rise. More and more American products are being pirated overseas. Some are even finding their way back into the United States for sale and distribution.

I am very concerned that our most valuable export—American ingenuity and the blood, sweat and tears behind it—is being taken from us as a nation. According to the Business Software Alliance, in 2001 the total of direct and indirect losses due to software piracy alone cost the U.S. nearly \$5.6 billion in wage losses, more than 111,800 jobs for the U.S. economy and almost \$1.5 billion in total tax losses.

Almost \$220 million of retail software dollar losses and nearly 5,000 jobs were stolen from the State of Illinois where I reside. The people of Illinois were robbed of almost \$59 million in Federal and state tax losses due to software piracy in 1 year alone. Remember, these numbers refer only to the software industry.

As if it is not enough to contemplate the drain which these crimes commit against our economic security, then also consider the extent to which they may be hurting our national security.

Intellectual property crimes are serious crimes in their own right, not typically because they inflict physical injury or death upon a person—though tell that to one who has been injured due to the use of a faulty auto or airplane part—but because they steal

a creative work from its owner and further deprive the government of a tax base. This robs the American people of precious jobs and necessary governmental services.

I do not need to explain how seriously our nation takes terrorism after the horrific events of September 11. Traditionally, intellectual property crimes and terrorism have been considered separately, much as drug trafficking and terrorism were considered until recently. Law enforcement and the intelligence community have been telling us that a growing concern is the convergence of different types of illicit activities in order to further the gains of clandestine activities and operation.

As an example, a congressional delegation led by Western Hemisphere Subcommittee Chairman Cass Ballenger traveled to the tri-border area of Argentina, Brazil and Paraguay to meet with local law enforcement officials. The State Department's *Patterns of Global Terrorism* report indicates that the tri-border area has long been characterized as a regional hub for Hezbollah and Hamas fundraising activities.

It was during this trip that Members and staff viewed warehouses full of confiscated counterfeit American items. One of the most disturbing items was a counterfeit Microsoft CD-ROM flight simulation program that was being marketed by depicting the September 11 attack with Osama bin Laden on the front cover of the CD.

The delegation was told that this item, along with numerous others, was confiscated in raids of businesses owned by individuals with established links to Hezbollah and Hamas. The delegation was told of several examples of arrests made in the region for similar offenses. In some instances, propaganda supporting terrorism has been recovered among the items confiscated.

Today, we will explore evidence that terrorists are becoming more creative with the financing of operations, especially when it concerns intellectual property crimes. This is due in part to governments' increased pressures against traditional terrorist fundraising and terrorists' desire to operate in an arena where profits are high and penalties are low. It should make you think twice before buying that knock-off purse or a fake CD.

I would like to show you a video clip from WTVJ-NBC, Channel 6, in Miami, which aired a story on the subject matter of this hearing on February 4 of this year. Afterwards, we will proceed to our witnesses.

[Whereupon, a videotape was shown.]

Chairman HYDE. I would also like to thank the Motion Picture Association of America for submitting written testimony for this hearing and for releasing its previously prepared report entitled *Asia-Pacific Region: Organized Crime and Movie Copyright Piracy*, Second Quarter 2003, today.

As one last housekeeping matter, Secretary General Noble of Interpol has prepared a confidential memorandum for Members of this Committee to view concerning the topic before us. It will be available for inspection in the Committee anterooms during the hearing and will be maintained on file with the Committee. I invite your review of this document.

I now turn to my esteemed colleague, Tom Lantos, the Ranking Democratic, for any remarks he may wish to make.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

Today's hearing will examine whether or not terrorists are using intellectual property crimes as a means of funding terrorist organizations.

Everyone loves to make a deal, or get a bargain. But, these days, the Buyer *really should* Beware. Not only because the quality of the item being purchased may not be up to par, but because the counterfeit item you purchase from a street vendor or on the Internet may be helping to finance terrorism.

It has been reported that intellectual property now represents the largest single sector of the American economy. With the ease of reproduction of goods and creative works due to emerging technologies, counterfeiting is on the rise. More and more American products are being pirated overseas. Some are even finding their way back into the United States for sale and distribution.

I am very concerned that our most valuable export—American ingenuity, and the blood, sweat and tears behind it—is being taken from us as a nation. According to the Business Software Alliance, in 2001, the total of direct and indirect losses due to software piracy *alone* cost the U.S. nearly \$5.6 billion in wage losses, more than 111,800 jobs for the U.S. economy, and almost \$1.5 billion in total tax losses. Almost \$220 million of retail software dollar losses and nearly 5,000 jobs were stolen from the State of Illinois, where I am from. The people of Illinois were robbed of almost \$59 million in federal and state tax losses due to software piracy in one year alone. And remember: these numbers only refer to the software industry. As if it isn't enough to contemplate the drain which these crimes commit against our economic security, then also consider the extent to which they may also be hurting our national security.

Intellectual property crimes are serious crimes in their own right—not typically because they inflict physical injury or death upon a person (although tell that to one injured due to the use of a faulty auto or airplane part)—but because they steal a creative work from its owner and further deprive the government of a tax base. This robs the American people of precious jobs and necessary governmental services.

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I'd like to show you a video clip from WTVJ/NBC-Channel 6 in Miami, which aired a story on the subject matter of this hearing on February 4th of this year. Afterwards, we will proceed to our witnesses.

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entitled, "Asia Pacific Region: Organized Crime and Movie Copyright Piracy: Second Quarter 2003," today.

As one last housekeeping matter, Secretary General Noble of Interpol has prepared a confidential memorandum for Members to view concerning the topic before us. It will be available for inspection in the Committee anterooms during the hearing and will be maintained on file with the Committee. I invite your review of this document.

Mr. LANTOS. Thank you very much, Mr. Chairman. Let me first congratulate you on holding the first hearing in Congress either in the House or in the Senate on this most important emerging issue. It demonstrates, Mr. Chairman, that you are at the cutting edge of the fight against terrorism, and I want to publicly pay tribute to your decision to hold this hearing.

Chairman HYDE. Thank you.

Mr. LANTOS. I also would like to ask unanimous consent to introduce in the record an item from today's *New York Times* which deals with your decision to hold this hearing and outlines the basic issue.

Chairman HYDE. Without objection. So ordered.

[The information referred to follows:]



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HEADLINE: THREATS AND RESPONSES: THE MONEY TRAIL;
Fake Goods Support Terrorism, Interpol Official Is to Testify

BYLINE: By DAVID JOHNSTON

DATELINE: WASHINGTON, July 15

BODY:

Groups like Al Qaeda and Hezbollah have turned to trafficking in counterfeit consumer goods, like fake Nike shoes, Sony stereo equipment and Calvin Klein jeans, says the top official at Interpol, who is scheduled to testify about the issue on Wednesday at a Congressional hearing.

"The link between organized crime groups and counterfeit goods is well established," states the written testimony by Ronald K. Noble, the secretary general of Interpol, to be presented at the House Committee on International Relations. "But Interpol is sounding the alarm that intellectual property crime is becoming the preferred method of funding for a number of terrorist groups."

The booming international trade in phony consumer goods has long been known and its links to terrorist groups often suspected by government agencies. But Congressional officials said that Mr. Noble's testimony was the first by a senior law enforcement official to conclude emphatically, on a global basis, that the trade in counterfeit consumer products financed terrorism.

Mr. Noble's appearance is the first time an Interpol secretary general has testified to a Congressional panel. A former senior official at the Justice and Treasury Departments, Mr. Noble took over in 2000 at Interpol, which coordinates information among police and security services in 181 countries.

Representative Henry J. Hyde, Republican of Illinois and chairman of the International Relations Committee, states in his prepared remarks that intellectual property crimes and terrorism have until recently been thought of as separate issues.

"Law enforcement and the intelligence community have been telling us that a growing concern is the convergence of different types of illicit activities in order to further the gains of clandestine activities and operations," Mr. Hyde said in his written statement.

In his testimony, Mr. Noble said that the trade in illegal products ranged widely, from counterfeit cigarette trafficking by paramilitary groups in Northern Ireland to ethnic-Albanian extremist groups in Kosovo where Mr. Noble said a "significant proportion" of consumer goods like computer software, shoes and clothes were fakes.

In the United States, investigators have said the trade in counterfeit products flourishes in cities like New York, Los

Angeles and Miami, where phony products with well-known brand names are sold in shops and by vendors on the streets. The Federal Bureau of Investigation estimated in 2002 that the cost to American businesses was \$200 billion to \$250 billion a year.

"Trafficking in counterfeit goods is a relatively easy criminal activity," Mr. Noble's testimony said. "A terrorist could make profit solely from sales of counterfeit or pirated goods and does not need to be involved in the actual production or fabrication. Thus there are relatively low entry costs and the illicit profit margins are high."

Larry C. Johnson, a consultant on international product counterfeiting, who is also scheduled to testify at the hearing, states in his prepared testimony that over the years traditional financial support from countries in the Middle East and elsewhere had dried up.

"Consequently, terrorist groups turned to a variety of activities, including charitable contributions, narcotics trafficking, cigarette smuggling and I believe selling counterfeit products," Mr. Johnson said.

But Mr. Noble said that law enforcement agencies around the world had generally not aggressively investigated such crimes, which often carry relatively low fines and prison sentences when offenders are convicted.

<http://www.nytimes.com>

LOAD-DATE: July 16, 2003

Mr. LANTOS. Mr. Chairman, you are holding a hearing on an emerging mechanism for terrorist organizations to finance their deadly acts, intellectual property crimes. There is no doubt in my mind that tens of millions of Americans who inadvertently have been contributing to terrorist organizations by buying these items will be as grateful to you as I am for focusing attention on the matter.

It is common for the public to think of intellectual property piracy as a victimless crime, a minor economic offense that only affects wealthy corporations and does no real harm to society or to individuals. Such activities are frequently a low priority for domestic and international law enforcement agencies.

But we are in a new world where terrorists act globally and use creative ways to finance and conduct their evil operations. Terrorist groups are behaving much like international crime syndicates, developing increasingly sophisticated financial infrastructures to generate dependable revenue sources.

There are disturbing reports, many fully confirmed, that terrorist groups such as Hamas and Hezbollah and their sympathizers are engaging in intellectual property crimes, selling pirated software, DVDs and other products to generate funds. Terrorist groups in Ireland and Chechnya have been implicated in this activity, and there are strong indications that al-Qaeda itself is involved in these activities.

It is important to remember that devastating terrorist acts do not require tremendous amounts of money. The September 11 attacks may have required as little as a half a million dollars to produce. Intellectual property piracy is, unfortunately, a low risk, high profit criminal enterprise which is widely tolerated and almost universally ignored.

As the United States and our friends and allies work to shut down terrorist groups funding networks and money laundering schemes, it is very likely that al-Qaeda and other groups will in-

crease their focus on international property crimes as a way of obtaining funds.

This issue deserves much more attention from both U.S. and international law enforcement agencies, and I hope that the Administration will make a full court press internationally against intellectual property crimes and its relationship to terrorism.

I call upon the Departments of State and Justice to come and brief this Committee on the actions they will take to address this emerging and serious terrorism related issue. We have to get ahead of the curve on this matter before the terrorists do.

I hope, Mr. Chairman, that this hearing will be the first step, the very first step, in raising the consciousness of the American people, of U.S., foreign and international law enforcement agencies, to pay greater attention to the developing connection between international intellectual property and terrorism.

I again want to commend you for bringing this to the attention of the Congress.

Chairman HYDE. Thank you very much, Mr. Lantos.

Mr. Ballenger?

Mr. BALLENGER. Thank you, Mr. Chairman.

As you said, I led a congressional delegation to Ciudad del Este, the city on the tri-borders of Paraguay, Argentina and Brazil, last year. The purpose of the trip was to see firsthand the problems associated with the region, which serves as a hub for Hezbollah and Hamas fundraising activities in Latin America.

While there, we witnessed the extent to which smuggling and the sale of illegal contraband, including pirated American goods, drugs and weapons, pervades the local economy. To provide you with a glimpse of what we saw, I will refer Members to the photographs on the plasma screens.

During our trip, we learned the Paraguayan authorities had identified at least 50 local individuals involved in raising millions of dollars for Hezbollah and other terrorist organizations in the Middle East. The funds were raised by a variety of means, including pirating compact discs, cigarettes, electronic equipment, DVDs, software and other common household goods.

To illustrate the magnitude of the sales of compact discs in this region, over 80,000,000 blank CDs were imported to Ciudad del Este during 2001. One of the photos depicts a confiscated machine which is capable of taking a blank disc and imprinting music or software. It is capable of producing 20,000 CDs each day. These are not "mom and pop" operations. These are professional pirating operations where millions of dollars are made for illicit purposes.

The delegation was told that the items depicted in these photographs, along with numerous others, were confiscated in raids of businesses owned by individuals with established links to Hezbollah and Hamas. Authorities explained that the arrests had been made of Assad Barakat, notorious for allegedly funding millions of dollars to Hezbollah, and Ali Nasir Darug, the nephew of a former tri-border shopkeeper and suspected al-Qaeda associate, Mohammed Darug Darug, in addition to several others.

In addition to the obvious reasons for concern over the tri-border area and other places where this type of activity is occurring, I do not like the fact that at a minimum North Carolina loses an esti-

mated 3,300 jobs and over \$39 million in tax revenue just due to software piracy each year. We could use that money to do many good things in my state.

I want to thank the Chairman for having this hearing today and look forward to hearing from our witnesses as to whether or not these are isolated examples of connection between intellectual property crimes and terrorism or whether there may be more to this story. I thank the Chairman.

Chairman HYDE. Thank you, Mr. Ballenger.

Mr. Berman?

Mr. BERMAN. No statement, Mr. Chairman.

Chairman HYDE. Thank you, Mr. Berman.

Ms. Ileana Ros-Lehtinen?

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I echo the sentiments of our colleagues in congratulating you for holding this hearing.

I am ashamed that this video that we showed is in parts of my congressional district in south Florida where so many of these swap meet sales are taking place. I am glad that our local authorities are paying greater attention because of the news reports and because of hearings like this. We hope that everyone who purchases any items from these outlets understands that they are participating in this terrible terrorist network.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you, Ms. Lehtinen.

Mr. Smith of Michigan?

Mr. SMITH. Mr. Chairman, thank you and Mr. Lantos for your holding this hearing.

The real challenge for American shoppers, in fact shoppers throughout the world, is resisting the temptation to buy these goods that are much lower in price. The importance of this hearing is a start in communicating to shoppers in America and around the world that they need to resist the temptation to buy that cheaper product with the understanding that often it goes into the criminal element and very likely often goes into the terrorist element.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you, Mr. Smith.

Mr. Schiff of California?

Mr. SCHIFF. I just want thank the Chairman for holding the hearing, and I will return the balance of my time.

Chairman HYDE. Thank you.

We are very pleased to have with us today Ronald Kenneth Noble, the current Secretary General for Interpol. Today is an historic moment because this is the first time a Secretary General of Interpol has ever testified before the United States Congress.

Interpol is a 181 member country organization created to share sensitive police information in order to fight international crime. An American citizen, Secretary General Noble is the first non-European to hold this position. Prior to this position, Mr. Noble was the Under Secretary of the Treasury for Enforcement for the U.S. Department of Treasury.

In that capacity, he oversaw four of the United States' eight largest Federal law enforcement agencies—the Secret Service, the U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms,

and the Criminal Investigation Division of the Internal Revenue Service.

He oversaw the reorganization of the U.S. Customs Service, ATF and the Financial Crimes Enforcement Network. He also conducted Treasury's review of the failed ATF raid on the Branch Davidian compound near Waco, Texas, and the series of breaches of security at the White House, including a suicide plane crash and an assault rifle carrying gunman.

Mr. Noble also worked as the Chief of Staff and Deputy Assistant Attorney General for the U.S. Department of Justice' Criminal Division, where he oversaw the General Litigation Section, the Witness Protection Unit and the Appeals Section. Earlier in his career, Mr. Noble prosecuted public corruption, organized crime, drug and fraud cases as an Assistant U.S. Attorney.

He has received numerous awards, authored several publications and is fluent in four languages. He is currently on leave of absence as a law professor and faculty director at the New York University School of Law to serve as Secretary General of Interpol.

He graduated cum laude from the University of New Hampshire in 1979 and received his Juris Doctor from Stanford Law School in 1982. We wish to extend a very warm welcome to you, Mr. Noble.

Also on our first panel is Asa Hutchinson, an old friend who is now Under Secretary for Border and Transportation Security, U.S. Department of Homeland Security. Under Secretary Hutchinson was appointed by President Bush and confirmed by a unanimous vote of the U.S. Senate in January 2003.

As Under Secretary for Border and Transportation Security, Mr. Hutchinson leads a directorate of over 110,000 employees and is responsible for coordinating the enforcement activities of our borders, waterways and transportation on immigration systems. Prior to coming to DHS, Secretary Hutchinson served as a Member of Congress from Arkansas from 1997 to 2001, and while in Congress he served on the Select Committee on Intelligence and the House Committee on the Judiciary. I was certainly proud to serve with Under Secretary Hutchinson during his tenure on the Committee on the Judiciary.

After being re-elected to his third term in Congress, he was appointed Administrator of the Drug Enforcement Administration where he combined tough law enforcement initiatives with advocating increased investment in treatment and education programs.

Prior to his election to Congress, he practiced law in rural Arkansas for 21 years and tried over 100 court cases. During this time, he was appointed by President Reagan to be U.S. Attorney for the Western District of Arkansas. At the age of 31, he was the youngest U.S. Attorney in the nation. Welcome home, Mr. Secretary.

We are honored to have you both appear before the Committee, and please proceed with a 5-minute summary, if possible, of your statement. Your full statement will be made a part of the record.

We will start with you, Secretary Noble.

**STATEMENT OF THE HONORABLE RONALD K. NOBLE,
SECRETARY GENERAL, INTERPOL**

Mr. NOBLE. Thank you, Mr. Chairman. I also wanted to thank the Chairman and the Committee for hosting a hearing on this very, very important topic and to say that personally it is not only an honor to be the first Secretary General to appear before the U.S. Congress, but it is especially an honor to be seated next to Asa Hutchinson, who has demonstrated strong, strong commitment to fighting international crime and to supporting Interpol.

Intellectual property crime: It is well established and few people will argue that it is at least a \$400 billion to \$450 billion a year crime problem. One would think that that in and of itself would make it a high priority for law enforcement around the world.

If not the global impact, think about any one nation's impact. Think about the U.S., where people believe the problem is a \$200 billion to \$250 billion a year crime problem. One would think that any crime problem of that proportion would draw the attention of law enforcement at a national level and an international level.

So why has this not been a high priority crime area? Some of the comments have already been made by Members of this Committee that answer this question in part, if not in whole. It is perceived as a victimless crime. The cross industry impact of the crime dilutes its importance on any one industry perhaps.

It is a crime that crosses national borders, so it is difficult to investigate from end to end. The distribution network is very dispersed, often ending up with poor immigrants standing on street corners with items that seem too good to resist.

The penalty, if arrested and convicted, for engaging in this kind of activity is also low. Therefore, the deterrence impact is not great. Law enforcement and prosecutors get little credit for arrests and/or for seizures. It is often viewed as a civil enforcement problem. Why not let the wealthy companies or the wealthy industries police this problem themselves?

Consumers believe that the companies involved make so much money already. Consumers wonder why and how are they going to be hurt if I buy this disc, this CD or designer product? Profits of designer good companies seem to be high. Profits of drug companies seem to be high. Profits of certain sports producers also seem to be high. The connection between their act, their purchase, and crime seems to be far, and the victim is not anyone they know or can identify in terms of a human face.

Organized crime figures and terrorists know this as well. They are smart, they share information, and they investigate for high profit endeavors that are low priorities for the police where they can engage in their activity and make a profit without the fear of significant investigation resulting in arrests.

Organized crime and terrorists seek diverse income streams, so it is not enough to say yes, they are supported by drug trafficking; yes, they are supported by human trafficking or payment card fraud. No. One must think about is there an illegal activity that is a high profit activity where there is a low penalty and low priority in law enforcement that organized crime and terrorists would not engage in? I say there is no such criminal activity that they would not engage in.

Then there are the people who say prove it to me. Prove it to me that there is a direct connection between financing of terrorism and intellectual property crime. When we give them examples, such as examples we will talk about today, in northern Ireland where they have established terrorist organizations that have the characteristics of organized crime groups that control this activity from manufacturer to distribution to sale should signal us that if there is any country or any location in the world, whether it established terrorist groups, they are going to use this in part for their financing.

Kosovo. Post conflict areas tend to be areas that once the conflict is resolved, but before law enforcement is established, there tends to be a flood of counterfeit goods. We know that in Kosovo the Chechen separatists, the terrorists there, are believed to sell counterfeit goods and generate up to \$500,000 to \$700,000 U.S. dollars per month.

Al-Qaeda. We know that al-Qaeda supporters, and I cannot go into detail, but we know that al-Qaeda supporters have been found with commercial size volume of counterfeit goods. If you find one al-Qaeda operative with it, it is like finding one roach in your house or one rat in your house. It should be enough to draw your attention to it.

We know from a project we are running in north Africa with a lot of the supporters of the fundamentalist terrorist organizations there that they, too, are embarking in this area. We have heard examples from Members of this Committee about Hezbollah and the tri-country region in South America being involved in this area. We know about Hamas.

That is, from Interpol's perspective we say that there has been enough of a connection drawn already that we should no longer think of intellectual property crime as a victimless crime. There has been enough connection drawn already between organized crime and intellectual property crime that we can no longer think of it as a victimless crime.

Finally, and most importantly, we are seeing the connection in areas between terrorist financing and intellectual property crime, and so Interpol says we welcome the interest of the U.S. Congress in this area. We would also welcome the support of U.S. law enforcement and law enforcement around the world to make international intellectual property crime a high priority crime and to try to expose the connection it presents to terrorist financing and organized crime activity.

Mr. Chairman, Members of the Committee, thank you very much.

[The prepared statement of Mr. Noble follows:]

PREPARED STATEMENT OF THE HONORABLE RONALD K. NOBLE, SECRETARY GENERAL,
INTERPOL

THE LINKS BETWEEN INTELLECTUAL PROPERTY CRIME AND TERRORIST FINANCING

Introduction

Intellectual Property Crime (IPC) is the counterfeiting or pirating of goods for sale where the consent of the rightsholder has not been obtained. Terrorist financing is the generation of funds via licit or illicit means that are then remitted to a terrorist organization or its front organization via formal or informal financial channels. These funds may be used for either the running costs of the organization or to carry out attacks.

Scope and Purpose

This testimony seeks to examine the links between IPC and the financing of terrorist organizations. It examines what is known to the International Criminal Police Organization (Interpol).

The testimony is produced for the Congress of the United States, House of Representatives Committee on International Relations hearing on the links between IPC and the financing of terrorist organizations.

Methodology

The testimony draws on information held in files at the Interpol General Secretariat (Interpol), from Interpol Member States, trade bodies, manufacturers and rights holders, and a range of open sources.

The Nature Of Intellectual Property Crime

Intellectual Property refers to the legal rights that correspond to intellectual activity in the industrial, scientific, and artistic fields. These legal rights, most commonly in the form of patents, trademarks, and copyright, protect the moral and economic rights of the creators, in addition to the creativity and dissemination of their work. Industrial property, which is part of intellectual property, extends protection to inventions and industrial designs.

Based on this understanding Intellectual Property Crime (IPC) *refers to counterfeited and pirated goods, manufactured and sold for profit without the consent of the patent or trademark holder.*¹

Intellectual Property Crime (IPC) represents one aspect of the informal economy (black market) which operates in parallel to the formal economy. Other activities within the informal economy include illicit drugs, stolen vehicles, or counterfeit credit cards. The informal economy has expanded with globalisation, and represents a significant level of economic activity even in developed countries.

The global trade in counterfeit goods has recently been estimated at US\$ 450 billion, representing between 5 to 7% of the value of global trade.² In Europe, in 2001, the European Union reported the seizure of 95 million items of counterfeit or pirated goods, representing approximately US\$2 billion. The Federal Bureau of Investigation (FBI) in the United States estimates losses to counterfeiting to United States businesses at US\$200 to 250 billion a year.³ IPC is a lucrative criminal activity with the possibility of high financial returns. It is also relatively low risk as prison sentences tend to be light when compared to other criminal activity such as drug trafficking.

IPC involves a wide range of criminal actors ranging from individuals to organised criminal groups. IPC includes the manufacturing, transporting, storing and sale of counterfeit or pirated goods. Generally, the above is organised and controlled by criminals or criminal organizations. In Northern Ireland, however, paramilitary groups are known to control some manufacturing through their links to organised crime groups.

The Nature of Terrorist Financing

Terrorist financing is the remittance of funds to terrorist organizations or their front organizations. These sources of funding are multiple and vary between groups. Sources for funds depend on the needs of the group and its capacity to generate funds. A group like the FARC in Colombia, obviously needs to generate large amounts of money in order to support a large and relatively expensive infrastructure. In contrast some paramilitary groups in Northern Ireland have financial requirements under US\$ 1 million per annum. The September 11 attacks have been estimated as costing less than US\$500,000.

Funds given to terrorist organizations have diverse origins. Licit and illicit activities can be used to generate funds. Licit origins can include donations from sympathizers or legitimate enterprises owned by terrorist organizations. Illicit origins can include a wide range of criminal activity from drug trafficking in the case of narco-terrorists like the FARC, to credit card fraud by members of the Salafi Group for Call and Combat, or extortion or taxes by other terrorist groups.

¹Definition as used on page 11 by The Organised Crime Taskforce, Northern Ireland, in *"The Threat: Assessment 2002 Serious and Organised Crime in Northern Ireland"* The Police Service of Northern Ireland

²*"The Economic Impact of Counterfeiting"*, Organization for Economic Co-operation and Development, 1998

³The Federal Bureau of Investigation and the U.S. Customs Service today announced the National Intellectual Property Rights Coordination Center's first conference for members of Congress and industry in Washington. FBI National Press Office, Washington D.C., July 17, 2002 available at <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>

Establishing the relationship between IPC and Terrorist Financing:

The link between organized crime groups and counterfeit goods is well established. But Interpol is sounding the alarm that Intellectual Property Crime is becoming the preferred method of funding for a number of terrorist groups.

There are enough examples now of the funding of terrorist groups in this way for us to worry about the threat to public safety. We must take preventative measures now.

In general, law enforcement does not treat IPC as a high priority crime. Law enforcement does not always investigate IPC cases. Investigations when initiated often tend to be seizure-based and do not extend to following onward flows of money. Even if law enforcement were to follow onward flows of money, given the high level of cash-based transactions involved, it is difficult to establish with precision the end destination of the financial flows. In relation to private industry enforcement bodies, a number of whom conduct intelligence gathering operations, generally, money trails are not of interest as the primary task is to eradicate counterfeit production and seize counterfeit goods.

In contrast, terrorist financing is regarded as a high priority for law enforcement agencies. However, much of the information about terrorist financing is highly classified or strictly controlled at a national security level due to its sensitivity. This information is often not widely available to Interpol. Interpol usually collects such information in the context of projects involving small groups of countries. Terrorist financing is difficult to investigate due to the complex flows of money often in cash form and often laundered. This is facilitated by complicated associations of individuals through which the money transits before becoming available to the relevant terrorist group.

All of the above complicates establishing links between IPC and terrorist financing. Furthermore, much of the financing is of an indirect nature and it is difficult to attribute direct links between an individual involved in IPC and funds remitted to a terrorist organization.

Nonetheless, Interpol does not believe an investigation into Intellectual Property Crime is over when there is a seizure of counterfeit or pirated goods. We think further work needs to be done to trace the proceeds, and to establish links if possible with groups benefiting from these funds.

Law enforcement agencies have to recognize that Intellectual Property Crime is not a victimless crime. Because of the growing evidence that terrorist groups sometimes fund their activities using the proceeds, it must be seen as a very serious crime with important implications for public safety and security.

The links between IPC and terrorist financing can be categorised as follows;

Direct involvement where the relevant terrorist group is implicated in the production, distribution or sale of counterfeit goods and remits a significant proportion of those funds for the activities of the group.

Terrorist organizations with direct involvement include groups who resemble or behave more like organized criminal groups than traditional terrorist organizations. This is the case in Northern Ireland where paramilitary groups are engaged in crime activities. These crime activities include IPC. Involvement by these groups ranges from control or investment in manufacturing or fabrication to taxing the market stalls where counterfeit goods are sold. It is possible for illicit profit to be generated for terrorist groups at different points in the process.

Indirect involvement where sympathizers or militants are involved in IPC and remit some of the funds, knowingly to terrorist groups via third parties.

Terrorist organizations whose sympathizers are involved in IPC and who use some of the funds generated from this activity to support the terrorist group. In many cases the funding is further attenuated, involving unrecorded movements of cash via third parties. This seems to be the case with some groups like Hizbullah and the Salafi Group for Call and Combat.

Specific Examples

The Interpol General Secretariat is in possession of the following examples of IPC and terrorist financing.

Northern Ireland

In Northern Ireland the counterfeit products market is estimated to cost the economy in excess of US\$167 million. In 2002, the police seized in excess of US\$ 11 million in counterfeit products. It is known that paramilitary groups are involved in IPC, including counterfeit cigarette trafficking. It is unknown how much of the money generated by these counterfeiting operations goes to terrorist groups and how much is retained as criminal profit.

Paramilitary involvement in IPC in Northern Ireland is through their control of the markets where many counterfeit goods are sold. Other aspects of the IPC in Northern Ireland appear to have no terrorist involvement i.e. the importation and sale of counterfeit clothing is dominated by individuals in the South Asian community in Northern Ireland.

Kosovo

An example similar to the situation in Northern Ireland is in the United Nations-administrated province of Kosovo. A significant proportion of consumer goods, (CDs, DVDs, clothes, shoes, cigarettes and computer software) available for sale, are counterfeit. The sale of counterfeit goods occurs openly and there is limited enforcement against counterfeit products due to significant legal loopholes. In Kosovo, there is a long-standing relationship between criminal organizations and local ethnic-Albanian extremist groups. This relationship is based on family or social ties. It is suspected that funds generated from IPC benefit both criminal organizations and extremist groups.

Chechen Separatists

Interpol is aware of a case in 2000 in Russia, where Chechen organized crime groups and terrorist organizations were benefiting from counterfeit good manufacturing and trafficking. Specifically, in 2000, a joint operation between Russian law-enforcement agencies and private industry resulted in the break-up of a CD manufacturing plant. According to the police officials involved, this counterfeit CD plant was a source of financing for Chechen separatists. The CD plant was run by Chechen organized crime which then remitted funds to Chechen rebels. The FSB (Russian Federal Security Service) estimated that the average monthly earnings of the criminal organization are estimated to have been US\$500,000–700,000. A number of explosives and arms were also confiscated by the police during raids on the residences of the suspects.

North African Radical Fundamentalists Terrorists in Europe

Interpol possesses information that indicates the following in relation to IPC and terrorist financing in Europe to radical fundamentalist networks. Sympathizers and militants of these groups may engage in a range of criminal activity including IPC. Sympathizers will indirectly pass a portion of the funds generated from their illicit activity to radical fundamentalist networks. The sympathizer passes money in the form of charitable giving or zakat (charitable giving based on a religious obligation in Islam) via Mosques, Imans or non-profit organizations that are sympathetic to radical fundamentalist causes. This money is eventually moved to the radical fundamentalist terrorist group. The transactions are predominantly cash-based leaving no paper trail or way of verifying the origin or final destination of the funds. In terms of radical fundamentalist militants, these persons may for long periods of time not be directly involved in terrorist activity. During these periods, while not on active service duty, they support themselves through criminal activity like IPC or credit card fraud. A portion of the money earned in these activities is kept while a portion is remitted to radical fundamentalist terrorist groups in cash form, in ways similar to the methods used by sympathizers.

A militant active in Europe, known for his activities in radical fundamentalist organizations over the last decade has been recently convicted for trafficking in counterfeit goods. The individual's counterfeiting associates are also known members of radical fundamentalist groups. They are reported as still being involved in large-scale counterfeit goods trafficking. This individual fits the profile outlined above of militants being involved in criminal activity to support themselves while not on active service duty. Funds are remitted to the group with which they are aligned.

Al-Qaeda

In general al-Qaeda and affiliated groups benefit from funds raised by sympathizers. This may include funds originating in either licit or illicit activities. One estimate is that over a ten year period al-Qaeda received between \$300 million and \$500 million, averaging US\$30 to US\$50 million a year.⁴ According to the same source approximately 10% of spending went on operations while 90% was used to maintain the infrastructure of the network, including payments to other groups to support them or to increase al-Qaeda's influence in these regions. A further use of

⁴Jean-Charles Brisard, JCB Consulting, Report prepared for the President of the Security Council, United Nations, "Terrorism Financing: Roots and trends of Saudi terrorism financing", December 19, 2002

these funds was the payment of money to guarantee the protection of the group in Afghanistan or Sudan.

One counterfeiting case has been reported in the media where there are alleged connections to al-Qaeda. The investigation into a shipment of fake goods from Dubai to Copenhagen, Denmark, suggests that al-Qaeda may have indirectly obtained financing through counterfeit goods. Danish customs intercepted a container, containing counterfeit shampoos, creams, cologne and perfume. The sender of the counterfeit goods is allegedly a member of al-Qaeda. A transnational investigation involved agencies from three countries; Denmark, the United Kingdom and the United States.⁵ It is difficult to know whether the funds from this traffic went directly to al-Qaeda or whether only a part of them were remitted. In general, it is possible that funds generated through IPC are remitted to al-Qaeda indirectly through zakat-based (a religious duty to give money) giving. Although given the cash-based nature of this giving it is difficult to establish the provenance of the funds.

Hizbullah

Interpol is aware of three cases of IPC-related activity and terrorist funding in South America. These cases involve ethnic-Lebanese who are involved in the remittance of funds to Hizbullah. As in the case of European radical fundamentalist groups funds are thought to be indirectly remitted via organisations associated with Hizbullah. Interpol's information suggests that these persons are involved in the distribution and sale of counterfeit goods, not in the manufacturing or fabrication of counterfeit goods. It is suspected that most counterfeit manufacturing and fabrication is dominated by organized crime. Three examples illustrate this:

Funds generated from IPC may be remitted to Hizbullah using the following modus operandi. Counterfeit goods produced in Europe are sent to a free-trade zone in South America by a group of Lebanese criminals sympathetic to Hizbullah. The goods are then smuggled into a third country, to avoid import duties, where they are sold via a network of sympathizers and militants originating in the Middle East. An unknown amount of the money generated through this activity is suspected to be remitted to Hizbullah.

In February 2000, an individual was arrested for piracy and suspected fundraising for Hizbullah. The individual sold pirated music CDs, Sega, Sony and Nintendo game discs to fund a Hizbullah-related organization. Among the discs recovered were discs containing images and short films of terrorist attacks and interviews with suicide bombers. The discs were allegedly used as propaganda to generate funds for Hizbullah. Interpol is in possession of some of these films. This individual is currently a fugitive.

Another individual was arrested for his alleged ties with the Hizbollah in Foz do Iguaçu in June 2002 after evading arrest in October 2001. The individual is wanted for tax evasion and the collection and remittance of funds to extremist organizations. Interpol files do not mention involvement in IPC. The alleged IPC connection is stated in open sources. Law enforcement sources indicate that numerous letters from organizations, suspected of being associated with Hizbullah in Lebanon, were found thanking the individual for financial contributions.

Future Evolutions

Based on the following factors it is possible to state that IPC may become a more important source of illicit financing for terrorist groups. IPC crime is a low priority for law enforcement agencies and investigations are poorly resourced when compared to illicit narcotics or counter-terrorism investigations. There is also a lack of generalised expertise among law enforcement agencies in recognising and investigating counterfeit and pirated goods.

The size of the informal economy and the demand for inexpensive consumer goods means that a wide-range of products are vulnerable to counterfeiting and piracy. The demand for counterfeit or pirated goods is widespread due to perceptions that purchasing these goods is not criminal. There is a large illicit market for persons seeking to engage in low risk criminal activity.

Trafficking in counterfeit goods is a relatively easy criminal activity. A terrorist could make profit solely from the sale of counterfeit or pirated goods and does not need to be involved in the actual production or fabrication. Thus, there are relatively low entry costs and the illicit profit margins are high.

⁵ *BBC Monitoring Reports*, (United Kingdom), "Al-Qa'idah Trading in Fake Branded Goods," 11/09/2002; *Australian Financial Review*, (Australia), *Big Business Targets Terrorist Pirates*, 29/01/2003

One estimate is that the profits from counterfeiting are similar to drugs trafficking; there is a return of €10 euros for each €1 invested.⁶

Other estimates are that counterfeiting is more profitable than drugs trafficking, one kilo of pirated CDs is worth more than one kilo of cannabis resin. The kilo of CDs is worth €3000 and the kilo of cannabis resin is valued at €1000.⁷ The same source states that a computer game costs €0.20 to produce and sells at €45 while cannabis costs €1.52 a gram and sells at €12.⁸

In terms of the levels of risk involved, the penalties are low, for example, in France selling counterfeit products is punishable by a two-year prison term and a €150,000 fine, while selling drugs is punishable by a ten-year prison term and a €7,500,000 fine.

It follows that the profit/risk ratio is attractive not only to criminals but also to loosely networked terrorist groups, like Salafi Group for Call and Combat, who do not have the capacity to generate funds through sophisticated criminal activity.

In the case of terrorist groups who resemble organized crime groups counterfeiting is attractive because they can invest at the beginning of the counterfeiting cycle and extract a illicit profit at each stage of the counterfeiting process from production to sale, thus maximising returns.

Conclusions

There is a limited amount of information available from IPSP criminal files and Interpol Member States on IPC and terrorist financing. Drawing generally valid conclusions about IPC and terrorist financing is difficult based on the information available to IPSP. However, based on the information relating to IPC and terrorist financing available to IPSP it is possible to state with a reasonable degree of certainty the following:

1. IPC is global in its scale and scope, generating significant amounts of illicit profit;
2. IPC is a low risk/high return activity, due to the low penalties if caught, and the high return in relation to the initial investment.
3. While this testimony does not address organized crime involvement directly, it is possible to state that IPC is now dominated by criminal organizations, due to the relatively low level of risk and comparatively high level of profit.
4. IPC, as with other crime activities, involves a number of different types of criminal actors from individuals to organized criminal groups.
5. It is generally true that terrorist groups have multiple sources of funding. These sources of funding include both licit and illicit activities. One illicit activity could be revenue generated from IPC. This can be from either direct involvement in IPC, or indirect involvement where supporters or sympathizers involved in IPC remit funds from this activity to terrorist groups.
6. Most terrorist groups do not take responsibility for the development and control of counterfeit production and distribution; rather they benefit indirectly from funds remitted to them from sympathizers and militants involved in IPC.
7. It is not possible to estimate the level of funds remitted to terrorist groups from IPC. First, terrorist financing is by its nature opaque. Second, the scale and scope of intellectual property crime is difficult to realistically estimate as the number of cases known to IPSP is limited.
8. It is, however, possible to state with certainty that paramilitary groups in Northern Ireland have financially benefitted from IPC. Individuals in the Tri-border region in South America have remitted funds generated from IPC to Hizbullah-associated organizations. Funds generated from the informal economy, specifically IPC-related activities may also find their way indirectly to terrorist organizations.
9. It is possible to state that intellectual property theft is likely to become a more important source of financing for terrorist groups because it is low risk/high return. This is probably more true for terrorist groups like those in Northern Ireland due to the increasing resemblance of these groups to organised crime groups.

⁶“Explosion de la contrefaçon”, *Affiches Parisiennes et Départementales*, 4th–5th July 2002.

⁷Report broadcast on France 2, 1pm news, 26th June 2002, and TV, *Journal Mondial des Journaux*, 27th June 2002.

⁸“La contrefaçon de CD plus rentable que le trafic de hasch”, *Marianne*, 10th–16th December 2001.

Recommendations

The International Criminal Police Organization (Interpol) is uniquely positioned to act to combat this criminal threat. Interpol should work to reduce organized crime involvement in IP crime and reduce the risk that IP crime becomes a preferred source of terrorist financing.

There is a need to allocate resources to the investigation of IP crime and to trace the proceeds of it.

Based on the key judgments above, the following should be considered as appropriate responses to the financing of terrorism by IP crime.

1. Interpol recommends that good practice and successful models for investigating IP crime nationally should be established. Interpol should help to coordinate international action against IP Crime. The models should be based on professional law enforcement and intelligence agency investigations into terrorist involvement in IP crime and other forms of criminality. A good example is the multi-agency Organized Crime Task Force (OCTF) in Northern Ireland.
2. The work of the Interpol Intellectual Property Crime Action Group (IPCAG) should be enhanced and developed by including a wide range of stakeholders from customs, police and private industry. Under the auspices of Interpol the Group should continue to address the following IP crime enforcement issues:
 - a. Encourage Interpol's 181 member countries to identify a national law enforcement IP crime central point of contact to facilitate the exchange of IP crime related information
 - b. Enhance the exchange of information and intelligence on IP crime between law enforcement agencies
 - c. Enhance and strengthen the operational contact network of private and public partners throughout Interpol's four regions—Africa, the Americas, Asia and Europe
 - d. Develop and disseminate the IP crime best practice guide
 - e. Develop and deliver training for IP crime investigations to law enforcement agencies
 - f. Raise awareness of the issue of IP crime and its link to terrorist organizations and serious organized crime
3. Interpol proposes establishing a three-year private/public IP crime program of activities. It will be coordinated by a dedicated IP Crime Unit at the General Secretariat and supported throughout Interpol's 181 Member States by a network of dedicated IP crime liaison officers located in the four Interpol Regions. The aim of the program will be to develop and maintain a private/public IP crime partnership to:
 - a. Develop strategies and programs to combat international criminal activity linked to IP infringement
 - b. Raise awareness of IP crime and its links to terrorism and serious organized crime
 - c. Facilitate and improve the exchange of information and intelligence on IP crime
 - d. Coordinate international cross-border multi-agency investigations into IP crime

Chairman HYDE. Thank you, Mr. Secretary.
And now Under Secretary Hutchinson?

STATEMENT OF THE HONORABLE ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HUTCHINSON. Good morning, Mr. Chairman. It is good to be back in your Committee. Congressman Lantos, thank you for your leadership as well.

Distinguished Members of the Committee, it is my pleasure to speak to you about the efforts undertaken by the Department of Homeland Security to combat intellectual property crimes and to discuss the exploitation of those crimes by terrorists. I am pleased

to be here with my friend, Ron Noble, who is providing excellent leadership to Interpol and the international community in law enforcement.

As you know, Mr. Chairman, the Department of Homeland Security encounters crimes related to intellectual property through two agencies or bureaus, the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection. ICE, Immigration and Customs Enforcement, was formed during the creation of the Department by combining the investigative intelligence functions of former Customs Service and the INS.

At the same time, Customs and Border Protection has the inspection functions at the border of both agriculture, immigration and former Customs inspectors. These are the ones that are the team that enforces our Customs immigration laws at the border.

The Department of Homeland Security views crime that violates intellectual property rights as one of the fastest growing and most serious threats to the U.S. economy. In this information age, the production and distribution of intellectual property, whether it be software, entertainment products such as movies, music or video games or other goods are valuable in part because of a trusted brand name.

Currently, the U.S. leads the world in the creation of intellectual property, and our economic growth of the last decade has been largely fueled by these businesses. Copyright based industries represent over 5 percent of the country's gross domestic product.

Although the U.S. piracy rate for software is much lower than in developing countries, further piracy reductions would create significant benefits. The International Chamber of Commerce has estimated that 5 to 7 percent of world trade is counterfeit goods, a market worth \$350 billion. Current estimates by industry and trade associations indicate that U.S. businesses lose more than \$200 billion per year due to worldwide counterfeiting and piracy.

Intellectual property violations have grown in both magnitude and complexity. Seizures have increased 57 percent since 1999. ICE investigations have shown that organized criminal groups are involved in trademark, counterfeiting and copyright piracy.

The Department of Homeland Security has not established a direct link between profits from the sale of counterfeit merchandise and specific terrorist attacks in the United States, but we do have credible and specific intelligence which indicate that intellectual property crimes and terrorist organizations are linked.

These cases arose in the tri-border region of South America, as Congressman Ballenger indicated, where known terrorist organizations such as Hezbollah operate. In June 1992, Brazilian authorities arrested a man suspected of helping finance Hezbollah in Lebanon for criminal association, document forgery, tax evasion and was later charged with product counterfeiting.

In addition, in October 1991, a joint ICE/FBI initiative received several referrals from the JFK Airport Customs inspectors concerning a pattern of intellectual property seizures from Lebanese manufacturers. There were 15 seizures over a 4-month period. Intelligence indicated that the Lebanese importers based in New York and Detroit areas were using counterfeit importations as a means of funding terrorist organizations, specifically Hezbollah. We

identified eight subjects, 23 businesses, connections to L.A., Detroit, as well as New York. Similar cases have been reported in California.

In some countries, we have also seen an enormous capacity underground to manufacture the production of counterfeit goods. A pattern has developed. We see the counterfeit production worldwide. We see these items shipped around the world in the underground gray market. We see a variety of sophisticated criminal organizations tap into the supply chain and reap the profits from a careless public.

Terrorist organizations worldwide are looking for a variety of illegal activities to fund their efforts. Certainly they have looked at drug trafficking. They have looked at contraband and counterfeiting and piracy all as means of illegal activity to fund their organizations.

How is the United States Government responding and addressing this problem? At the Department of Homeland Security, we have a unique ability in our border enforcement, our investigative authorities under Customs and our BTS agencies to combat intellectual property violations, but the mission is very challenging. Through the coordinated efforts within ICE and Customs and Border Protection, we have achieved substantial success in targeting infringing merchandise and enforcing intellectual property laws.

During the last 5 fiscal years, legacy enforcement efforts have resulted in record intellectual property related seizures and significant investigative activity. China, Hong Kong and Taiwan were the origins of over half of all the merchandise seized. An increasing number of these seizures have been media products, including DVDs, interactive and computer software, CD-ROM, floppy disc, music on CD or tape.

A key part of our efforts have been the National Intellectual Property Rights Coordination Center, which was established in the year 2000 as a joint initiative between ICE and the FBI. The center is responsible for coordinating investigative efforts, intelligence gathering and interdiction of intellectual property crimes both domestically and internationally. It is a very useful tool in carrying out our efforts.

This center has utilized the latest in information technology to design innovative risk assessment computer models. Through the use of those models we weigh criteria to assign risk scores to individual imports. This methodology is developed both on historical risk based trade data and qualitative rankings. It has led to significant seizures and an increased ability to target shipments that may include counterfeit goods.

We are increasing our efforts in cooperation with affected industries. One of the problems that we are having increased attention to is internet piracy. The internet has opened up vast new opportunities for both legitimate business and cyber smuggling crime. U.S. industries in particular, those involving software, motion pictures and sound recordings, are especially at risk.

With a keystroke from a computer anywhere in the world, criminals can traffick in stolen trademarks or music or download copyrighted software of music, movies, video games or other works. It is now estimated that over 2.6 billion songs are traded illegally

over the internet. In response to this threat, the Department maintains a cyber smuggling center established in 1998. One of its primary missions is to combat the threat of intellectual property related cyber crime.

We have had a number of instances of success through specific cases. I will not go in my limited opening statement to those. They are a part of the record that illustrates the type of activities that both our ICE, Immigration and Customs Enforcement, agents are engaged in, as well as the seizure opportunities from our Customs and Border Protection efforts. Many of those were illustrated on the video clip that was portrayed earlier.

Let me say in closing that I am grateful for the work of this Committee in drawing attention to this increased problem. We need the help of the public to guard against purchases of counterfeit items on the street. We need to stay ahead of the perpetrators.

Greater interaction among Homeland Security agencies and other Federal law enforcement agencies is a necessity. We have to have increased cooperation with intellectual property owners, the public and domestic and international law enforcement. It is imperative through training and equipment to keep pace with advances in intellectual property crime.

Again, thank you for the work of this Committee. I look forward to the questions and responses that we will have an opportunity to engage in.

[The prepared statement of Mr. Hutchinson follows:]

PREPARED STATEMENT OF THE HONORABLE ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, U.S. DEPARTMENT OF HOMELAND SECURITY

INTRODUCTION

Good morning, Mr. Chairman, and distinguished members of the Committee. It is my pleasure and privilege to be here today to have this opportunity to speak to you about the efforts undertaken by the Border and Transportation Security Directorate to combat intellectual property crimes and their link to terrorism.

As you know, this directorate encounters crimes related to intellectual property through two of our component agencies, the Bureau of Immigration and Customs Enforcement ("BICE") and the Bureau of Customs and Border Protection ("BCBP"). ICE was formed during the creation of the new Department of Homeland Security by combining the investigative and intelligence functions of the former U.S. Customs Service and the Immigration and Naturalization Service. In part, the mission of ICE is to protect the U.S. and its citizens by deterring, interdicting, and investigating threats arising from the movement of people and goods into and out of the U.S. At the same time, BCBP was created by taking the inspectors from the former Customs Service, former INS, the Animal and Plant Health Inspection Service, and the Border Patrol to create "One Face at the Border" to enforce our customs and immigration laws as people and cargo cross the border into and exiting the United States.

BACKGROUND

BTS views crime that violates intellectual property rights as one of the fastest growing and most serious threats to the U.S. economy and the legitimate trade that bolsters not only our economy but those of our trading partners. In this information age, the production and distribution of intellectual property, whether it be software, entertainment products such as movies, music or videogames, or other goods are valuable in part because of a trusted brand name.

Currently, the U.S. leads the world in the creation of intellectual property, and our economic growth of the last decade has been largely fueled by these businesses. Copyright-based industries represent over 5% of the country's GDP, and it is also important to note the extremely positive impact intellectual property exports play in our balance of trade. Although the United States piracy rate for software is much

lower than in developing nations, further piracy reductions would create significant benefits.

The increasing demand for intellectual property products has resulted in a massive escalation in the production of counterfeit and pirated goods throughout the world, causing losses to the U.S. economy in revenue and jobs that are staggering. For example: information compiled by the International Anti-Counterfeiting Coalition (IACC) indicates that in 1998, losses from counterfeiting and piracy were estimated to be \$60 billion dollars. In 1998, the International Chamber of Commerce estimated that five to seven percent of world trade is in counterfeit goods, a market worth \$350 billion dollars.

LINKS TO CRIMINAL ENTERPRISES

IPR violations have grown in both magnitude and complexity. BICE investigations have shown that organized criminal groups are involved in trademark counterfeiting and copyright piracy. Criminals use the proceeds from the sale of counterfeit and pirated goods to finance a variety of legitimate and/or criminal enterprises.

Recently, there has been media coverage alleging links between counterfeit and pirated merchandise and funding of terrorist groups. Neither BICE nor BCBP have established a direct link between profits from the sale of counterfeit merchandise and specific terrorist acts. However, criminals involved in manufacturing, distributing and selling of counterfeit and piratical products reap large profits with relatively low risk of prosecution. As a result, this type of crime could be attractive to organizations seeking lucrative and low risk funding mechanisms to support terrorist activities.

Customs Attaches have seen, in two specific areas, indications and circumstances that led Customs to suspect that intellectual property crimes and terrorism are linked. These cases arose in the Tri-Border Region of South America (Ciudad del Este), where known terrorist organizations such as Hezbollah operate, and in the Philippines, both areas which have been documented as having serious problems with criminal activities involving intellectual properties, both as production and as transit points.

In a number of countries, including Russia and Taiwan, both above-ground and underground optical disk factories have the capacity to make five, ten, twenty times the needs of the domestic market for DVD's and CD's. This excess production is then shipped around the globe, undermining legitimate sales and our balance-of-trade.

As a directorate with both counter-terrorism and traditional law enforcement missions, BTS is obviously concerned with any criminal behavior which might facilitate the financing of terrorist operations. However, our determination to combat non-terrorist criminal enterprises, such as those involved with intellectual property crimes, is robust. We will endeavor to protect legitimate American business from the unfair competition of illegal importers and exporters and to protect American consumers from potentially dangerous knockoff or counterfeit goods.

BTS ANTI-PIRACY MISSIONS

Since a large percentage of the counterfeit merchandise comes to the United States from abroad, the unique border enforcement and investigative authorities maintained by BTS and its component agencies are essential to combating intellectual property violations. The mission is accomplished through the cooperation of private industry, the public, international and domestic law enforcement, and Customs officials in foreign countries, to combat this problem. Through the coordination of various disciplines within BICE and BCBP, substantial success in targeting infringing merchandise and enforcing IPR laws has been achieved. During the last five fiscal years, legacy Customs enforcement efforts have resulted in record IPR-related seizures and significant investigative activity. During FY 1998–FY 2002, legacy Customs effected 19,723 IPR seizures, with an estimated domestic value of \$376 million dollars. China, Hong Kong and Taiwan were the origins of over half of all the merchandise seized. An increasing number of these seizures have been media products. Media includes motion pictures on tape and DVD, interactive and computer software on CD–Rom, CD–R, floppy disc, and music on CD or tape.

In 1998, recognizing the importance of intellectual property rights, the White House included intellectual property crime in its international crime control strategy. Legacy Customs, along with the Federal Bureau of Investigation, co-chaired a working group to implement the IPR strategy and strengthen the enforcement of IPR laws. Pursuant to this initiative, the National Intellectual Property Rights Coordination Center (IPR Center), a joint initiative between BICE and the FBI, was established in 2000. In FY 2002, legacy Customs received funding for the IPR Center in

the amount of \$5 million dollars. This funding established an operating budget for the IPR Center and increased investigative positions domestically and internationally. In FY 2003, the IPR Center received \$1.4 million dollars funding additional domestic positions.

In addition, BICE, BCBP, and the National Intellectual Property Rights Coordination Center, continue to detect and seize infringing merchandise entering the U.S. and to investigate those individuals and organizations involved in these illicit schemes. The IPR Center is responsible for coordinating investigative efforts, intelligence gathering, and interdiction of intellectual property crimes, both domestically and internationally. The IPR Center gathers information from a variety of sources, analyzes the information, and provides coordinated flow of intelligence for use by BICE and FBI field offices. The IPR Center has fostered close working relationships with trade associations and industries most affected by IPR violations.

In addition, the IPR Center continues to raise awareness, domestically and internationally, of the importance of protecting intellectual property rights. The IPR Center, representing BICE, is an active participant in the Interpol Intellectual Property Crime Action Group (IIPCAG). The IIPCAG is comprised of various national law enforcement agencies, international organizations and industry associations. Its mission is to coordinate and enhance IP enforcement around the world. It aims to raise the awareness of the economic and social impact of the trade in counterfeit products; to create IP crime investigation training programs; and to improve the enforcement coordination of IPR matters between police, Customs and the private sector.

BCBP has utilized the latest in information technology to design an innovative IPR risk assessment computer model. Through the use of sophisticated, state-of-the-art statistical/analytical techniques, the model uses weighted criteria to assign risk scores to individual imports. This methodology is developed on both historical risk-based trade data and qualitative rankings. The historical data is comprised of seizure information and cargo examination results. The qualitative rankings include the IPR at-risk countries as identified by USTR and will soon include external business data, such as Dun & Bradstreet. Both criminal investigations and cargo targeting will benefit from this more advanced approach to risk.

BCBP is also increasing its efforts to work with affected industries which often maintain sophisticated and well-funded anti-piracy campaigns. BCBP's efforts include:

- BCBP maintains and staffs the IPR Help Desk in Long Beach, CA as a source for general IPR information and assistance for BCBP field officers, IP rights holders, attorneys, importers, and other members of the trade community;
- BCBP uses IPR industry-specific officers to more effectively serve the needs of internal and external customers;
- BCBP IPR attorneys work with rights holders to craft legally permissible enforcement plans such as those relating to the enforcement of the Digital Millennium Copyright Act; and
- BCBP IPR attorneys conduct training domestically and internationally on various aspects of intellectual property rights enforcement.

INTERNET PIRACY

The Internet has opened up vast new opportunities for both legitimate business and Cybersmuggling crime. It is unfortunate and ironic that the same Internet that carries information back and forth between millions of people per day is also creating unprecedented opportunities for international criminals, money launderers, traffickers in child pornography and criminals intent on violating intellectual property rights. U.S. industries, in particular those involving software, motion pictures and sound recordings, are especially at risk. With a keystroke, from a computer anywhere in the world, criminals can traffic in stolen trademarks or piratical music, or download copyrighted software, music, movies, videogames or other copyrighted works.

It is now estimated that over 2.6 billion songs are traded illegally over the Internet, largely via peer-to-peer file-trading networks, each month. Hundreds of thousands of movies are stolen in a similar fashion, a number which could rise dramatically as network speeds and compression technology improve. Books, software videogames, and any other media capable of being digitized are also at risk. While many of this piracy is generated from within the United States, many of the most egregious offenders are located overseas, where it is more difficult to utilize traditional legal mechanisms to enforce U.S. copyright laws.

In response to this threat, legacy Customs established the Customs Cybersmuggling Center in 1998. One of its primary missions is to combat the threat

of IPR-related cyber crime. We have had some significant successes in this area, most notable Operation Buccaneer discussed below. In light of the serious threat to American business, BTS will examine opportunities to assist in the government's crackdown on illegal Internet-based copyright fraud.

CASE EXAMPLES FOR ICE

The IPR Center also generates investigative leads and assists BICE agents in IPR investigations. For example, the IPR Center received an allegation concerning the smuggling of counterfeit vodka. Recognizing the potential health and safety concerns, the IPR Center referred the case to the field for immediate investigation. The subsequent investigation led to multiple seizures of counterfeit product in Florida and Massachusetts; and the arrest and indictment of the target of the investigation. Currently, the subject is scheduled for trial in the fall of 2003. In addition, this investigation is pursuing others involved in this smuggling organization.

Another successful investigation conducted by BICE agents in Los Angeles, California dismantled an international smuggling ring based in Hong Kong. During the course of the investigation, organizational members made over a dozen bribery payments, totaling in excess of \$50,000, to an undercover BICE agent, ostensibly to facilitate their smuggling venture. The investigation culminated in the arrest of several violators and the largest seizure in U.S. history of counterfeit computer software and software packing materials. According to industry sources, had the computer software been authentic, it would have been valued at approximately \$100 million dollars.

A third example is an investigation known as Operation Buccaneer conducted by ICE agents from our Cybersmuggling Center. This operation is an unprecedented international investigation into the global network of cyberspace piracy. The subjects of this investigation are responsible for pirating billions of dollars worth of software and copyrighted materials over the Internet. In December 2001, BICE agents executed 37 search warrants in 27 U.S. cities. Law enforcement authorities in five foreign nations simultaneously executed nineteen additional search warrants and arrested four individuals in connection with the case. Operation Buccaneer targeted the WAREZ community, a loosely affiliated network of software piracy gangs that engage in duplication and replication of copyrighted software over the Internet. The software pirated by these groups included expensive business software, firewall and other security software, and copyrighted games, music and digital videos. To date, Operation Buccaneer has resulted in 22 arrests and 22 U.S. convictions. Trial is pending for 7 defendants in the United Kingdom.

CASE EXAMPLES FOR BCBP

Working together, BCBP and BICE have had tremendous success in seizing counterfeit cigarettes. In FY02, 45 seizures with a value of \$37.5 million were made. For the first six months of FY03, BCBP and BICE have made 35 seizures of counterfeit cigarettes totaling \$22.2 million. Among these include:

- As the result of research conducted by an IPR industry officer at the LA Strategic Trade Center (STC), \$500,000 in electrically heated coffee mugs with counterfeit UL labels were seized at the San Francisco seaport.
- IPR industry officers developed examination criteria that resulted in the seizures of nearly \$650,000 of counterfeit Louis Vuitton shoes and nearly \$1 million of Louis Vuitton and Gucci handbags.
- BCBP inspectors in Minneapolis discovered a shipment of lamp holders with counterfeit UL labels. Working together, the inspectors and IPR industry officers from the LA STC identified subsequent shipments with the counterfeit items. Three shipments worth nearly \$290,000 were seized.
- The Port of Miami, The LA STC, and the Office of Regulations and Rulings to seize 32,200 piratical video game CD's with a value of \$644,000.
- As a result of increasing the cooperation between BCBP inspectors and Customs Attaches and their foreign counterparts, shipments identified as having anomalies are being targeted for inspection. This has recently led to the seizure of three containers of counterfeit merchandise in Hong Kong destined for the U.S.

CONCLUSION

In closing, I should say that as much as we have done to protect our intellectual property, we must do more. We need to stay ahead of the perpetrators. Greater interaction among BTS agencies and other federal law enforcement agencies with

intellectual property responsibilities is a necessity. Enhanced cooperation with intellectual property owners, the public, and domestic and international law enforcement, is critical to our efforts to combat the increasing threat posed by IPR crime. It is imperative that law enforcement, through training and equipment, keep pace with advances in IPR crime. I would like to thank the distinguished members of this Committee for the opportunity to speak before you today, and will be glad to address any questions you may have.

Chairman HYDE. Thank you very much, Mr. Hutchinson.

Secretary General Noble, could you tell us something about the level of cooperation your agency gets from let us say our country, the United States or others? Do you have an international police establishment? It would depend, I should think, on the members cooperating.

You have 181 countries or entities that you deal with, but are local police force, indigenous police forces, eager to cooperate with you, or do you have to struggle?

Mr. NOBLE. Thank you, Mr. Chairman. With me today is Director James Sullivan of the United States National Central Bureau of Interpol, who is seated behind me, and the way that Interpol operates is that in each of our 181 member countries we have an Interpol office that is completely staffed and managed by law enforcement officers from that country, so the U.S. Interpol office is completely staffed by U.S. law enforcement and U.S. personnel.

They receive requests for help and send requests for help through the Interpol network. To give you an idea in terms of how much cooperation there is or how high the level of cooperation is generally and globally, the U.S. National Central Bureau of Interpol receives about 10,000 messages per month from offices of Interpol around the world where they are seeking information about suspected criminal conduct or criminals in their individual countries, so I would say the level of cooperation with U.S. law enforcement at the Interpol office is great.

In terms of the staffing of the Interpol office, U.S. law enforcement agencies are supposed to send their agents or officers to the Interpol office in Washington, and there is also supposed to be state and local representation, which often depends on the head of the law enforcement agency involved and how strongly he or she believes the role of Interpol is to his or her agency's success.

Chairman HYDE. I gather, interpreting what you said, you could use some help from local police forces dedicating personnel to your office for a period of time. Is that so?

Mr. NOBLE. I think it is fair to say that since September 11, the activity of the U.S. National Central Bureau of Interpol has increased dramatically, and I believe that the reason for that is there is a lot more attention being given to terrorism now worldwide than before.

I can certainly tell you that we need more support from national law enforcement at Interpol headquarters, and I believe the U.S. NCB needs more support in order to deal with the increased volume of work that they have to undertake.

Chairman HYDE. Thank you very much.

Mr. Lantos?

Mr. LANTOS. Thank you very much, Mr. Chairman, and I want to add my welcome to that of the Chairman to both Secretary Gen-

eral Noble and to my good friend and former colleague, Secretary Hutchinson. We are very pleased to have you back, Asa.

Mr. HUTCHINSON. Thank you.

Mr. LANTOS. Mr. Chairman, you have opened up an extremely new and important and critical arena because what we are dealing with is for most Americans both invisible and insidious, which makes dealing with it extremely important and extremely difficult, so let me raise a few questions to which I would be grateful if both of you would respond.

If our best estimate is that this is a \$500 billion operation, even if 1 percent of it is in the hands of terrorist organizations, we are dealing with a flow of \$5 billion to outfits like Hezbollah or Hamas or al-Qaeda, which, of course, is a horrendous amount of funding because their activities are cheap activities.

We are in an age of asymmetrical warfare. Sunday we just launched the latest aircraft carrier, which cost a mind-boggling fortune, and we are dealing with people who are capable of operating with minimal funds and creating incredible havoc.

It seems to me that the first task we all have is a gigantic national education program, and I am wondering whether either of you or whether we, Mr. Chairman, should deal with the National Advertising Council and get public service announcements on the media with respect to this issue because I think the disconnect is that a young mother visiting New York with her two children walks down Fifth Avenue and buys an attractive purse for a fraction of what it would cost in a store, and she has not got a clue that she is contributing to the terrorist activities of organizations that are claiming American lives.

I also wonder, Secretary Hutchinson, if you or Tom Ridge could have given thought to or would be willing to give thought to requesting the President to hold a White House conference on this issue. I mean, step number one in dealing with this problem, as Chairman Hyde is doing this morning, is to focus national attention on this issue.

I suspect if you had a public opinion poll today, you would find that not one out of 1,000 American citizens even think of the relationship between intellectual property crime and terrorism, even assuming that they know what intellectual property crime is. I think we have a collective task, not a partisan task, in which both the Administration and Congress need to play a significant role.

My specific question to you, and I know, Asa, you are fully familiar with the workings of this body, and I know, Secretary General Noble, you are, too. What would you like Congress to do to assist you in this most important national endeavor, Secretary General Noble?

Mr. NOBLE. I believe that one thing Congress has to do is Congress has to demand that U.S. law enforcement report back to Congress what steps it is taking to investigate intellectual property crime beyond the seizure and arrest phase and to demand that U.S. law enforcement and Interpol, through the U.S. NCB, report back to Congress.

I find that when we are asked to report back on activity that we are doing, we in law enforcement tend to focus our attention on it much more closely. I believe that we have to raise the awareness

in the law enforcement community and other communities, the public. This is a huge demand issue.

You mentioned the mother who goes to New York who leaves with the impression that New York is the greatest city on earth because she could buy anything she wants at a great discount—

Mr. LANTOS. Exactly.

Mr. NOBLE [continuing]. Not thinking in fact that she has been committing crimes. I believe there is a huge role for the private sector and for the civil society to play as well.

From an international perspective, what Interpol would like to see is to have national law enforcement entities be required to report the names, the addresses and the telephone numbers of those people arrested engaging in intellectual property crime. We can then run those names against our database, which has the names of terrorists, their addresses and phone numbers they have used, and see if there is any match. Then we can actually investigate this crime like it is a high priority crime.

There is an important role for Congress to play, for the private sector to play, but there is also an important role for law enforcement to play.

Mr. LANTOS. Thank you. Thank you very much.

Mr. HUTCHINSON. Congressman Lantos?

Mr. LANTOS. Secretary Hutchinson?

Mr. HUTCHINSON. Thank you, Congressman. I would be delighted to speak with Secretary Ridge about your suggestion on a White House conference, and certainly increased attention on the importance of intellectual property rights protection is important. This hearing is a very important part of it.

I hope that we can educate a generation of Americans about the importance of intellectual property rights. I have teenage sons, and sometimes there is a disconnect there. We have to educate the American public about the risks that are undertaken in terms of criminal organizations that gain from the marketing of counterfeit goods on the streets of America, and so education is a critical part of it.

Now, when it comes to what Congress can do, I want to thank you, and I trust you will have continued support for our National Intellectual Property Rights Coordination Center. This is located here in Washington in the Ronald Reagan Building, but it is a key joint venture with the FBI and ICE in terms of coordinating, training of agents and police personnel and coordinating investigations in this arena.

Secondly, I appreciate an understanding of what it takes for law enforcement to participate in the international arena. We cannot successfully pursue these type of cases without international cooperation.

Many times our investment in personnel at Interpol, for example, is taken out of hide because, you know, Congress does not particularly see that as a function necessarily of a particular law enforcement agency, but our participation in sending the personnel to those entities is very important to develop international cooperation, training and the sharing of information.

Mr. LANTOS. Thank you very much.

Thank you, Mr. Chairman.

Chairman HYDE. Ms. Ileana Ros-Lehtinen?

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

It is an honor to have you testify before our Committee. Asa, it is always wonderful to see you, my colleague, as well.

I wanted to ask Secretary General Noble a question regarding sensitive information and rogue states. Critics contend that the U.S. should not be in the business of sharing information that is very sensitive with an organization such as yours when states like Cuba and Libya, for example, are members and may have access to this sensitive information.

Are there manners in which the United States is able to submit information to your agency and not have certain nations be able to view it? How is security provided in these situations? Also, how would you characterize the level of cooperation between Interpol and states that the United States does not have formal relations with, such as Libya and Cuba?

Mr. NOBLE. Thank you. Interpol has 181 member countries, as has been indicated, and within that group of 181 member countries there are countries that do not have bilateral relations, and there are countries that think the worst of the other country. The question is how can an organization, a police organization, function in that context?

I will use the Libya example. I will make it a real life example because the first country in the world to request Interpol to arrest Osama bin Laden was not the United States. It was Libya, and it happened before September 11.

The hypothetical I ask is I say assume a person is entering the United States border, and that person is wanted for arrest for terrorism by Libya or Iran or Iraq or any other country with whom the United States has difficult relations or no relations. What would you advise that Immigrations officer or Border Control person to do? This is a question that has to be grappled with.

I submit that it is important for the U.S. and every country to know about those people who are being publicly searched for violation of serious crime, including terrorism, and let each country decide for itself what it wants to do with the information.

Regarding the sensitive information part, Interpol is structured in the following way. The U.S., when it uses Interpol channels, can exclude, and any country can, any country it wishes from not reading that information, so the United States could say we do not want Cuba, we do not want Libya to see our inquiry or to have our information. We also, by having law enforcement officers there from individual countries, permit the country to have a direct contact with their own law enforcement officer in the organization.

Finally, because of the membership of Interpol, there are law enforcement agencies who do the cost/benefit analysis, and they say there are certain kinds of information they will not share with Interpol.

We respect that and understand that, but there is information that you need to share. When you are hunting for a fugitive and that person could pose a risk to the safety of citizens anywhere, the view of Interpol is that you should share that information with Interpol.

Ms. ROS-LEHTINEN. Related to that on this specific issue of intellectual property crimes, are there some countries that are impacted either because they are part of the problem, or they could be part of the solution, who are not part of the Interpol 181 nation group? Which nations are you looking to have more participation from?

Mr. NOBLE. We know that there have been countries that have been identified already today that are believed to be source countries of a lot of the intellectual property counterfeiting and piracy that occurs, and we concede that it is a very delicate issue to go into a country and accuse the country of being responsible for a crime problem affecting another country.

We find the best way to do that is to get the police working on actual cases and to get them working, like the U.S. has the group involving the FBI and the Customs Service. Interpol tries to get member countries together to work on a problem.

We have created this Intellectual Property Action Group that we have invited member countries to participate from the source regions and from the end use regions as well, and we have had fairly strong participation. We are also trying to raise money through the private sector to establish a relationship between the private sector and public sector in order to fight this crime problem.

Ms. ROS-LEHTINEN. Is there a level of participation that you can gauge from member nations, or is it just something that they all participate in and share? How do you know that they are really forthcoming with the information they are giving you or that it is accurate?

Mr. NOBLE. One is we know that the level of participation in intellectual property crime worldwide is low among the police. No matter what the relationship might be between the U.S. and a country, generally it is low. It is not a high priority.

We believe it is a ground roots effort that we have been undertaking to try to make this a high priority area, and that is why we are exposing the relationship between organized crime and intellectual property crime and terrorism and intellectual property crime.

Right now if you ask me what is the level of participation of Interpol member countries' police forces in intellectual property crime fighting, I would say it is very low.

Ms. ROS-LEHTINEN. We thank you for your leadership on this, and we are very concerned the more we know about the relationship between these crimes and the funding of terrorist organizations. Thank you.

Thank you, Asa.

Chairman HYDE. Mr. Berman?

Mr. BERMAN. Thank you, Mr. Chairman. I join with the others in commending you for holding this hearing and drawing attention to this issue.

I, as you do and several other Members of the Committee, serve on the Judiciary Committee as well as the International Relations Committee, and, of course, we spend some time over there focusing on this whole problem of international intellectual property piracy and what we might do about it. I know Secretary Hutchinson is familiar with that as well.

I would like to ask the Secretary. There is a Cyber Smuggling Center at the Customs agency that has really done, I am told, a

terrific job at investigating on-line intellectual property infringements. It played a key role in developing the evidence used in Operation Buccaneer to successfully prosecute a gang of well-organized copyright pirates.

There is concern that under the reorganization of Customs into the Department of Homeland Security the Cyber Smuggling Center may no longer include IP investigations as part of its mission. Will those IP investigations continue to be a primary part of the mission of the Cyber Smuggling Center that up to now has been housed at Customs?

Mr. HUTCHINSON. Absolutely. Absolutely. The Cyber Smuggling Center plays an important role of a broad range of internet crime, but the counterfeiting, the piracy, is a huge part of that and so it will remain a priority.

This hearing gave me the occasion to review case statistics and as to how we are progressing in that, and I was pleased to see that in the first half of this fiscal year 2003 that our cases and our seizures will actually be increased over a similar time period in 2002, so I think it shows a continued commitment by the Department of Homeland Security even during a time of increased threat.

Mr. BERMAN. My second question. Tomorrow, the Judiciary Subcommittee on Courts, Internet and Intellectual Property will have a hearing on a bill that its Chairman, Lemar Smith, and I introduced. One provision of that bill removes the requirement that copyrighted works be registered with the Copyright Office before Customs can seize infringing copies of those works.

The problem is that the Copyright Office has a 6-month delay in issuing copyright registrations, and many of the infringing copies of software, music, movies appear on the street prior to their official release date and prior to the Copyright Office issuing the registration.

We think under the present situation it is unreasonable to prohibit Customs from seizing this material without an issued registration. Would you support the removal of this registration prerequisite to seizure?

Mr. HUTCHINSON. Well, the registration with Customs and Border Protection is a very useful tool.

Mr. BERMAN. Registration with the Copyright Office. In other words, right now under the state of the law, Customs cannot seize counterfeit CDs, software, music software—

Mr. HUTCHINSON. Unless it is protected.

Mr. BERMAN [continuing]. Unless it has been registered with the Copyright Office. The Copyright Office has a 6-month backlog on registrations. This stuff that both of you have been talking about gets out on the street sometimes even before it is released for distribution through the legal distribution mechanisms.

Our bill would get rid of the requirement that Customs cannot seize an item unless it has been registered to deal with that problem. That is what I am trying to seduce you into supporting.

Mr. HUTCHINSON. And I have been seduced into looking at it very carefully. I am aware of that, and I have had discussions with the industry about the problem. Let me assure you that, one, we will be delighted to work with you to address this and to work with our industry partners.

There is obviously an evidentiary issue with limited resources that we want to go after counterfeit goods. We can actually make a case in court. The prior registration is an important part of that, but if there is a delay that leaves a gap there we want to be able to address that.

There is a requirement, you know, for the copyright registration, but in addition a registration with Customs that is done simultaneously. That is helpful because it gives us additional information to identify and to be able to show the counterfeit nature of the goods we are pursuing.

Mr. BERMAN. Let me just say we are not dealing with the Customs registration here. It seems crazy that Customs finds a huge shipment of obviously counterfeit items, and because the registration application is sitting in the Copyright Office it cannot seize it. Once it goes through, there is no enforcement.

Mr. HUTCHINSON. We would be happy to work with you on that.

Mr. BERMAN. Okay.

Chairman HYDE. The gentleman's time has expired.

Mr. Ballenger?

Mr. BALLENGER. Thank you, Mr. Chairman.

Secretary Noble, your written testimony discusses an arrest for the sale of counterfeit goods was made in the tri-border area in February 1900, and Interpol has copies of Hezbollah propaganda films in its possession from the subsequent search of this individual's business. Are you able to elaborate on the content of those films?

Mr. NOBLE. I am not, sir.

Mr. BALLENGER. It would not be a gentleman named Mr. Barakat, would it?

Mr. NOBLE. I am not allowed to comment on it.

Mr. BALLENGER. I am sorry.

Mr. NOBLE. Sorry, sir.

Mr. BALLENGER. Pardon me for laughing. I understand exactly what you are saying.

Secretary Hutchinson, intellectual property rights. I know at the present time there is a big to-do about drug companies having their drugs copied in other areas. I know we had an argument with Brazil about changes of accepting or sneaking in and producing products down there. In other words, their government lets it happen. Does that fit into this problem that we have here?

Mr. HUTCHINSON. Violation of the patent for a drug?

Mr. BALLENGER. Yes.

Mr. HUTCHINSON. Certainly that would be a concern as well. I mean, that is a property right that is protected, and that jurisdiction would be from the FDA as well as Customs Enforcement, so that would be a similar issue.

Mr. BALLENGER. Does that have international importance as far as the—

Mr. HUTCHINSON. Well, it is of international importance in terms of health and safety, so absolutely it is an important issue.

Mr. BALLENGER. I just wondered if Interpol had any other different view on that?

Mr. NOBLE. No. I echo the views of Under Secretary Hutchinson, and I would say that from Interpol's perspective, and I know the

Secretary is familiar with this, we also view counterfeiting of medical products and medicines as a way that terrorists could strike at countries and the psychological security, as well as the physical well-being, of citizens of those countries.

We see it not only as a patent problem, but if you are thinking about protecting your country from terrorist attacks, you can think about terrorists counterfeiting medical products, distributing those medical products in a country and the subsequent harms that would occur to people, but also the hysteria that would be caused in that country, so we view it as a significant concern as well.

Mr. BALLENGER. Asa, have we seen anything? With drugs right now, prescription drugs and so forth, we hear everybody buying products from Canada, Mexico and so forth, and there is a great deal of counterfeiting there as far as the drugs are concerned. Does that fit into this at all, as far as you know?

Mr. HUTCHINSON. Well, I am not sure what you mean by fit in. It does not—

Mr. BALLENGER. I mean the terrorist funding, that sort of situation.

Mr. HUTCHINSON. No. I have no indication of that or intelligence in that regard.

Certainly it is an enforcement issue for us at the borders. We have the responsibility of enforcing our trade laws, as well as our copyright laws and a whole host of other protected issues such as the reimportation of medicine that is not authorized.

Mr. BERMAN. Thank you, Mr. Chairman.

Chairman HYDE. I would like to ask you a question, Asa. Which of the multifarious police agencies that we have should take the lead in this intellectual property situation? Can you hazard a guess?

Mr. HUTCHINSON. Well, first of all, it is sort of the nature of the Federal Government that there are overlapping jurisdictions, but Immigration and Customs Enforcement, our border inspectors, combined with our Customs Enforcement authorization, is a unique position to take the lead in this issue because of our presence on the border and our enforcement capability, the fact that we have the manifest information that is coming in on all the cargos.

We have the capability of targeting the shipments that are coming in that may look like a counterfeit or a piracy content. With that unique capability, we are in a unique position to be in the forefront of this battle.

Chairman HYDE. After you finish that, do these investigations get followed through with prosecution, or are they handed off to another agency?

Mr. HUTCHINSON. First of all, yes. No. They are worked. Whenever you look at a seizure, sometimes if there is absolutely no information—it is like a drug seizure—sometimes we are not able to follow it through to the extent that we can, but the numerous cases that are cited in my testimony generally originates at the border with a seizure.

ICE takes it over and pursues the investigation through the Coordination Center. What is beautiful about it is that it is coordinated with the FBI and any others that might be engaged in this area, so there is the coordination.

Obviously just like the FBI, I mean, they are pulled a hundred different directions. Whenever we go to an orange alert, that does impact our capacity to a certain extent, but we have the resources. We want to be able to continue to pursue these cases because we realize the importance of them.

Chairman HYDE. Very well.

Ms. Watson?

Ms. WATSON. Thank you very much, Mr. Chairman.

I have taken on this issue of protection of intellectual property with great concern. We have started an Entertainment Caucus, as you know, and this is a number one issue within that community. It is a \$500 billion industry annually, and lots of money is flowing out to other countries, counterfeiters, and we do not know where it goes from there.

My concern, and I think on the staff table are examples of counterfeit material. Is that correct? Articles and so on. Secretary Hutchinson, what can we do with the end product so that the consumer will know it is counterfeit?

I used to go back and forth to Hong Kong, and, I am telling you, anything you want you can get there. You go down the alley, up the stairs in the back, and it is there. We kind of know it is counterfeit, but for innocent consumers is there a program?

We are doing it with our money, and I notice that Secretary General Noble worked with Treasury. I have gone into stores, and they will take the \$100 bill and show you the six points they are to look for.

Is there any technology that is being developed today to alert the consumers when they are abroad or even here in the country?

Mr. HUTCHINSON. First of all, we have worked closely with industry in reference to the cooperation with the law enforcement community. For example, cigarettes. We know—

Ms. WATSON. Yes.

Mr. HUTCHINSON [continuing]. What chemicals are in there. Therefore, we can use light, which would tell us whether it is counterfeit or legitimate. Now, as to whether that is available to consumers, the answer would be no. It would be much more difficult.

I think consumers, first of all, their education and awareness should be by the price. I mean, if you have a CD on the street corner selling for \$1, that ought to raise some suspicions that maybe this is not on the up and up, and so I think that obviously education is important, but I think that the price variation is the first sign that this could be a counterfeited item.

Obviously the counterfeiters are working very hard to make sure there is not any appearance distinction that is readily perceivable, so it is a matter of education, working with industry to make sure the information is out to the public, as well as law enforcement.

Ms. WATSON. I think today's youth are much involved in seeking ways to obtain the counterfeit products and probably are part of the problem. Certainly education would be one way, but I am thinking more of those products that we get from overseas or we get when we are overseas and where the proceeds go.

I just do not know how we make that connection and close that gap. If there is anything you can share with us as to what you are doing that you cannot now, I would appreciate it maybe through

a letter. We are very concerned about the protection and seeing that the profits get back to the people who have put their sweat equity into developing them.

Mr. HUTCHINSON. Thank you. I would be happy to work with you on that and be more responsive to you.

Ms. WATSON. Thank you very much.

Chairman HYDE. I wonder if Mr. Smith, Mr. Pence, Mr. Pitts and Mr. Wexler would be kind enough to withhold their questions until the next panel so we can get to the next panel before we get dif-fused in the other buildings?

Mr. SMITH. If I could just ask one important question, Chairman Hyde?

Chairman HYDE. Sure.

Mr. SMITH. Thank you. Customs apparently confiscated over 19,000 products between 1998 and 2002. Is there a record kept of who shipped these products and the shipping companies, and is that pursued? Asa, I guess that is your question.

Mr. HUTCHINSON. Absolutely. A record of those are kept where they can be analyzed. The trends can be viewed, and so we do have a record of all the seizures, the shippers that are involved. That is part of our effort to better analyze and target what might be illegal shipments.

Mr. SMITH. Thank you, Mr. Chairman.

Chairman HYDE. Thank you.

Mr. NOBLE. Could I just follow up on that point because it is a very important point to highlight, and it happens worldwide.

There is no doubt that there is a coordinated national investiga-tion in many countries of these items, but with bills of lading or addresses or phone numbers, not always does the national law en-forcement send that to the international criminal police organiza-tion, Interpol, to put in its database.

One thing that I am committed to working on with the Under Secretary is to make sure that that network is established because then we can see whether or not there is a worldwide pattern and have a better chance of getting to the source countries and/or orga-nizations involved in this activity.

I know the Under Secretary is as committed as I am to making sure that it is not only followed to its logical conclusion nationally, but also internationally.

Thank you.

Chairman HYDE. Thank you.

Mr. WEXLER. Mr. Chairman? Mr. Chairman? Mr. Wexler. May I just have like 20 seconds?

Chairman HYDE. Mr. Wexler?

Mr. WEXLER. Could the gentlemen just quickly identify which countries in their minds pose the greatest challenges at this point in terms of piracy that have been the least cooperative?

Mr. HUTCHINSON. I will provide you my perspective, and I know that Secretary Noble probably will as well.

If you look at the seizures for the year 2002, 49 percent of the seizures originated from China, 27 percent from Taiwan, 4 percent from Hong Kong, and so those are the areas that are the imme-diate concern of point of origination. Other countries are

transshipment countries like the tri-border area that is a great concern as well.

Mr. WEXLER. Thank you.

Chairman HYDE. Thank you.

We thank you, Secretary Hutchinson, Secretary Noble, for your great contributions. We will follow up on what we have discussed and remain in touch. Thank you both very much.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

[Panel excused.]

Chairman HYDE. On our second panel this morning, I am pleased to introduce Mr. Timothy Trainer. Mr. Trainer has been the President of the International AntiCounterfeiting Coalition since 1999, which is the largest organization devoted solely to combating product counterfeiting and piracy. Comprised of a cross section membership of business and industry, the IACC's members' combined annual revenues exceed \$650 billion.

Prior to joining IACC, Mr. Trainer was an attorney in the U.S. Patent and Trademark Office, International Affairs Office. He regularly represented the U.S. at World Intellectual Property Organization meetings during his tenure at the Patent and Trademark Office and advised other governmental agencies regarding intellectual property.

Mr. Trainer has worked in the Intellectual Property Rights Branch of the U.S. Customs Service and has practiced law in the DC office of the firm Arter & Hadden. In addition to writing numerous articles, Mr. Trainer authored the book entitled *Border Enforcement of Intellectual Property* published in the year 2000.

He has testified before Congress and has frequently appeared on television broadcasts promoting intellectual property protection. He holds a Master of Arts degree in Asian Studies from the University of Pittsburgh and a Juris Doctor from the Cleveland Marshall College of Law.

Welcome, Mr. Trainer.

Mr. Iain Grant is the worldwide Director of Anti-Piracy Enforcement for the International Federation of the Phonographic Industry based in London. IFPI is the organization that represents the international recording industry with a membership of over 1,500 record producers and distributors in 76 countries.

Prior to this assignment, he was the Chief Superintendent of the Narcotics Bureau for the Royal Hong Kong Police Force. Mr. Grant has been the Senior Superintendent for Crime and a police liaison and recruitment officer as well for the Royal Hong Kong Police Force. He holds a Master's Degree in Police Studies from the University of Exeter and has studied Cantonese and Mandarin languages, and we welcome you, Mr. Grant.

Mr. Larry C. Johnson is CEO and Founder of BERG Associates, an international business consulting firm that helps multinational corporations and financial institutions develop and identify strategic opportunities, manage risks and counter threats posed by terrorism and money laundering.

Since 1994, Mr. Johnson has provided subject matter expertise in scripting terrorism exercises for the U.S. military Special Operations Forces. He has served as an instructor for the State Depart-

ment's Anti-Terrorism Training Program's crisis management seminar and has lectured to officials from more than 45 countries.

As one of the principles of BERG, Mr. Johnson manages investigations of international fraud, money laundering and product counterfeiting. Mr. Johnson previously served as Deputy Director in the U.S. State Department's Office of Counterterrorism. In this capacity, he managed crisis response operations for terrorist incidents throughout the world.

He helped organize and direct the U.S. Government's debriefing of United States citizens held in Kuwait and Iraq, which provided vital intelligence on Iraqi operations following the 1990 invasion of Kuwait. He also participated in the investigation of the terrorist bombing of PanAm Flight 103.

He has also worked in the CIA, where he received training in paramilitary operations, worked in the Directorate of Operations and served in the Operations Center and the Directorate of Intelligence. At the end of his tenure with the CIA, he received two exceptional performance awards.

Mr. Johnson taught at the American University School of International Service while working for a Ph.D. in Political Science. He received his M.S. Degree in Community Development and his B.S. Degree cum laude in Sociology from the University of Missouri.

We welcome you, Mr. Johnson.

We are honored to have you appear before the Committee today, and if you would proceed with a 5-minute summary? Your full statement will be made a part of the record, and we will try to get to you with some questions.

Mr. Trainer?

**STATEMENT OF TIMOTHY P. TRAINER, PRESIDENT,
INTERNATIONAL ANTICOUNTERFEITING COALITION, INC.**

Mr. TRAINER. Mr. Chairman and distinguished Members of the Committee, good morning. On behalf of the IACC and its members, I thank the Committee for the opportunity to address the issue of product counterfeiting and piracy that generates revenues for criminals and impacts our national economic security, consumer safety and economic health of companies that develop, make and distribute products that incorporate their trademarks, patents, copyrights and other intellectual property assets. Our members represent a cross section of industries from autos, medicines and electrical goods, to entertainment, apparel and sportswear.

Our recommendations. The IACC respectfully requests that this Committee and Congress consider implementing the following package of recommendations to combat counterfeiting and piracy:

Strengthen the Federal criminal statute against trafficking and counterfeit goods; encourage Federal law enforcement agencies to investigate and prosecute manufacturers, distributors and others involved in trafficking of counterfeit goods; increase vigilance at the border regardless of the products involved; impose higher IP enforcement standards on trading partners; require technical assistance programs to use more technology to maximize their reach abroad; support Interpol's effort to combat international trafficking and counterfeit goods; conduct a study of the Federal law enforcement agencies to assess their investigations of potential links be-

tween counterfeiting and terrorist organizations; and conduct a study to assess the level of counterfeit and pirated products in the domestic market.

I would also add that we would support Mr. Lantos' recommendations that he stated earlier.

The IACC has highlighted the growing problem of product counterfeiting abroad. We have over the past 2 years identified 30 countries in our submissions to the U.S. Trade Representative regarding their special 301 annual report. The products targeted by counterfeiters in the global market are at times shocking because of the reckless disregard counterfeiters have for consumers in their effort to profit off of famous trademark goods. I believe that the goods on the other table are a demonstration of that.

There are no industries exempt from counterfeiting and no countries spared. We released a White Paper last month entitled International Global Intellectual Property Theft: Links to Terrorism and Terrorist Organizations, which is available on our Web site. The IACC initiated this effort because we are concerned that product counterfeiting and piracy are very low enforcement priorities after September 11, 2001.

The intent of the White Paper is to highlight several points: Consumers should think about whether a dime or a dollar paid for a fake product goes to support more heinous criminal activity. Consumers are at risk of unknowingly purchasing products that pose potential health and safety risks.

More corporate resources are diverted to combat counterfeiting and piracy. The volume of counterfeit and pirated products in the global market indicates that the illegal industry has graduated from mom and pop operations, and enormous profits from counterfeiting and piracy are attracting criminal organizations.

The question is where all the money from the trade in counterfeit and pirated goods is going. The IACC White Paper explores the possible link to terrorism. I say possible link because industry is not empowered to make a concrete link. The primary objective of IP owners is to offer new and better products to consumers, not to undertake criminal investigations.

IP owners, lawyers, private investigators and others work together to protect IP assets and to prevent counterfeit goods from reaching consumers. When they uncover what appear to be criminal acts, they turn to the FBI, the Bureau of Immigration and Customs Enforcement, the Department of Justice and state and local police and prosecutors. The job of connecting the final links of an investigation is left to those who have the legal authority to undertake criminal investigations.

Corporate and private investigators turn to law enforcement professionals when they have detected anything that may link a counterfeiter and such operations to possible terrorist organizations. For example, post 9/11 at a civil raid at a location run by individuals who appeared to be Middle Eastern, a member investigator found flight manuals with Arabic writing. After the raid, the investigator contacted the FBI. The FBI asked the investigator to go back to the location to gather more information.

Because of his lack of police authority, the investigator asked the FBI to use its powers to get the information it wanted. In the end, it was not clear if the FBI would go to the vendor's location.

The same investigator during another civil search for counterfeit goods found documents relating to bridges and contacted the FBI. This time, the FBI did follow up to get these documents. Investigators state that leads are called in to the FBI before calling state or local authorities.

Mr. Chairman, I know my time is up, but if I may just finish for a few seconds?

We cannot take a passive approach to counterfeiting. I can only speculate that smarter counterfeiters are counting on law enforcement, prosecutors and the courts to take a soft approach to those engaging in what appears to be victimless counterfeiting.

Until investigations of these crimes prove otherwise, the extent of the threat arising from these activities is unknown. It seems only logical that persons using counterfeiting to raise funds for terrorist organizations would not risk trading in counterfeit medicines, auto parts or other goods that themselves pose public health and safety risks.

In conclusion, those involved in trafficking and counterfeit goods are everywhere. Despite the perception that product counterfeiting is harmless and victimless, consumers, companies and governments are all victims.

Not all counterfeiting supports terrorist organizations, but when a counterfeit is sold, regardless of the product, we have no way of knowing where the money goes or what it supports. We respectfully recommend that Congress and the Executive Branch agencies look deeper into the problem and commit to increased vigilance at the borders and in the domestic market. Finally, we encourage this Committee and Congress to consider and implement the package of recommendations we have provided.

The IACC thanks the Committee for the opportunity to provide testimony and will attempt to answer any questions the Committee may have.

Thank you very much.

[The prepared statement of Mr. Trainer follows:]

PREPARED STATEMENT OF TIMOTHY P. TRAINER, PRESIDENT, INTERNATIONAL
ANTICOUNTERFEITING COALITION, INC.

INTERNATIONAL/GLOBAL INTELLECTUAL PROPERTY THEFT: LINKS TO TERRORISM AND
TERRORIST ORGANIZATIONS

Mr. Chairman and Members of the Committee, good morning. I am Timothy Trainer, President of the International AntiCounterfeiting Coalition (IACC). On behalf of the IACC, I thank the Committee for the privilege and opportunity to address the very important issue of product counterfeiting and piracy that impacts our national economic security, consumer safety and the economic health of some of our largest employers and investors—the companies that research, develop, manufacture and distribute products that incorporate their trademarks, patents, copyrights, trade secrets and other intellectual property (IP) assets that are being stolen to generate revenues for criminals.

The IACC is the largest organization dealing exclusively with issues involving IP counterfeiting and piracy. The organization has approximately 130 members representing a cross-section of industries, including the automotive, electrical, entertainment, software, apparel, luxury goods, tobacco, personal care, pharmaceutical and office product sectors. The total annual revenues of IACC members exceed US\$650 Billion.

These diverse industries are brought together because of their common objectives to

- protect their assets and the viability of their products and companies;
- protect consumers from counterfeit products, some of which pose significant public health and safety risks;
- educate law enforcement and policy makers about the threats posed by counterfeit goods; and
- learn how they can be more effective in their effort against illegal activities.

RECOMMENDATIONS

At the outset, the IACC respectfully requests that this Committee and Congress consider implementing the following package of recommendations to combat the scourge of counterfeiting and piracy that exists:

- Raise the stakes for the individuals involved—the federal criminal statute against trafficking in counterfeit goods should be strengthened;
- Encourage federal law enforcement agencies to cooperatively pursue investigations of counterfeiting to root out and prosecute manufacturers, distributors and others involved in the trafficking of counterfeit goods;
- Increase the level of vigilance at the border regardless of the products involved—counterfeiting and piracy impact national economic security;
- Impose higher intellectual property enforcement standards on trading partners who seek trade preferences to access the world's greatest market;
- Require U.S. technical assistance for IP enforcement to use more technology to maximize the reach of assistance programs abroad;
- Support Interpol's effort to improve cross-border coordination to combat the international trafficking in counterfeit goods;
- Conduct a government study of federal law enforcement agencies to assess if investigations are examining potential funding links between counterfeiting and terrorist organizations; and
- Conduct a government study to assess the level of counterfeit and pirated products in the domestic market and its impact.

Regarding these recommendations, the IACC

- Drafted a proposed amendment to the federal criminal statute against trafficking in counterfeit goods and is working with other industry groups and has met with some Congressional staff members with the objective of a stronger law;
- Engages federal law enforcement agencies and meets regularly with officials regarding member involvement with law enforcement;
- Encourages member training of border enforcement officials and supports an ongoing program of training and education;
- Provides input to U.S. negotiators regarding intellectual property enforcement standards for our free trade agreements and other international efforts;
- Developed CD-ROM based enforcement standards tutorial;
- Participates in Interpol's intellectual property enforcement initiative and continues to work with its IP Crime Action Group; and
- Worked with other industry groups to successfully have funds appropriated for a study in FY 2001 only to find that the funds were not provided for the study.

The IACC is encouraged by the recent creation of an Intellectual Property Caucus by several members of Congress. We do request, however, that the issue of trademark counterfeiting and infringement receive the same level of attention as is given to digital piracy. The reason for this request is simple. In fiscal years 2001 and 2002, U.S. Customs statistics reporting seizures based on copyright piracy and trademark counterfeiting indicate that the value of goods seized due to trademark counterfeiting has been greater than for copyright piracy. Specifically, in FY 2002, the value of counterfeit cigarettes, wearing apparel, and consumer electronics (cell phones, radios, power strips, electrical tools and appliances) was approximately \$42 million dollars and the value of seized pirated products was \$28.3 million dollars. In FY 2001, the value of counterfeit apparel, watches/parts, batteries and cigarettes was nearly \$29 million dollars and the value of seized pirated products was \$7.3 million. The need to address product counterfeiting is also compelling.

The IACC has, for several years, underscored the growing problem of product counterfeiting here and abroad. We believe that the U.S. Trade Representative's 2003 Special 301 Report is accurate by stating

Unfortunately, in the area of counterfeiting what was once a localized industry concentrated on the copying of high-end designer goods has now become a massive, sophisticated global business involving the manufacturing and sale of counterfeit versions of everything from soaps, shampoos, razors and batteries to cigarettes, alcoholic beverages and automobile parts, as well as medicines and health care products.

In the IACC's last two Special 301 submissions to the U.S. Trade Representative, our member companies identified 30 countries around the world that pose the greatest problems in the manufacture, distribution (import/export) and sale of counterfeit and pirate products. In addition, the products that are targeted by counterfeiters in today's global market place is, at times, shocking because of the reckless disregard counterfeiters have for consumers in their effort to profit off of famous trademarked goods. The products and industries listed by the U.S. Trade Representative is a short list and could have included the vision care, home appliance, food and beverage, and many other industries.

Indeed, companies that have succeeded in bringing products to market and whose products have attained consumer loyalty and brand recognition are likely to be the victims of counterfeiters. Moreover, counterfeiters target success regardless of the price of the genuine product. The criminals engaging in counterfeit activities profit off of the backs of companies that have developed a demand for proven reliable products, regardless of unit prices.

Most consumers are familiar with the counterfeit handbags, hats, sunglasses, watches, shirts and other products sold by street and flea market vendors. They are not aware of the fact that one of the most targeted products is batteries due to the fame of certain brands. I mention this example because batteries are not considered luxury goods, but a widely used product in everything from toys to tools and smoke detectors.¹ As the list of goods demonstrates, there are no industries exempt from counterfeiting and no country spared.

The IACC White Paper

On June 5, 2003, the IACC released a White Paper entitled "International/Global Intellectual Property Theft: Links to Terrorism and Terrorist Organizations". The project to prepare this document was undertaken due to IACC members' increasing concerns that product counterfeiting and piracy are very low enforcement priorities after September 11, 2001. The community of legal enterprises that creates, develops, invests, and employs is under a withering attack from criminal elements. Therefore, the aim of the White Paper was to provide policy makers and law enforcement officials with information concerning trade in counterfeit and pirate products. The IACC White Paper simply collects previously published material in order to underscore the threat of counterfeit and pirate products around the world.

The intent of the White Paper is to highlight several points:

- Consumers should think about whether a dime or a dollar paid for a fake product supports more heinous criminal activity;
- Consumers are at risk of unwittingly purchasing products that pose potential health and safety risks;
- More corporate resources are being diverted to combat counterfeiting and piracy;
- The high volume of counterfeit and pirate products found in the global market indicates that the illegal industry has graduated from "mom and pop" operations; and
- The profits from counterfeiting and piracy are so high that they attract all types of organizations to this activity.

As we highlight just a few examples of what has been reported, the ultimate question is: "Where is all the money from trade in counterfeit and pirated goods going?"

¹According to U.S. Customs FY 2001 seizure statistics, it seized \$3.7 million dollars worth of counterfeit batteries exported from China. In value, batteries topped the list of goods seized from China by U.S. Customs.

1. Organized Crime

There is broad recognition of organized crime involvement in the trade of counterfeit and pirate products. The June 14, 1996 U.S. Congressional Record reporting on the “Anticounterfeiting Consumer Protection Act of 1995” included a section on “findings” and stated

The counterfeiting of trademarked and copyrighted merchandise (1) has been connected with organized crime; (2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill; (3) poses health and safety threats to United States consumers; (4) eliminates United States jobs; and (5) is a multibillion-dollar drain on the United States economy.

Ultimately, federal criminal statutes were amended pursuant to the Act, including the criminal statute against trafficking in counterfeit goods and the definitional provision of the Racketeer Influenced and Corrupt Organizations Act, which was broadened to include trafficking in counterfeit goods.²

Despite the 1996 changes to the criminal laws, trafficking in counterfeit goods continues to be a big business in the United States and abroad. As a result, we are again involved in an effort to strengthen the federal criminal law against trafficking in counterfeit goods. Although the information is in the White Paper, a few examples underscore the problem in the United States. The general public may have a preconceived notion of what organized crime may be, but these examples are clear instances of individuals organized to commit a crime and profit from criminal trafficking in counterfeit goods.

- On January 16, 2003, W.H. Farmer entered a guilty plea to trafficking in a massive counterfeit clothing operation. (The guilty plea was conditional upon an appeal to the United States Court of Appeals for the Fourth Circuit). According to the Government prosecutor, the scheme involved approximately \$7 million in knock off T-shirts and sweat shirts. Shirts were sold to 191 stores throughout the country. U.S. Customs agents seized over 300,000 fake items from Farmer’s house (a two-story home with a pool and two car garage) and warehouse. Farmer agreed to forfeit over \$500,000 in cash and cashier’s checks, eight vehicles, (including two Mercedes and a 1998 Corvette), and two cargo trailers. The majority of the money was in \$50 and \$100 bills. There was \$6,000 worth of change in the garage.³
- On May 9, 2002, law enforcement officers in New York City discovered a maze of tunnels and vaults holding \$125 million dollars worth of counterfeit products. Quantities that can generate this type of income can only occur because of a network of vendors, distributors and manufacturers. Ten individuals were arrested.⁴
- In July 2002, three people were arrested when police stumbled upon 5,000 counterfeit Rolex watches and Mont Blanc pens and a million dollars in cash during a raid in a Flushing, New York, home in connection with a drug operation. Prosecutors believed that the defendants used the sale of counterfeit goods to launder drug money.⁵
- In November 2001, a Florida man was convicted of possession and conspiracy to distribute cocaine and crack cocaine, trafficking in counterfeit goods and

² 18 U.S.C. § 1961 now reads
As used in this chapter [18 USC §§ 1961 et seq.]—

(1) “racketeering activity” means

(A)

(B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks). 18 U.S.C. § 1961. (emphasis added).

³ Cliff LeBlanc, *Huge Fake Clothing Ring Cracked, Upstate Man Pleads Guilty to Running \$7 Million Scam*, The State (South Carolina), January 18, 2003, A1; *South Carolina Man Pleads Guilty to Trafficking Clothing with Counterfeit Trademarks*, Department of Justice Press Release, January 16, 2003, available at <http://www.cybercrime.gov/farmerPlea.htm>.

⁴ Erik Martinez and Marsha Kranes, *Knockoffs Knocked Out*, New York Post (May 10, 2002).

⁵ Scott Shifrel, *3 Charged in Money Laundering*, Daily News (New York), July 11, 2002, at 4.

carjacking. At the time of arrest, the police seized \$150,000 in cash and a truckload of counterfeit apparel.⁶

The quantities of goods involved and the money associated with this criminal activity leads us to conclude that the scale of the problem grows because of a strong belief among those who do this that they are unlikely to get caught and to face severe sanctions. These vast amounts and the level of activity indicate that stronger penalties and more aggressive efforts are needed to address counterfeiting.

2. Counterfeiting—Funding Terrorist Organizations?

A major reason why the IACC is giving testimony today is due to our White Paper, which includes a section that addresses this possible link. I say “possible” link because industry does not have the responsibility of making the concrete link. The primary objective of our members who own intellectual property is to research, develop, create, manufacture and offer new and better products to consumers, not to undertake undercover criminal investigations.

Our members do have an obligation to take steps to protect their IP assets and they invest in protecting those assets. Every day, the intellectual property owners, lawyers, private investigators and others, work together to protect their assets and prevent counterfeit goods from getting into the hands of consumers, some of which pose significant healthy and safety risks. When they uncover, in the course of their investigations, what appears to be criminal acts, our members turn to the FBI, and, now, the Bureau of Immigration and Customs Enforcement, the Department of Justice and state and local police and prosecutors.

We leave the job of connecting the final links of an investigation to those who have the legal authority and responsibility to undertake the appropriate police investigations. The IACC’s corporate and private investigator members include a number of individuals who previously served in state and federal police and law enforcement agencies. Today, they work for companies. Thus, when conducting investigations, they are aware of the line between surveying the market and detecting counterfeits and what constitutes police actions that go beyond their limited role.

Because of their experience, investigators have turned to law enforcement professionals when they have detected anything that may link a counterfeiter and such operations to possible terrorist organizations. For example, post 9/11, during a civil raid on behalf of a client, one of our member investigators, while looking for and finding counterfeit goods at a location run by individuals who appeared to be Middle Eastern, found flight manuals with Arabic writing. After the raid, the investigator contacted the FBI. The FBI asked the investigator to go back to the location to gather more information. Because of his lack of police authority, the investigator asked the FBI to use its powers to get the information it wanted. The exchange between the FBI and the investigator concluded with no clear indication that the FBI would go to the vendor’s location.

The same investigator, in the course of conducting another civil search for counterfeit goods, found documents relating to bridges and contacted the FBI. In that particular instance, the FBI did follow up to get these documents. The input I have received is that leads such as these are called into the FBI before calling state or local authorities.

The potential links between the manufacture and sale of counterfeit goods and terrorist organizations can be difficult to determine, especially as it may be difficult to distinguish between a terrorist group and an organized crime group. For example, are the paramilitary gangs in Northern Ireland terrorists or organized crime gangs? A June 15 headline read, “Ulster Terror Gangs Link Up with Mafia: Loyalists and Republicans in Global Counterfeit Scam”.⁷ The article states that former paramilitary gangs operating in Northern Ireland are now linked to the Russian and Italian mafia and Chinese triads. It is believed that the former paramilitary groups earned well over \$200 million dollars last year from the distribution and sale of counterfeit goods. The article indicated that law enforcement in Northern Ireland seized more counterfeit products than all other UK police combined.

Although most people react to counterfeit watches, handbags, shirts and other counterfeits sold by street and flea market vendors as no threat, we cannot take such a passive approach to this or any type of counterfeiting. I can only speculate that smart counterfeiters are counting on law enforcement, prosecutors and the courts to take a soft approach to those who engage in what appears to be “victimless” counterfeiting. The reality is that until investigations of these types of

⁶John Tuohy, *Testimony from Felons Help Convict Cocoa Man*, Florida Today (November 27, 2001).

⁷Tony Thompson, *Ulster terror gangs link up with mafia: Loyalists and republicans in global counterfeit scams*, Observer News (Guardian Newspapers Limited) at p. 13 (June 15, 2003).

crimes prove otherwise, we do not know the extent of the threat arising from these illegal activities. It seems only logical that persons using counterfeits to raise funds for terrorist organizations would not take the risk of trading in counterfeit medicines, auto parts, electrical products or other goods that themselves pose public health and safety risks; though, it may be occurring on a larger scale than we know.

CONCLUSION

Those involved in the manufacture, distribution and sale of counterfeit goods are everywhere and, despite the perception that a lot of product counterfeiting is harmless and victimless, there is nothing harmless and victimless about this global problem. Consumers, companies and governments are all victims of counterfeiting. Not all counterfeiting is linked to supporting terrorist organizations; but when a counterfeit is sold, regardless of the product, we have no way of knowing where the money goes or what it supports.

We respectfully recommend that Congress and the Executive Branch agencies look deeper into this problem and commit to increased vigilance at the borders and in the domestic market. Finally, we encourage this Committee and Congress to consider and implement the package of recommendations we have provided.

The IACC thanks the Committee for the opportunity to provide testimony and will attempt to answer any questions the Committee may have.

Chairman HYDE. Thank you very much, Mr. Trainer.
Mr. Grant?

STATEMENT OF IAIN GRANT, HEAD OF ENFORCEMENT, IFPI SECRETARIAT

Mr. GRANT. Good morning, Mr. Chairman, distinguished Members of the Committee. Thank you for the invitation to testify before you today on behalf of the International Federation of the Phonographic Industry.

Independent consultants calculate that the global music piracy market and pirate prices to be worth between \$4 billion and \$5 billion per annum. Alarming, unlike the legitimate market, it is a growth industry fueled in part by advances in technology.

However, it is the proliferation of organized crime group involvement which gives rise to the greatest concerns. There is absolutely no doubt that organized crime is firmly entrenched in music piracy. Actually, it would be very surprising, given the potential profits, if that were not the case.

The majority of music piracy is not done by amateur operations working out of the family garage. Indeed, based on experience and professional judgment, I believe organized criminal elements to be involved in the greater percentage of physical music piracy, either the manufacture or distribution stages.

The advent of the compact disc clearly accelerated this phenomenon as it provided the pirate, or more accurately the criminal, with the ability to produce near-perfect illegal recordings in the millions. The recent development of cheap recordable optical discs has created another means of illegal mass duplication.

The situation is exacerbated by the global optical disc manufacturing capacity, which massively exceeds the legitimate demand, creating an international business environment ripe for exploitation by criminal syndicates. Exploit it they do. The high profit/low risk landscape inhabited all too often by government apathy and corruption offers fertile ground for these nefarious entities to generate hard cash to consolidate and expand their power base and influence.

Organized crime groups tend to turn their hand to diverse areas of criminal activity, motivated primarily by profit. Therefore, the surfacing of a nexus between intellectual property theft and offenses such as drug trafficking, illegal firearms and terrorism is not uncommon.

Faced with this, the music industry has responded by deploying on a worldwide basis seasoned professional investigators supported by modern investigative tools to address the problem. Over the past 5 years, considerable evidence has been collected to prove these connections, and they are summarized in the IFPI document attached to my written statement entitled Music Piracy, Organized Crime and Terrorism.

In light of the links, governments can ill afford to allow such activities to remain unchecked. The threat is real and considerable, as evidenced by the British experience in northern Ireland. The response must be commensurate, coordinated and effective.

Intellectual property crime needs to be tackled head on. It is encouraging to note the stance of Interpol and the obvious concerns of this Committee. Private industry resources are only capable of disturbing the edges of this particular storm, but the substantial criminal activity beneath continues unabated.

The crime gangs and any terrorist groups active in this field are well aware of the relative absence of effective law enforcement and, ironically, are vulnerable because of this. They often fail to adopt the usual tactics that frustrate penetration and detection of their traditional activities. Indeed, intellectual property crime may well be the Achilles heel of these pernicious groups.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Grant follows:]

PREPARED STATEMENT OF IAIN GRANT, HEAD OF ENFORCEMENT, IFPI SECRETARIAT

MUSIC PIRACY: ORGANISED CRIME AND LINKS WITH TERRORISM

IFPI is the organisation representing the international recording industry. It comprises a membership of over 1500 record producers and distributors in 76 countries. It also has associations, National Groups, in 47 countries. IFPI's international Secretariat is based in London and is linked to regional offices in Brussels, Hong Kong, Miami and Moscow.

THE NATURE AND EXTENT OF MUSIC PIRACY

The counterfeiting of music is almost as old as the music industry itself but the advent of the compact disc radically altered the nature of music piracy, providing the pirate producer with the opportunity to produce near perfect copies of any recording. There is massive manufacture and international traffic of illegal CDs and DVDs and the recent proliferation of cheap recordable optical discs has served to create an easy and hard to detect means of mass duplication.

Annual pirate sales approach 2 billion units; worth an estimated US \$4-\$5 billion. Globally, 2 in 5 recordings are pirate copies. Total optical disc manufacturing capacity (video/audio CDs, CD-ROMs and DVD)—stands at well over 20 billion units, having quadrupled in the past five years.

Manufacturing capacity massively exceeds legitimate demand. This creates a business environment ripe for exploitation by criminal syndicates. Production costs may be as little as US\$0.35¢, whilst retail value normally exceeds US\$2.50 and can reach US\$15.00. Given that the pirate producer has few or none of the overheads associated with genuine production, the profit margin is substantial.

The whole area of intellectual property crime which now includes the digital and electronic environment has become much more significant in the current fast moving commercial world. The challenge to law enforcement agencies to cope with serious and organised criminal activity in this environment encompasses all optical disc and new media related businesses and activities.

The potential market for, and profit from, music piracy is enormous and growing, however, the criminal sanctions for breach of copyright and trademark legislation bear little relation to the extent and nature of the criminality involved and are of minimal deterrent value. The huge illegal profits made are inevitably used to entrench the position of the pirates; to secure manufacturing and distribution networks through violence, intimidation and corruption and to subvert state institutions and processes.

The preferred format for the music pirate varies from country to country and clear regional differences can be seen. Partly in response to successful enforcement actions and partly due to the availability of cheap recordable discs, the preferred choice in the Americas and most of southern Europe, is the CD-R. It is interesting to note that in countries such as Hong Kong, which introduced stringent legislation and active enforcement, the pirates have switched from producing CDs to CD-Rs. The advantages are perhaps obvious; a large investment in machinery and skilled manpower to operate it is avoided. Production can be divided among many sites thus avoiding the risk of detection. Unskilled and illiterate workers can be used and production can be undertaken close to the point of sale thus again minimising the risks.

Underlying the continuing spread of music piracy is global overcapacity in the manufacture of all optical discs, i.e. discs carrying all media including music, film and computer software. IFPI estimates that the number of optical disc plants worldwide has increased to 1,000. 2002 saw a geographical shift in capacity within Asia and significant increases in Russia and Eastern Europe. This is a recipe for increasing illegal sales, because the supply of discs is far outstripping legitimate demand. The following chart illustrates the problem.

Territory	Estimated Capacity: all disc formats (million units)	Total Legitimate Demand: all disc formats (million units)
Taiwan	7600	230
Hong Kong	2700	150
China	2500	700
Malaysia	1600	65
India	800	160
Singapore	720	73
Poland	320	120
Russia	300	70
Indonesia	190	17
Czech Republic	170	37

Source: Understanding & Solutions Ltd

In Asia, China and Malaysia have seen sharp increases in manufacturing capacity. The movement of plant production facilities from Ukraine contributed to an increase in Russia's production capacity, which rose above 300 million. Poland's excess capacity more than doubled. In all these countries such increases underline the lack of adequate regulation of optical disc manufacturing.

DEALING WITH THE PROBLEM OF ORGANISED PIRACY

As a direct result of proliferating music piracy IFPI established an Enforcement Unit specifically to target the organised criminals involved. The strategy adopted was to recruit experienced investigators with a wide range of abilities and to bring in support services in the fields of intelligence analysis and forensics. Currently there are 50 investigators worldwide who obtain evidence and intelligence from many different countries. A further 200 personnel in National Groups investigate domestic music piracy.

The success of the forensic laboratory in linking infringing discs to source factories has resulted in many raids on suspect plants worldwide. This has in turn encouraged several Governments including Malaysia, Poland, Bulgaria and Russia to establish their own forensic programmes. Russia alone has 28 known optical disc plants and pirate discs from 17 of these plants have been found in 25 different countries.

IFPI has published a document, 'Music Piracy—Organised Crime and Terrorism', that summarises major cases encountered in recent years. The definition of organised crime used by the United Kingdom, National Criminal Intelligence Service (NCIS) has been adopted by IFPI to classify the incidents in this brochure. (See copy attached of IFPI Organised Crime brochure.)

The evidence of organised crime involvement is incontrovertible. Music piracy flourishes in those jurisdictions in which corruption is endemic. Major evasion of tax is inherent to these offences causing huge losses in Government revenues. Illegal firearms have often been encountered during raids and in a number of investigations there is evidence that groups are also engaging in the trafficking of drugs. In some developing areas whole economies are being distorted internally leading to loss of revenue and the failure of legitimate domestic enterprise to flourish.

IFPI works in partnership with Interpol and the World Customs Organisation. At their General Assembly in Budapest in September 2001, the General Secretary of Interpol, Mr R. Noble, stated that,

“Interpol recognises the extensive involvement of organised crime and terrorist groups in intellectual property crimes. There is a real need for facilitation and coordination of international police efforts in combating this criminality, which operates across international borders and has very serious consequences for the public. Working in partnership with customs authorities, international agencies and the private sector, Interpol will provide an effective response to this growing threat.”

CASES LINKED TO ORGANISED CRIME SYNDICATES

The following cases serve to illustrate the links between organised crime and piracy.

- *February 2003—Italy*

Mafia boss, Luigi Giuliano, described in a trial the role of organized crime in music and video piracy.

Giuliano, La Forcella (Naples downtown) Camorra boss, arrested two years ago, turned State's evidence and provided information on organised crime activities and strategies in Naples in the last two decades.

On the 5th of February, in front of the Public Prosecutor Filippo Beatrice, Giuliano stated that the camorra clans earn some “100,000 Euros each week dealing with drugs, extortion and video and music piracy”. He described in detail how organised crime manages all the illegal operations in Naples, with different gangs controlling the calls for tenders, the drugs sales, the illegal betting, and the production of counterfeit CDs in different city areas. These “local” gangs keep part of the illegal incomes while other monies are deposited in the Camorra bosses' bank accounts. Giuliano confirmed that the Camorra gang was directly involved in the production and distribution of pirate CDs, not just controlling the area used by organised crime to run illegal activities. Giuliano told the judges that in the early 80's, during a major war between the various gangs in which dozens were killed, the “Cupola”, the illegal main board of the criminal alliance, agreed on the distribution of the illegal activities to various gangs. The “pax mafiosa” which followed the agreement allowed the criminal network to increase the business in many areas including the emerging piracy business.

- *January 2003—Spain*

A series of 13 raids by the National Police in Madrid led to the arrest of 40 persons involved in the mass duplication of CD-Rs. The suspects many of whom were illegal immigrants from China and who had been brought to Spain by the other members of the gang were found in possession of 346 high speed burners, 168,400 blank CD-Rs, 24,450 recorded CDs, 39,000 DVDs, 10,500 VCDs with films, 515,000 jewel cases, 210,000 inserts and 48,000 Euros in cash. The gang used a number of computer shops and restaurants to launder the money generated by the pirate product.

- *July 2002—Mexico*

An investigation led to a police raid that was met with fierce resistance from five juveniles aged under 18. There were 5kg of cocaine in the premises along with 25 CDR burners and 16,000 pirate CDRs. Using juveniles to run CDR and drug trafficking operations is a deliberate ploy by organised crime to protect those behind the syndicate.

- *October 2001—Mexico*

Police raided eleven houses, three of which were linked by interconnecting passages and tunnels, which were disguised by false walls. Inside they discovered a massive counterfeiting operation. In total five persons were arrested during searches, which yielded 235 CDR burners, over 1million blank CDRs and 512,000 pirated CDRs together with over 1,000,000 inlay cards. This illegal plant had the potential capacity to produce over 14 million CDRs annually. It is believed, that this

crime syndicate have invested the profits from piracy into other activities such as narcotics and prostitution.

Four of the persons arrested were found to be in possession of loaded 9mm pistols. During the searches a car was deliberately crashed into a Police barricade and the driver arrested. This man, an associate of the others had been sent to the address to create a diversion to allow the others to escape. He was found to be in possession of an AK47 assault rifle and has was indicted for attempted murder.

- *May 2001—Taiwan*

A raid on residential premises in Kaoshung City, revealed 70,000 suspected pirate discs. Most contained pornographic material but more significantly the search of the premises revealed several illegal firearms. These guns were Italian and German selfloading pistols. Five persons were arrested.

As a result of these arrests, further searches were carried out and small quantities of pirate product and further firearms seized. At a third premises an illegal arms factory was discovered running alongside a sophisticated CDR facility. In total 17 rifle barrels, 7 modified handgun barrels, 10 shotgun barrels, 10 cartridge magazines, 50 bullets and other equipment were seized. The main suspect in this case had previous involvement in music piracy

- *April 2000—London*

Following an IFPI investigation into the supply of high quality counterfeit CDs linked forensically to Russian plants, a series of raids were carried out in London and four persons arrested. During the search a sophisticated credit card counterfeiting operation was uncovered. The suspects, Russian nationals who had been granted political asylum in Britain, employed members of the Russian community in London, to secretly record details of credit cards when these were tendered for payment in restaurants and hotels. The data obtained was then downloaded onto computers and subsequently written to blank cards, which were then used to purchase high value items from London stores. Forensic examination of the computers revealed that over 30,000 credit card details were recorded. At the suspects addresses 10,000 blank credit cards were found together with stamps for attaching holograms and machinery for printing and embossing the cards. The sale of CDs financed the Credit card operation with a network of couriers smuggling the discs into the UK.

MUSIC PIRACY AND LINKS TO TERRORISM

The most extreme form of organised crime affecting society today is that of terrorism. The clandestine nature of terrorist organisations requires large sums of money to maintain operatives in the field and for the purchase of arms and explosives. Some intelligence has been obtained to indicate that these groups are involved in the fabrication, distribution and sale of counterfeit music and other intellectual property infringing material to raise funds for their operations.

IFPI anti-piracy personnel do not investigate information giving rise to suspicion of terrorist involvement in music piracy. Information encountered has been, and will be, referred to an appropriate government agency.

In the United Kingdom and the Republic of Ireland the investigation of terrorist crimes committed by both sides of the sectarian divide has provided a great deal of intelligence about the operations of those groups. There is no doubt that a significant proportion of their funding stems from the sale of counterfeit product. At a recent Organised Crime seminar hosted by the Police Service of Northern Ireland it was stated by a senior police officer that 93% of persons involved with intellectual property crimes, including music piracy offences, were linked to para-military groups.

- *December 2000—Ireland*

In December 2000 Garda Officers (Republic of Ireland Police) and Irish Customs officers, investigating the smuggling of diesel fuel between the Republic and Ulster searched a remote farmhouse, where they discovered over 20,000 optical discs suspected to contain infringing material. Whilst still at the premises they were attacked by men dressed in combat clothing and carrying handguns and rifles who stole the discs from them. A subsequent investigation led to the arrests of the gang and the seizure of a huge number of counterfeit music CDs, burning equipment and associated artwork. One of those arrested was a person suspected of being a senior figure in the Provisional IRA during the 1970s and 1980s.

- *September 2000—Russia*

On 20 September 2000 the public relations department of the Federal Security Service (FSB), Moscow announced the elimination of a criminal organisation headed by one, Ziyaudi Terloyev. This organisation was reported to have been financing illegal rebel formations in Chechnya. Integral to Terloyev's activities was the the manufacture of pirate compact discs at a plant in Noginsk, outside Moscow. During the raids this plant was closed and 5,000 pirate discs seized. Explosives, grenades, detonators and ammunition were reported seized at the suspects' residences. It was estimated that this groups average monthly earnings amounted to over \$500,000.

- *September 2001—South Africa*

During a raid on an address in Durban, in September 2001, counterfeit CDs were seized from a syndicate of Pakistani nationals. A search of the premises also revealed documentation indicating allegiance to Al Qaeda and Osama Bin Laden. This information was passed to the appropriate authorities in South Africa.

- *November 2001—Paraguay*

Several CD-Rs, containing pirate music compilations, recovered by investigators in Paraguay contained inlay cards depicting graphic images of the exploding twin towers of the World Trade Centre, New York, and portraits of Osama Bin Laden. There is a large population of middle—eastern origin in Ciudad del Este, a city notorious in Paraguay for producing pirate products of all descriptions. See images in appendix.

- *November 2001—Mauritius*

Street hawkers selling counterfeit music products were seen to be selling video CDs containing footage of the twin towers of the World Trade Centre exploding and a message from Bin Laden. These propaganda discs were seized on the orders of the Police Commissioner in Mauritius who feared that they might foment public unrest. The origin of these discs is suspected to be Pakistan. Pakistan has been identified to be a significant manufacturer and exporter of pirate music compact discs.

- *April 2003—Philippines*

On 23 April 2003 officers from the Philippine Videogram Regulatory Board (VRB) supported by Police units, took action against street vendors selling pirate discs. During this action in which violent protests were staged a man, linked to the vendors was shot and killed by Police. Subsequently it was established that the dead man was the son of an alleged commander of an MILF unit, a proscribed terrorist organisation, operating in Mindanao.

CONCLUSION

There is no doubt that in many jurisdictions the 'low risk—high reward' environment that characterises the usual response to music piracy of government and law enforcement agencies encourages exploitation by organised crime groups.

The experience of the British in Northern Ireland clearly illustrates that terrorist organisations are alive to the potential of intellectual property crime as a source of funding. The absence of evidence in other jurisdictions cannot be taken to indicate that such crime is not a major source of funding for such groups. The greater probability is that the difficulty in penetrating and investigating their activities, coupled with the fact that piracy thrives in corrupt regimes, allows such groups to engage in piracy unhindered by any authority.

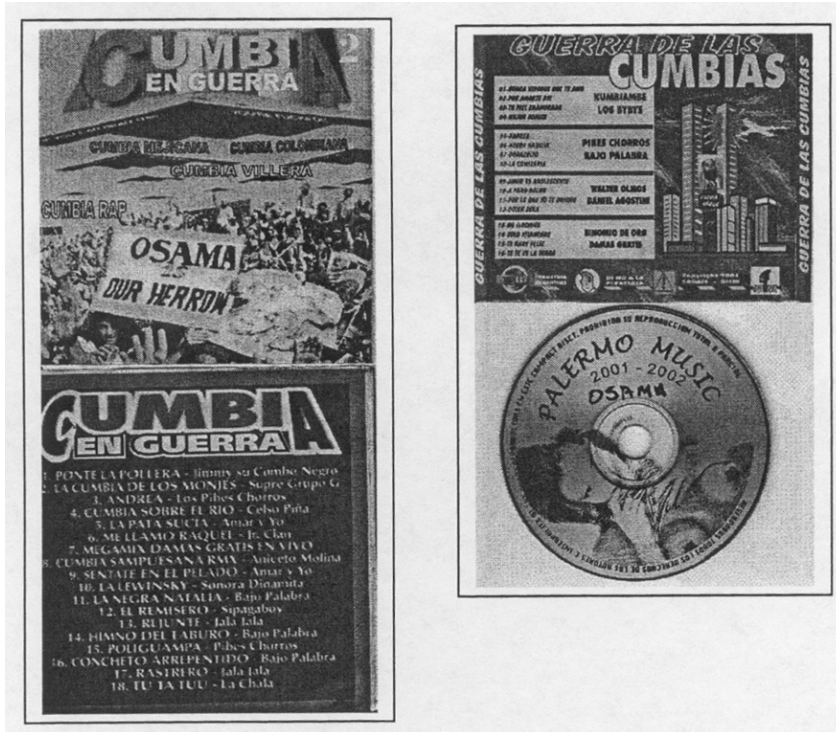
The music industry is absolutely committed to confronting the organised crime groups that now threaten the very survival of our business. No other industry invests so much energy and capital to this; no industry has a team of professionals comparable with the investigative resource that we have constructed.

However, this anti-piracy resource is tiny relative to the forces ranged against it. Our investigators have no enforcement powers to assist them in the investigation of the ruthless sophisticated groups that are realising huge profits and which readily resort to extreme violence. It is submitted that there are currently few, if any, Governments that appreciate the threat posed by intellectual property crime and that assign commensurate levels of enforcement resources to it.

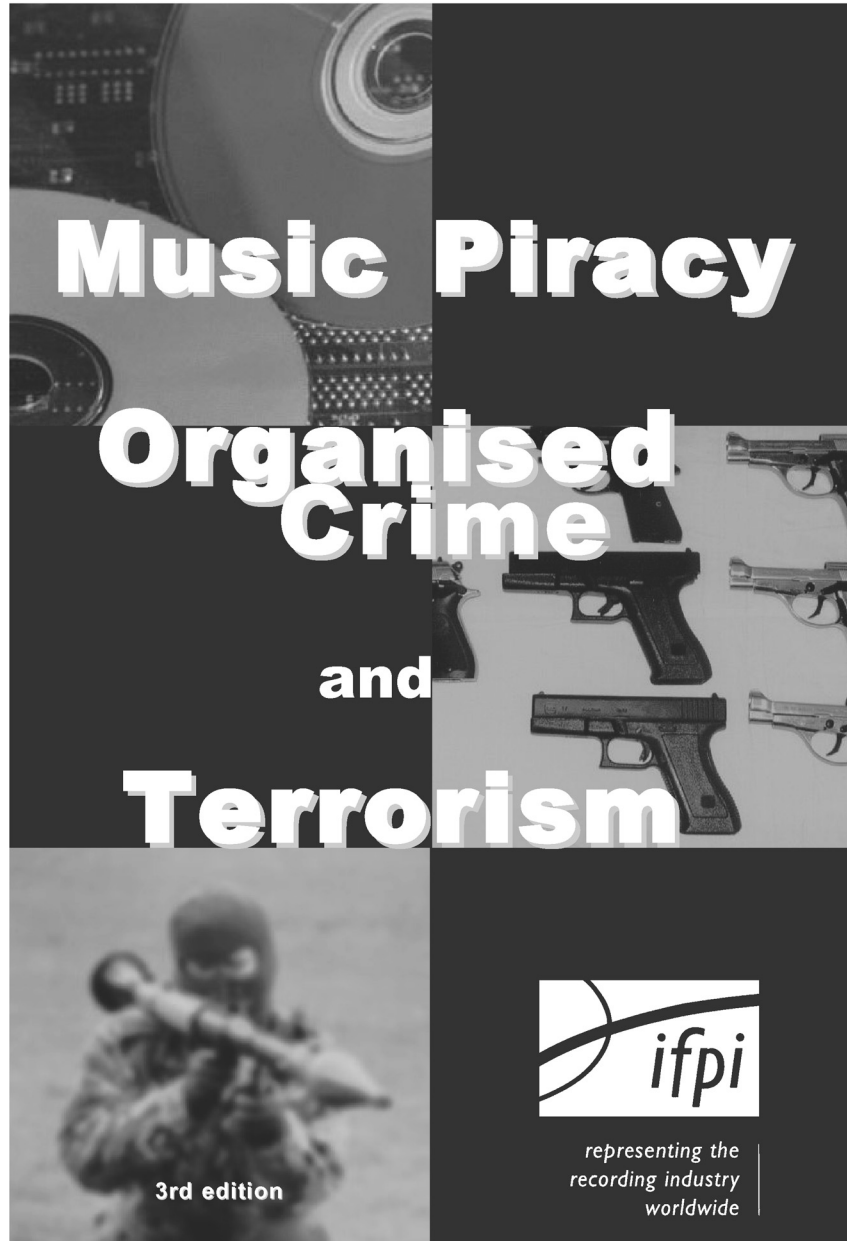
The music industry resource is capable of disturbing the debris at the edges of this particular stone but the substantial activities beneath continue undisturbed. The crime gangs, and any terrorist groups, engaging in intellectual property crime are fully aware of the relative absence of any effective law enforcement in this arena and, ironically, may be vulnerable because of this. They often fail to adopt the usual tactics that frustrate penetration and detection of their traditional activities. Indeed, intellectual property crime may be the soft underbelly of these pernicious groups.

PHOTOGRAPHIC APPENDIX





Images from CD-Rs recovered in Paraguay, November 2001



Music Piracy

Organised Crime

and

Terrorism

3rd edition



representing the
recording industry
worldwide

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Music Piracy Organised Crime and Terrorism



Introduction

This paper examines the concept of organised crime, the relevance of this to piracy of music industry intellectual property rights and the need for concerted and joint action by the industry, governments and law enforcement. It provides examples from around the world of seizures and arrests of music pirates connected with organised crime gangs. Increasingly, evidence is available to show that these criminals are not only connected with intellectual property crimes but are also involved in illegal immigrant smuggling, terrorism, extortion and extreme violence. Firearms are regularly found in the possession of these criminals who evidently need these weapons to protect their burgeoning profits and who will not shrink from using them. This is a worrying trend not only for IFPI investigators but also for all law enforcement agencies.

Organised Crime

The following definition of organised crime is used by the UK National Criminal Intelligence Service:

“Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries.”

The music industry adopts this definition for the purpose of examining organised crime involvement in music piracy.

The characteristics typical of organised crime groups, and their activities, are listed on page 3 and may be present in any group, or activity, to a greater or lesser degree. The presence, or absence, of these characteristics will allow a qualitative analysis to be conducted as to the extent of involvement of an organised crime group and/or organised crime activities, in intellectual property crime.

An appreciation, and common understanding, of organised crime will enhance cooperation between the music industry, governments and law enforcement. This will promote the effective use of limited resources against organised crime groups, which if unchecked, have the potential to undermine state and commercial institutions.

Characteristics of Organised Crime Groups and their Activities

- Collaboration by a minimum of three people.
- Criminal activity which has, or is intended to be, continued over a prolonged period.
- Commission of serious criminal offences, or offences which, taken as a whole, are of considerable importance.
- Motivated by the pursuit of profit or power.
- Operations are international, national, or regional.
- Uses violence or intimidation.
- Uses commercial or other business like structures.
- Engages in money laundering.
- Exerts influence upon politics, the media, public administration, judicial authorities or the economy.

Organised Crime and Music Piracy

There is absolutely no doubt that in many situations the theft of intellectual property amounts to organised and serious crime. The nature and context of this activity requires closer examination.

The manufacture and distribution of illegal music carriers is, in many instances: an "enterprise... engaged in continuing illegal activities, which has as its primary purpose the generation of profits." Violence, intimidation, and/or corruption are encountered, and in a number of countries international and domestic intellectual property rights legislation is repeatedly and flagrantly breached. This is illustrated on pages 6-12 by reference to documented cases.

It should come as no surprise to governments and law enforcement agencies that the prospect of huge profits for a small capital outlay and very small potential penalties in a poorly regulated environment is highly attractive to the criminal, who will exploit it to the full. The manufacture and traffic of illegal music products, both domestically and internationally, is often an organised crime activity.

Groups engaging in such activities may be established hierarchical criminal organisations, such as Triads and La Cosa Nostra, or they may be less formalised and only associate for the duration of a particular enterprise. The evidence of organised crime involvement is incontrovertible. Confirmed links to international drug trafficking, illegal firearms, money laundering, massive tax and revenue evasion

and more recently the funding of terrorist activities have been established. In some developing areas whole economies are being distorted internally leading to loss of revenue and the failure of legitimate domestic enterprise to flourish.

Links to Terrorist Groups

The most extreme form of organised crime affecting society today is terrorism. The clandestine nature of terrorist organisations requires large sums of money to maintain operatives in the field and for the purchase of arms and explosives. Evidence is available to prove that these groups are involved in the fabrication, distribution and sale of counterfeit music and other intellectual property infringing material to raise funds for their operations.

In the United Kingdom and the Irish Republic the investigation of terrorist crimes committed by both sides of the sectarian divide has provided a great deal of intelligence about the operations of those groups. There is no doubt that a significant proportion of their funding stems from the sale of counterfeit product. Intelligence gained from IFPI investigations has also uncovered connections with organised crime gangs involved in music piracy in South America who are suspected of being linked to Middle Eastern terrorist organisations. More recently examples of CDs and CDRs carrying propaganda messages from extremist groups have been found in Argentina, Mauritius, Pakistan and Paraguay. It is certain that these discs emanate from the same source as much illegal music in those regions.

The Music Industry and Law Enforcement: A Challenge

Governments, judicial systems, and law enforcement agencies seek to define, identify and tackle organised crime, which is recognised as having the potential to destroy the fabric of society. Serious and organised crime groups must be accorded a priority proportionate to the growing threat and increased resources must be allocated to the fight against organised crime.

Given the range of the responsibilities of governments, judicial authorities and enforcement agencies and the limit of their resources it is inevitable that these public guardians do not always identify and pro-actively tackle organised crime activities. It is clear that there is a responsibility upon those industries exposed to organised crime activity to alert and educate the authorities. The music industry is a case in point.

The Nature and Extent of Music Piracy

The advent of the compact disc radically altered the nature of music piracy. There is massive manufacture and international traffic of illegal CDs:

.....
Annual pirate sales approach 2 billion units, worth an estimated US\$4-5 billion, while globally, 1 in 3 recordings is a pirate copy. Total optical disc manufacturing capacity (video and audio CDs and CD Roms and DVD) - stands at well over 20 billion units, having quadrupled in the past five years.

Manufacturing capacity massively exceeds legitimate demand. This creates a business environment ripe for exploitation by criminal syndicates. Production costs may be as little as US\$0.35, whilst retail value normally exceeds US\$2.50 and can reach US\$15.00. Given that the pirate producer has few or none of the overheads associated with genuine production, the profit margin is substantial.

Intellectual property crime, which now also takes place in the digital and electronic environment, has become much more significant in recent years. The challenge to law enforcement agencies to cope with serious and organised criminal activity in this environment encompasses all optical disc and new media-related businesses and activities. In partnership with business, law enforcement can

achieve much in protecting the public from what is an insidious and growing threat - **the theft and destruction of property and businesses through counterfeiting and falsification.**

The potential market for, and profit from, music piracy is enormous and growing. However, the existing criminal sanctions for breach of copyright and trademark legislation bear little relation to the extent and nature of the criminality involved and are of minimal deterrent value. The huge illegal profits made are inevitably used to entrench the position of the pirates, to secure manufacturing and distribution networks through violence, intimidation and corruption, and to subvert state institutions and processes.

.....
Profits are then frequently reinvested in other serious criminal enterprises such as drug trafficking and money laundering.

For this reason recourse to more weighty criminal charges e.g. racketeering, conspiracy or fraud should be considered. This approach has been successfully employed in a number of jurisdictions against organised crime.

The challenge for all intellectual property industries is to educate relevant law enforcement agencies as to the criminal potential of piracy. In certain jurisdictions music piracy is already an organised crime activity and this is not confined to domestic markets. In those jurisdictions in which music piracy is not yet clearly an organised crime activity, the potential profits will surely attract hierarchical and entrepreneurial criminal organisations.

A strategy

A new anti-piracy strategy was established by IFPI in 1997 based on a policy of zero tolerance. This was followed by the formation of a global regionalised structure to investigate music counterfeiting, copyright and trademark infringement and to take action against offenders. A fully resourced organisational structure capable of a global response has now been established. This investment by the music industry has already paid dividends. Relations with other optical disc industry groups and with international law enforcement agencies continue to develop very positively. However if the initiative is to succeed, law enforcement agencies must recognise the criminal potential of international music piracy and increase the resources dedicated to combat it.

The law enforcement response has to be proportionate and cost-effective. It cannot be so unless the problem is recognised and fully appreciated. The role of IFPI must be to assist law enforcement agencies in appreciating and tackling the problem on a national and international basis.

Governments and law enforcement agencies must confront these responsibilities:

- ▶ to develop strategic intelligence on intellectual property crimes;
- ▶ to assess whether such criminal activity constitutes organised crime in their territory or contributes to organised crime activity elsewhere in the world;
- ▶ to ensure that the resources deployed to combat piracy are proportionate to the existing and the potential problem.

The role of the recording industry is to provide governments and law enforcement agencies with an overview of the current and potential problem and to encourage them to confront the issues. There is an industry responsibility to support enforcement through developing strategic and tactical intelligence and, where appropriate, initiating civil actions.

Interpol

Interpol endorsed the view that intellectual property crimes should be of major concern to law enforcement agencies around the globe during a debate on Intellectual Property Crime at the 69th Annual General Meeting in Rhodes in October 2000. For the first time Interpol recognised that they should pass information regarding these crimes between member countries and liaise with rights holders. They concluded that:

"It is an area where there is increasing evidence of greater organised crime activity due to the imbalance between the rewards and the risks. This imbalance is due to several factors ranging from lack of international coordination, insufficient resources, inconsistent legislation and insufficient sanctions."

In November 2001, Interpol held its first ever conference dedicated to the fight against international intellectual property crimes. Conference delegates included police, business and customs in what was a unique tri-partite event.

Interpol will look at ways of taking practical anti-piracy action with information, support and assistance from rights holders.

Conclusion

In May 1998 the Foreign Ministers of the G8 Group of major industrialised democracies said:

"We recognise that intellectual property related crime is a major and growing problem which should be of concern to all. We agree on the importance of effective action against such crime in our own countries. We agree to explore opportunities for better co-operation and exchange of information between governments and intellectual property rights holders so as to facilitate more effective enforcement of intellectual property rights."

The Heads of State and Governments at the G8 Summit recognised that:

"Building partnerships with industry will help guarantee that the most up to date crimes are being tackled by the most up to date methods."

We in the music industry will continue to work hard to ensure that this kind of support is translated into effective practical action.

The music industry has identified the involvement of serious and organised crime in piracy.

Both the industry and law enforcement agencies have a common interest in combating music piracy, in particular those areas that are controlled by organised crime. The objective should therefore be to build partnerships with enforcement agencies at all levels. This will depend upon recognition of mutual professionalism and commitment.

The international music industry is determined to protect itself from the depredations of organised crime, and to meet its wider social responsibility of cooperating with the authorities to eliminate opportunities for organised crime to profit and flourish.

We are committed to investing substantial resources to this end. We believe that all responsible governments and law enforcement agencies, both international and national, will wish to cooperate in eliminating organised crime from our industry and our societies.

PRÉCIS OF RECENT EXAMPLES INDICATING ORGANISED CRIME INVOLVEMENT IN MUSIC PIRACY

▶ EUROPE (WEST)

England

Two Russian asylum seekers were jailed for four years in February 2001 for what has been described as one of the "most sophisticated fraud networks ever encountered in the UK". IFPI investigators discovered that the Russian syndicate was using the profits gained from the sale of counterfeit music CDs to finance a massive credit card fraud. Compact discs were smuggled into the UK to one of several safe houses. A network of couriers travelling on false and forged passports was used to smuggle the discs into the country.

The ringleaders used a network of Russian or immigrant waiters operating throughout London to steal details of customers' credit cards. This was done by means of a battery-powered card reader either carried on a belt or behind a counter. This information could then be downloaded onto a computer and subsequently used to create a cloned card. At the time of their arrest over 30,000 stolen credit card numbers were found on a computer belonging to the suspects and enquiries revealed that over £196,000 worth of goods had been unlawfully obtained. During searches of their addresses police found 10,000 blank credit cards, stamps for affixing holograms to the cards and imprinting machines for stamping the card numbers. It is estimated that if all the cards had been manufactured and used they

could have caused losses to the banks of at least UK£2,000,000. ■

Germany

In what has been hailed as the largest-ever seizure of illegal sound recordings in the history of anti-piracy investigations in Germany, authorities successfully intercepted 500,000 counterfeit compact discs at Frankfurt International Airport in January 2000. The discs, which were of Ukrainian origin and valued at approximately US\$2,500,000, had been transhipped using a network of shell companies to disguise the origin of the product.

This case has once again illustrated the international nature of global music piracy, and has exposed another circuitous route for the illegal traffic of such goods manufactured in Eastern Europe, to South America, via Germany and the British Virgin Islands. The

continued need for co-operation at all levels with law enforcement, and the benefits derived from such interaction, is well demonstrated by this case. ■

Germany/Holland

German Police raided a clandestine CD factory in September 2001, which, it is believed, had been producing CDs for at least 12 months. This plant, which has been described as Europe's largest underground CD factory, was actually making CDs when police entered the premises. Thousands of illegal CDs were seized during the raid and several stampers recovered. During a coordinated action a number of suspects were also arrested in Holland. These suspects are believed to be responsible for ordering the manufacture and subsequent distribution of the discs. ■



Germany/Holland: Machinery inside the raided clandestine plant.

Greece

Police arrested two men in August 2000 for carrying out a string of bomb attacks. They were members of a protection racket using CDR piracy to fund serious crime. Apart from a gun, ammunition and explosives, quantities of CDRs and CDR burning equipment were recovered following related searches. One of the two men had previously been arrested in March 2000 following a police raid, which led to the seizure of over 500 CDRs and duplicating equipment. ■

Holland

The biggest ever crackdown against the illegal CD trade in Holland was announced in September 1999 with the arrest of suspects and raids on houses which resulted in huge quantities of cash and some firearms being recovered (see photo below). It is estimated that the criminal organisation had generated more than 4.3 million CDs in the last four years with a street value of US \$50 million. 80,000 CDs a month were pressed. It was reported that such was the scale of production that "it seriously affected new investment and employment levels".



Holland: Money and firearms linked directly to piracy.

Tackling this level of organised crime demanded an innovative response and led, in mid 1997, to a joint investigation by the special investigation department Buma Stemra and the National Crime Squad. Investigators were intent on dismantling the organisation, from financiers to wholesale distribution, through criminal conviction and confiscation of the criminal proceeds.

At the conclusion of the criminal case the ringleaders were sentenced to three years imprisonment and assets totalling US\$ 1.6 million cash, thirty vehicles, luxury goods and jewellery were confiscated. ■

Ireland

In December 2000 the Garda (Irish Police) and Irish Customs officers investigating the smuggling of diesel fuel between the Republic and Ulster, searched a remote farmhouse where they discovered over 20,000 optical discs suspected of containing infringing material. Whilst still at the premises they were attacked by men dressed in combat clothing and carrying handguns and rifles who stole the discs from them. A subsequent investigation led to the arrest of the gang and the seizure of a huge number of counterfeit music CDs, CDR burning

equipment and associated artwork. One of those arrested was a person suspected of being a senior figure in the Provisional IRA during the 1970s and 1980s. ■

Italy

Anti-piracy representatives of AFIMI, the local music industry group, have reported increasing numbers of raids and large seizures of illegal music CDs. During 1999 and 2000, Mafia sponsored and protected gangs of criminals throughout were responsible for this piracy and such illegal activity has become so serious that it has been the focus of attention of an anti-Mafia prosecuting officer for the area.

According to information provided by the General Attorney of Naples, 100 Camorra gangs are active in that area. They deal in drugs, arms, extortion and counterfeiting. Recent intelligence and interviews with police 'supergrasses' has confirmed that various 'clans' are investing the money obtained from the distribution of drugs and cigarettes in the counterfeiting of CDs. A considerable amount of capital has been used on purchasing industrial CDR burners with a capacity of more than 2,000 units per day. The connection with Eastern Europe mafias is allowing the 'clans' to import large quantities of counterfeit CDs from countries such as Bulgaria and the Ukraine. ■

Two people were arrested in Rome in March 2000 after a police investigation unveiled extensive traffic of stolen cars with counterfeit documents. The organisation was also involved in the production and distribution of pirate CDRs. A scanner was used to reproduce both CD covers and counterfeit documents along with fake police seals used to certify



Italy: CDR replicating equipment seized. Fiscal Police examining product after the seizure.

the cars' licenses. During a search the police found six stolen cars, 800 CDs, CD burners, personal computers and scanners, blank CDRs and jewel boxes. ■

Investigations by the Guardia di Finanza have revealed that Italian organised crime gangs are actively involved in counterfeiting CDRs in Naples. During raids in March 2001 authorised by the anti-Mafia District Attorney investigators found a covert factory with 189 CDR burners, which represented, at that time, the largest single CDR site in Europe. Also recovered was an industrial printing machine capable of printing 50 inlay cards per minute together with over 8,000 recorded CDRs and 100,000 blank discs. Documentary evidence detailing the importation and distribution of over 300,000 blank CDRs during the preceding week was found at the same site. A total of twelve persons were arrested. ■

Malta

Acting on information received from IFPI the Maltese Police led by an Assistant Commissioner raided premises in July 2001 used for the wholesale manufacture of

CDRs. During the raid 20 burners were found and approximately 50,000 CDRs. The main suspect was found in possession of a 9mm pistol loaded with six rounds of ammunition. ■

Spain

Investigators in Spain uncovered a sophisticated and widely dispersed organised gang utilising Bengali illegal immigrants. A total of 68 persons were arrested in various cities in Spain during May 2001 including the owner of a copy shop responsible for the wholesale production of inlay cards.

The raids, which were conducted by the Guardia Civil at thirty locations, recovered 247 CDR burners and 104,000 CDRs. The Bengali suspects were effectively treated as slave labourers, being provided with all necessary equipment, an apartment to work from and a small salary.

The principal organisers provided the lower ranking syndicate members with the equipment and utilised courier companies to deliver the finished products to different provinces around Spain. ■

▶ EUROPE (EAST)

Bulgaria

At around 4am on 23 March 2000 near the town of Svishtov, following information received from NSCOC (National Service Counter Organised Crime), the Bulgarian Border Police stopped a vessel sailing under a Bulgarian flag. The ship was transporting goods from the Ukrainian port of Reni to the Yugoslavian port of Prahovo. During the search, a secret compartment, disguised as an extra fuel tank, was discovered. In this compartment, the police found 220 cardboard boxes containing 212,424 pirate CDs worth an estimated US\$500,000. The CDs were sourced to two replication plants in the Ukraine and this was pursued with the appropriate authorities. In Bulgaria, the police have initiated criminal proceedings against the ship's owners, who were previously known to them. ■

Emil Dimitrov-Makarona a Bulgarian national with a background in illegal CD production and smuggling was found murdered in January 2001 in Sofia. Makarona, who was shot in the head, is believed to have upset his former partners whom he suspected of stealing from him, by disrupting their supplies of polycarbonate.

Investigators believe it was these partners who ordered his death. Two Georgian nationals arrested on 29 October 2001 for involvement in the supply of narcotics, are suspected of involvement in this murder. ■

Lithuania

During an operation conducted by the Department for Combating Organised Crime of the Interior Ministry of Lithuania, in January 2000, 111,000 CDs with international, Polish and German repertoire, and 1,200 kg of inlay cards were seized at a rented house in the capital Vilnius. A group of nine persons was detained in connection with customs, tax, organised crime offences and offences of infringement of intellectual property rights. According to data provided by the Department for Combating Organised Crime, the group's monthly turnover amounted to approximately USD \$215,000. The group was a well organised distribution enterprise, with clearly defined structure and responsibilities. It had been very active in the infringement of intellectual property rights, sourcing most of its product from Ukraine. ■



Lithuania: Thousands of counterfeit CDs of Eastern European origin seized in the UK.

adequate legislation to protect intellectual property rights, trade sanctions were imposed in January 2002. Information suggests that organised crime groups from the region are involved in much of the pirate production, exportation, tax and revenue avoidance and associated money laundering, which have done much to harm the reputation of the legitimate industry. ■

pirate CDs, 27,500 pirate cassettes 300,000 jewel boxes, 120,000 blank CDRs and 1,000,000 preprinted inserts and tray cards were seized. The daily production capacity was assessed to be 15,000 CDRs per day. ■

Los Angeles Sheriff's department searched a commercial printers in July 2001 and arrested three persons implicated in the illegal production of CDs. During the search approximately 18 million CD inlay cards were found as well as over 11,000 completed CDs and other equipment for finishing the product. ■

Ukraine

During 2000 the Ukraine was widely recognised as being one of the biggest exporters of pirate CDs internationally. According to IFPI estimates, the level of piracy in the Ukraine stood at over 95%. As a direct result of the Ukrainian government's inability to pass

▶ NORTH AMERICA

United States

Suffolk County, USA was the scene of a CDR replication plant, capable of creating as much as US\$100 million in illegal business. The investigation by the RIAA anti-piracy unit came to fruition in August 1999 when police officers were suspicious of the activities of two men in the vicinity of commercial premises. The behaviour of these suspects and the arrival of 'the boss' led to entry to the premises. Eight illegal Mexican immigrants were found and 104 individual CD burners, 26,000 completed

▶ MIDDLE EAST/S.W. ASIA

Israel

A joint investigation by Israeli Police and the local IFPI group led to the arrest of 12 persons involved in music piracy in September 2001. Tens of thousands of CDRs were seized along with CDR burners. Some of the twelve suspects had previously been involved in illegal production of music in Bulgaria, Russia and France. ■



Los Angeles, USA: Inside the printing facility.

Egypt

Inspectors from the Ministry of Culture and local police officers raided a warehouse in Tanta City in September 2001 and found at least 300,000 inlay cards for music cassettes and over 6,000 cassettes. The inlay cards were destined for different producers in Egypt and other Middle Eastern countries. The cassettes featured the latest releases of local artists. During the raid two suspects threatened the police and inspectors from the Ministry of Culture with a knife and sulphuric acid. ■



Egypt: Counterfeit inlay cards and cassettes.

Pakistan

Large numbers of pressed CDs are being shipped by courier from this country witnessed by the numbers of persons stopped by customs in divers countries and found in possession of such discs. Test purchases recently carried out in Pakistan also reveal that CDRs are available with video images of mutilated persons from various zones of conflict. One

such disc contains footage with both Arabic and English voiceover. Examination of these films reveals them to be carrying a propaganda message with an anti-American theme. ■

▶ RUSSIA/CIS

Moldova

A Ukrainian company exported more than 500,000 CDs using a Moldavian company. The putative recipients were companies in Austria, Latvia, USA and Russia. Investigations revealed that some of these companies and recipients were false. Storage facilities in Kishinev the capital of Moldova were raided in December 2000 and 558,000 CDs with an estimated value of more than \$US 250,000 were seized. ■

Russia

IFPI Regional Office for Russia/CIS with the co-operation of the Economic Crime Department of the Russian Ministry of Interior put a stop to the illegal activity of an under-ground Moscow based company involved in the pirate CD distribution covering Russian Federation and European territories. The raid in January 2000 resulted in the confiscation of 650,000 pirate CDs of international repertoire and around 2 million pirate inlays in one of the company's premises. ■

Anti-piracy staff from the IFPI Regional Office for Russia/CIS in collaboration with the Federal Security Service, Moscow regional city police conducted a complex series of investigative operations to expose an organised crime group, which illegally produced CDs at a CD plant in Noginsk (Moscow region). It is reported that illegal armed units in Chechnya were financed from part of the profit of this pirate activity. ■

Twelve members of a Russian organised crime group were sentenced to three years imprisonment in June 2001. They had been involved in illegal CD manufacture in Bulgaria and distribution in Russia since 1997 and it is estimated that over 2 million CDs were smuggled and distributed by them. The head of the group created more than twenty companies, which were engaged in the illegal importation of CDs. The suspects were arrested following a lengthy surveillance operation, which culminated in 400,000 CDs being recovered. ■

▶ LATIN AMERICA

Paraguay

Acting on a confidential lead, APDIF, the local anti-piracy organisation, accompanied by Paraguayan law enforcement authorities raided a fully operational CD plant in July 1999 with an estimated daily capacity of 50,000 illegal CDs. The seizure included 400,000 illegal CDs, CD processing machines, 80 boxes comprising computer towers and 340 infringing stampers. This represented a multi-million dollar investment by organised criminals. Thirteen people were detained: six Chinese, six Brazilians and one Paraguayan. The cost of the plant and the processing machines and products serve to illustrate the enormous resources available to the criminal enterprise and the cosmopolitan mix of team members.

In a related raid, a further 100,000 CDs were seized. Despite threats and bribes a destruction order was granted and the property burned in the presence of the Minister of Interior. ■



Paraguay: Firearms seized in raid on underground CD plant.

In Ciudad del Este, in the largest pirate CD plant located to date in Latin America, state of the art replicating equipment valued at nearly USD \$5.5 million and over 400,000 pirate CDs were seized by the Paraguayan authorities in November 1999. The sophistication of the syndicate involved was illustrated by the elaborate security employed at the plant, which included the construction of a secret compartment to conceal the main production facility. An earlier raid in July 1999 had proved unsuccessful as the concealed entrance was not discovered.

Two of the principal suspects, both ethnic Chinese fled the country and international arrest warrants were issued following searches of their residences, which led to the seizure of automatic weapons and ammunition. Additional raids were subsequently conducted by the Brazilian Police leading to the seizure of more firearms, the suspects travel documents and evidence linking them to the plant in Paraguay. The suspects are still at large and once again this case shows the involvement of organised crime groups from South East Asia in music piracy in South America. ■

Customs authorities intercepted a convoy of twelve lorries on the Argentine/Paraguay borders in

April 2001. A search of the lorries revealed 4.8 million blank CDRs as well as computers, hardware, software, printers, cigarettes, sunglasses and clothing. All these goods, which were on route to Ciudad del Este, had been smuggled into Paraguay by making a false declaration as to the contents of the lorries.

The main suspect operated a complex web of import and export companies operating behind front men. One of these men had previously been convicted in his absence in Bolivia for smuggling illegal music products. He also operated a large number of CDR burning sites and had long been suspected of being involved in producing infringing music product. ■

Peru

The enormous scale of CDR production in Latin America is again demonstrated by a series of ten raids carried out in Lima. Five hundred police officers were engaged in the searches during which 470,000 CDRs, 160 CDR burners, 535,000 cassettes, and 4.5 million inlay cards were seized. ■

Mexico

More than 1,200 armed police officers led a raid in August 2000 on the Tepito Market, Mexico, an area notorious with organised crime syndicates for the sale of pirated music and other counterfeit goods. In the strongest display yet of Mexico's determination to resolve the problem of piracy, some 30 people were arrested, and 60 trucks were loaded with seized pirate music CDs and cassettes. The operation follows a series of recent actions in the Tepito region, including the seizure of 500,000 illegal audiocassettes from a warehouse in April, and the discovery in February of two clandestine laboratories. These were operated by a syndicate which now faces extensive criminal charges under Mexico's recently introduced intellectual property legislation. ■



Paraguay: Convoy of trailers stopped by the authorities (main photo). The lorries being searched (inset).

Police raided eleven houses, three of which were linked by interconnecting passages and tunnels, disguised by false walls, in October 2001. Inside they discovered a massive counterfeiting operation. In total five persons were arrested during searches, which yielded 235 CDR burners, over 1 million blank CDRs and 512,000 pirated CDRs together with over 1,000,000 inlay cards. This illegal plant had the potential capacity to produce over 14 million CDRs annually. It is believed that this crime syndicate has invested the profits from piracy into other activities such as narcotics and prostitution. Four of the persons arrested were found to be in possession of loaded 9mm pistols. During the searches a car was deliberately crashed into a police barricade and the driver arrested. This man, an associate of the others, had been sent to the address to create a diversion to allow the others to escape. He was found to be in possession of an AK47 assault rifle and has now been charged with attempted murder. ■

Operation 'Green Light' led to 68 search warrants being executed in a series of coordinated nighttime raids in October 2001. The searches in the district of Tepito, Mexico City were executed at this time to avoid risks of serious civil disturbances. Despite the fact that no persons were arrested during the raids all the objectives were met and resulted in the seizure of 860,000 pirate music CDRs, 130,000 pirate music cassettes and other miscellaneous items, 3 CD-R reproduction laboratories, 5 printing laboratories, and 4 warehouses in which raw material was assembled. All this equipment was successfully dismantled. ■

► SOUTH EAST ASIA

Hong Kong

Following the seizure of US\$ 300 million worth of pirate product in December 2000 by the Hong Kong Independent Commission against Corruption (ICAC) investigations have continued to secure evidence against the syndicate involved. During the original seizures a large number of stampers were seized and these were found to contain software, films and games as well as music products. Investigations have revealed links to crime syndicates in North and South America as well as other South East Asian countries. ■

Indonesia

A raid conducted by Indonesian Police in Central Java in February 2001 highlighted the lengths to which an illegal business will go to protect their operations. Premises were protected by a series of large concrete walls and a reinforced concrete floor. Within the perimeter walls were found large numbers of poisonous snakes. These measures delayed the entry into the factory allowing the suspects to destroy much of the evidence of illegal production. Nevertheless large amounts of infringing material were found together with five production lines and a large amount of polycarbonate. ■

In February 2001 West Jakarta Police broke into a heavily fortified factory and discovered four production lines three of which were in operation. During the search the raiding team were forced to abandon the premises after a local armed militia group sought to engage the police in a fire-fight in an effort to recover the premises. ■

Malaysia

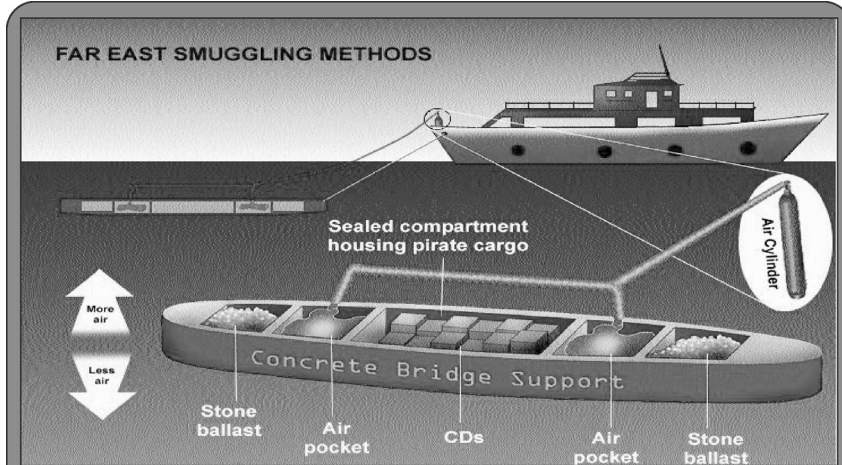
During March 2001 a raid on an optical disc manufacturing plant that contained three production lines two of which were operational, found that both lines were producing CDs, which contained **pornographic material**.

During the search 15 stampers were recovered all of which contained international and Chinese repertoire. In addition large quantities of film and pornographic discs were seized. ■

Philippines

A raid was conducted by the Philippines authorities in October 1999 at a clandestine CD production facility in Manila resulting in the seizure of 53,000 pirate music discs, 396 stampers and one replication and printing line. Subsequent inquiries by IFPI Regional Enforcement Office have identified a Hong Kong based syndicate responsible for the financial and logistical establishment of the plant and a Macao-based company involved in the production of the pirate stampers. The whole operation has revealed strong links to a Hong Kong-based organised crime operation. ■

National Bureau of Investigation agents and IFPI investigators raided a suspect CD factory in September 2001 and found two replication lines in operation producing two compilation albums. A search of the premises revealed a total of 466,740 pirate CDs containing both local and international music. In addition 377 stampers were recovered, all containing music recordings. ■



Macao: When opened the submarine was found to be carrying several hundreds of thousands of discs worth in excess of HK\$ 5 MILLION.

Macao

The IFPI South East Asia Regional Enforcement office had been working closely with the Macao authorities to help identify organised crime gangs smuggling pirate discs from the enclave to Hong Kong in April 1999. One of the methods discovered was the storage of pirate discs in sealed oil drums in underwater locations prior to collection by smugglers, a tactic frequently deployed by high level international drug traffickers.

However, the scale of their growing sophistication was illustrated by the interception of a Mainland Chinese fishing boat entering Hong Kong waters from Macao by Hong Kong Police. On close inspection the vessel was found to be carrying a submerged object. When the object was floated it was found to be a 14 metre concrete bridge support, which had been modified to transport pirate optical discs (see illustration above). When opened the 'submarine' was found to be carrying several hundreds of

thousands of discs worth in excess of HK\$5 million. The crew of the fishing boat was arrested. ■

Thailand

A special task force of the Royal Thai Police conducted 10 search and seizure operations during April and May 2000 in respect of 3 optical disc manufacturing plants and 7 storage facilities. IFPI investigators together with other copyright based organisations, participated in the raids which resulted in the seizure of in excess of 100,000 pirate optical discs. In addition, a total of 24 persons were arrested including Taiwanese, Malaysian and Chinese nationals who were found to be involved in the multi-million dollar operations of the plants. ■



Taiwan: Illegal firearms uncovered during raid.

Taiwan

A raid on residential premises in Kaoshung City in May 2001 revealed 70,000 suspected pirate discs. Most contained pornographic material but more significantly the search of the premises revealed several illegal firearms. These guns were Italian and German self-loading pistols. Five persons were arrested.

As a result of these arrests, further searches were carried out and small quantities of pirate product and further firearms seized.

At a third premises an illegal arms factory was discovered running alongside a sophisticated CDR facility. In total 17 rifle barrels, 7 modified handgun barrels, 10 shotgun barrels, 10 cartridge magazines, 50 bullets and other equipment were seized.

The main suspect in this case had previous involvement in music piracy. ■

What is IFPI?

IFPI is the organisation representing the international recording industry. Its membership comprises over 1400 record producers and distributors in 76 countries. It also has national groups in 46 countries. IFPI's international Secretariat is based in London and is linked to regional offices in Brussels, Hong Kong, Miami and Moscow.

IFPI's Mission:

- ▶ Fighting music piracy.
- ▶ Promoting fair market access and good copyright laws.
- ▶ Helping develop the legal conditions and the technologies for the recording industry to prosper in the digital era.
- ▶ Promoting the value of music in the development of economies, as well as in social and cultural life.

**Music Piracy, Organised Crime and Terrorism
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IFPI Enforcement



representing the
recording industry
worldwide

"Intellectual property related crime, such as music piracy, is a major and growing problem which should be of concern to all."

Excerpt from statement by G8 Foreign Ministers

IFPI's Enforcement Department offers support to investigators worldwide in the investigation of music piracy.

IFPI can provide:



Research and analysis using the most current techniques and databases for identifying criminal activity, international criminal associations, patterns and trends.

analysis@ifpi.org



Forensic examination of questioned samples; making comparisons against exemplars and control samples of legitimate optical discs, documentation and music products.

forensics@ifpi.org



Training in investigative techniques both reactive and proactive. The expert gathering of evidence and its submission to judicial authorities.

training@ifpi.org



Investigative & technical expertise, offering assistance and support throughout the investigative process, facilitating access to computer forensics and on-site inspection and examination of complex machinery.

techops@ifpi.org



Legal input on draft legislation and supplying model provisions relevant to anti-piracy enforcement.

info@ifpi.org

The IFPI enforcement team are all highly experienced crime investigators who are committed to a zero tolerance strategy.

Chairman HYDE. Thank you, Mr. Grant.
Mr. Johnson?

**STATEMENT OF LARRY JOHNSON, CHIEF EXECUTIVE
OFFICER, BERG ASSOCIATES, LLC**

Mr. JOHNSON. Thank you, Mr. Chairman. I have a PowerPoint presentation put up. I want to commend you and the Committee for acting proactively.

If you would have asked me 5 years ago if counterfeiting and terrorism were linked, I would have said no, but as a result of personal experience I know for a fact that they are. I have dealt with three different family merchant groups in the Colon Free Zone of Panama who have ties to terrorist organizations. All three have direct ties to Middle Eastern terrorist groups, two of them I know for a fact with ties to Hezbollah.

I think it is wrong to focus too much on Ciudad del Este. You are absolutely correct. I have been there. It is a problem, but it is important to understand that this nexus, the potential for terrorism and counterfeiting, is a global phenomena, and the center that it operates out of are these free trade zones.

True, most of the commercial activity in those free trade zones are legitimate, but, nonetheless, it is just like a superhighway between New York and Washington. All sorts of people can travel that highway—the good, the bad, the ugly. What you have with these commercial free trade zones is an infrastructure that criminal gangs take advantage of.

You notice in this hemisphere you see Colon Free Zone in Panama, Maicao in Colombia, Ciudad del Este on the Paraguay-Brazil-Argentine border and then Iquique in Chile. I raise those because when you look at who the merchants are in these free trade zones it varies by zone. In Panama, for example, about 25 of the merchants are Jewish, about 30 percent are Arabic, another 20 or 25 percent are Hindu, and then the rest are Chinese and Latin.

There is, when you move to Maicao and to Ciudad del Este, you find that a majority are in fact Arabic. This is not to impugn all Arabs, but the facts are that in these societies these are family criminal groups by and large that operate. The Barakats were mentioned as one. They are one of the six that have been identified with direct ties to Hezbollah. When I talk about family groups, they are not just sitting in one isolated location. Cousins, brothers, relatives are in these different free trade zones. They send them out to staff those places.

If we go to the next slide, please? I would like to focus just briefly on Colon. I can show you the picture of one of the folks who himself was a self-proclaimed terrorist. The Colon Free Zone sits at the north end of the Panama Canal. Unlike Ciudad del Este, which is not on a port, Colon is the second largest port outside of Hong Kong and is probably the least known area in the world.

Next slide? There are actually four different ports in Colon. The picture on the lower right-hand side shows the warehouse district, which is known as France Field. France Field is an area in which these 40 foot shipping containers come off of the boat.

Let us establish very clearly, and I want to reinforce what Secretary Noble and Secretary Hutchinson said. The process works

this way. The counterfeit goods, the production of them, in my experience has been brokered by a group predominantly of Hindus or Sindis, many of whom are Muslims, that come off out of the western part of India that abuts Pakistan.

These individuals are multi-lingual. They are based in Hong Kong, based in Central America and the Colon Free Zone. They literally have catalogs. You can go to them. You tell them what products you want to make, you look through the catalog, and they ask you what quality. You can get an exact replica knock-off, and I have had one experience with one of my clients. We bought a blender and took it back to them. Their engineers spent 20 minutes with it before they could figure out it was a counterfeit.

At the other extreme, we have run into things like coffee makers, waffle irons. You plug them in, they work once, and they immediately burn up, so you have, you know, quite the spectrum. I think it goes to a question that I think Congresswoman Watson asked earlier. It is impossible to come up with technology to distinguish between these things because there are so many different variants.

Next slide, please? I want to show you just two examples to illustrate that point. This is what those brokers will broker. When they broker the production, the production, as Secretary Hutchinson noted, takes place in Asia, predominantly in China. In many cases in China, I am told, the factories are being run by military and political officials of the Government of China.

When United States companies go to China to try to get enforcement activity to shut those factories down, there is little or no cooperation. It is not just in China. It is in Taiwan. It is in Thailand. It is in that Asian region. They do the manufacturing, they load it up, and they ship these products.

The product on the right, if you look, is Goldgate toothpaste. It looks like Colgate, but they changed the spelling of it. Similarly, not PlayStation, but PolyStation. Now, they begin to get clever once the heat comes on. You find little changes of word. You also find in Panama Sidney's. It uses the exact letter of Disney's, but they have simply swapped the S and the D.

Go to the next slide, please. These are counterfeit Oster blenders. The counterfeiters in Latin America—Oster is a very popular product there, and they do an exact replica knock-off. You can end up telling the knock-offs by the price differential. When you find it selling for anywhere from 30 to 40 percent less than the genuine retail price, you know you have a problem.

Next slide, please? I would like to introduce you to Mr. Walid Zayed Massis. He was one of the first companies that we went against in the Colon Free Zone for counterfeiting. When we walked in and finally conducted the raid with Panamanian authorities, the Panamanian working with me just turned and mentioned as a matter of fact. He said you know this guy is a terrorist. I said what are you talking about, a terrorist? He goes no, really. He also holds the distinction of being the first person convicted in Panama of money laundering, which I guess is quite an accomplishment.

Let us go to the next slide. This is the book that Mr. Massis wrote. Graduated from law school in Colombia, he was the representative for the Intifada from the Palestinian groups operating

against Israelis. He was the point of contact for those Palestinian terrorist groups in Latin America.

Now, why would they want to contact somebody in Latin America? It was just not moral support, in my judgment. I do not have proof. I have not gone through his bank accounts to establish wire transfers from his businesses to those groups in the Middle East, but he was engaged with product counterfeiting. In his own book he acknowledges traveling covertly to meet with these terrorist groups in the Middle East.

That is why I come back to the point. I do not know if he has actually funded terrorism, but I do know that he has been engaged with violations of intellectual property rights, and I do not think it is an unwarranted conclusion to take the next step to say that it is very likely that funds generated in this activity have found their way into terrorist hands.

Next slide? This just gives a summary of Mr. Walid's activities.

Let me close by just emphasizing a couple of things that I think are important for Congress to do to address this problem. Something needs to be done about China. They cannot continue to be a major force for producing counterfeit merchandise and suffer no consequence. There has to be concerted international pressure in that regard.

Secondly, individuals that are involved with the actual distribution and sale of counterfeit items, particularly overseas, right now are still allowed to travel to the United States, even if caught and convicted of an IPR crime.

I know of one specific case in Venezuela, and it took 3 years to work through the court system down there. Once the conclusion came out, we went to the U.S. Embassy and suggested that the individual's visa to the United States be lifted. We were told we cannot do that because he has not committed a crime that under visa law would allow him to be excluded.

What he was doing was he would come to the United States to these merchandise conferences to see what the latest legitimate merchandise was, take careful note, and then he would go back to the brokers and get the order placed in China. That has got to be stopped.

The third area of attention where at least Congress I think can encourage is the United States companies and corporations that are selling products overseas with manufacturing outlets in China, they need to work together better because in many cases they will try to attack the problem individually. It is much bigger than any one company.

Thank you, sir.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF LARRY JOHNSON, CHIEF EXECUTIVE OFFICER, BERG ASSOCIATES, LLC

Mr. Chairman and members of the committee I want to thank you for the invitation to testify at this very important hearing.

For the record my name is Larry Johnson. I am a founder and partner in BERG Associates, an international consulting firm that specializes in investigating product counterfeiting, money laundering and counter terrorism. We provide case support to DEA and US Customs, military exercise support to the Department of Defense, and compliance and due diligence support to financial institutions and brokerages. Be-

fore starting BERG Associates I served with the Central Intelligence Agency (1985–1989) and the US State Department’s Office of Counter Terrorism (1989–1993).

I commend this committee for shining the light of publicity on the relationship between terrorism and product counterfeiting. I do not know if the proceeds from counterfeited goods have funded terrorism but I do have firsthand knowledge that individuals and families with direct ties to terrorist groups have been involved with product counterfeiting and have profited from selling counterfeit goods.

Most people know what terrorism is, but few understand the scope and scale of product counterfeiting. Moreover, why would a terrorist want to sell a counterfeit toaster or pack of cigarettes? The answer is simple and direct—money. All terrorist groups—Marxists as well as the Islamic extremists—need money to plan, organize and conduct terrorist attacks.

Money may not be the root of all evil but it is a critical resource for any group that wants to carry out international terrorist attacks. Building a car bomb or hijacking a plane does not require a vast fortune; these things can be done relatively cheaply. But these activities still depend on funding. Aspiring terrorists must be taught how to build bombs. They need a physical place to train, qualified instructors, access to the materials required to assemble a device, and the time to devote to this activity without having to worry where the next meal is coming from.

Beyond the costs of recruitment and training, international terrorists also face the bugaboo of logistics and travel expenses. International terrorists do not have their own “Transportation Command”. They cannot call on a fleet of military aircraft or ships to move them from point A to point B. When they travel from one country to another, whether for planning or conducting an attack, they must use some form of public transportation (or else they must walk). They travel like most private citizens. They buy airplane tickets, they get on trains, they board ships or they drive cars. This means they have to have cash or a credit card. And once the terrorist arrives at his destination he still has to cope with the mundane tasks of paying for daily living expenses.

Prior to 1991, almost all active terrorist groups relied in some measure on countries (e.g., the Soviet Union, Iran, Iraq, Libya, Syria, Saudi Arabia, Greece, and Cuba) to bankroll their activities. But the collapse of the Soviet empire in 1991 cut off an important source of funds to many terrorist groups, especially communist groups. Moreover, states that had funded and protected terrorist groups began reducing their support in the face of international pressure. Libya, for example, dramatically scaled back its support for terrorist groups following UN sanctions levied against it for its role in the bombing of Pan Am 103. Consequently, terrorist groups turned to a variety of activities, including charitable contributions, narcotics trafficking, cigarette smuggling and, I believe, selling counterfeit products.

WHY COUNTERFEITING?:

The violation of intellectual property rights by the distribution or sale of counterfeit goods offers an attractive, profitable method for making good money while avoiding the penalties associated with high risk activities such as smuggling or drug trafficking. The latter are more likely to attract law enforcement attention and can carry hefty legal costs for those caught doing these things. Selling counterfeit products, however, is a relatively risk free activity. Even if caught in the act a merchant probably will suffer nothing worse than the loss of the money he spent to purchase the goods and having the counterfeit products confiscated. A merchant rarely is jailed for selling or distributing counterfeit merchandise.

What is the appeal of counterfeit merchandise? People around the world, regardless of income level, want to buy name brand products and, if offered a discount, will grab it up. Counterfeit products bear the labels of Sony, Ralph Lauren, Calvin Klein, Philip Morris, Black and Decker, Nike, Reebok, and Sunbeam but can be had for a price that is 60% to 70% of the original. The market for products that violate intellectual property rights is huge and encompasses all products, including clothing, stereo equipment, household appliances, televisions, liquor, cigarettes, compact discs, dvds, and shoes.

The IPR violations take three basic forms (these are not mutually exclusive):

- Copyright infringements—A merchant will sell an item that is contained in a package that outwardly is an exact replica of the original. Merchants armed with CD copy machines can churn out illegal copies of hit CDs and package them in a way that the average consumer will not realize is a copy. In several raids in Panama on behalf of Sunbeam Corporation, we have seized products like coffeemakers and rice cookers that were packaged in an exact replica of the Sunbeam/Oster box but contained products that were cheap knock offs.

For the unsuspecting consumer, if the package bears the name of a major brand label they expect a certain level of quality.

- Trade Dress infringement—Similar to a copyright infringement except the packaging is not an exact replica. The packaging imitates the look or replicates the colors of the original but alters some details, such as the product name. For example, we helped seize a dvd-based game system that imitated the artwork of a SONY PLAYSTATIONS but the box was labeled “POLYSTATION”. One of the first raids my company conducted in the Colon Free Zone of Panama was against Overseas Dispatcher, International, a company owned by Mr. Walid Zayed. Mr. Zayed has direct relations with Palestinian terrorists and claims to be the Latin American representative for the “Intifada”. Mr. Zayed, who is also a convicted money launderer, was selling products that outwardly used the same color and artwork as Sunbeam OSTER-brand products but bore the name, “ASTOR”.
- Trademark or Patent infringement—Products that are protected with a trademark or patent are reproduced by unauthorized manufacturers and sold by unauthorized distributors. The quality of the replication varies. In some cases it is almost impossible to tell the difference between the counterfeit and the original. In other cases the poor quality of workmanship makes it quite clear which is legitimate and which is illegitimate.

Counterfeit products and packaging create a host of problems. At a minimum, such products create confusion among consumers, who think they are buying a genuine brand, only to discover later that they have an imitation. Consumers eager for a good deal usually do not hesitate to pay a lower price for something they believe may be genuine.

Counterfeiting not only diverts revenue from the company and workers who produce the legitimate items, it also creates a potential tort liability for the companies whose goods are being knocked off. When consumers buy a product that looks like the real thing but is in fact made of inferior material and lacks the safety features found in legitimate products they might have a cause of action against the producer of the legitimate article. More often than not, the counterfeit products are of such an inferior quality that they represent a potential danger to the consumer. In one case we seized coffeemakers that would literally short out after making one pot of coffee. In another instance a waffle iron started smoking as soon as it was plugged into an outlet for the first time.

KEY PLAYERS IN COUNTERFEITING:

Southeast Asia, particularly China, is the major manufacturing center for counterfeit products. Besides China, my company has identified counterfeit manufacturing operations in Thailand, Taiwan, Indonesia, and South Korea. Many U.S. companies who have set up manufacturing plants in China have learned to their chagrin that the Chinese are quite good as copying products, especially those not covered by patents or trademarks. However, in our experience the Chinese have not been willing partners in trying to crackdown on counterfeit operations. In fact our sources tell us that Chinese government and military officials in certain provinces are involved directly in the counterfeiting activity.

Another set of key players in this process are the “Hong Kong Brokers”. According to testimony and documents we have collected in the Colon Free Zone, the “Brokers” are Hindu merchants (actually Sindis) based primarily in Hong Kong and Central America who offer to produce any merchandise someone wants to sell. A merchant in Panama who wants to acquire and sell counterfeit products has several options:

- They can visit the office the brokers maintain in the Colon Free Zone and place an order, or
- They are visited by a sales representative for the broker, who has a catalogue that describes potential products, or
- They can travel to Hong Kong (there are biannual fair in March and October of each year) to view merchandise and place orders.

The product brokers specialize in providing “knock-off” items, arrange for the manufacturing, and facilitate the delivery of the finished goods.

The final set of actors are the merchants that work in free trade zones (Figure 1). The free trade zones provide retail and wholesale merchants a chance to buy inventory for their businesses on a tax free bases. The Colon Free Zone of Panama is the second largest trade zone in the world. In addition to Colon, there is the city of Maicao, Colombia, Ciudad del Este, Paraguay, and Iquique, Chile. Most Americans have never heard of these cities. These trade zones provide a massive distribu-

tion point for merchants who work inside those zones. In my experience the majority of commercial activity in these areas represents legitimate commerce. However, I also know from personal experience that there is significant movement of counterfeit and contraband merchandise.

Who works in these free zones? The answer depends on the country. In Panama, for example, about 25% of the merchants are of Arab/Islamic descent. Another 30% are Jewish immigrants, 20% Hindu, and the remainder made up of Chinese and Latinos. Maicao, Colombia and Ciudad del Este, Paraguay, by contrast, are dominated by Arab/Islamic merchants.



Figure 1—CENTRAL AND SOUTH AMERICAN FREE TRADE ZONES

Among the Arab/Islamic family groups who work in the Colombian and Paraguayan free zones, there are at least six that are known to the US intelligence community as having direct ties to Hezbollah. At least three of these families have businesses in the Colon Free Zone. My company has conducted undercover investigations against two of these family groups and found them trafficking in merchandise that violated the Intellectual Property Rights of a U.S. publicly traded company.

Many of these family groups also have businesses in Maicao and Ciudad del Este. Ciudad del Este is located in the southern cone of Latin America in a region known as the “Tri-border” area. It is here that the countries of Brazil, Argentina, and Paraguay come together. The Paraguayan city, Ciudad Del Este, is the hub of this region. It is known as a major market for counterfeit and smuggled goods. It also has been the home to a significant Muslim population. One of the residents, at least until recently, is Assad Barakat, a Lebanese-born Paraguayan citizen, who is the enforcer and top fund raiser in the region for Hezbollah, according to Paraguayan and Brazilian authorities. Barakat is alleged to have played a role in terrorist attacks carried out in Argentina in 1992 and 1994.

Outside of our hemisphere Dubai figures as another important Trade Zone for the distribution and sale of counterfeit products. In the course of investigations carried out by my company we have discovered links between businesses in the Colon Free Zone and the Free Zone in Dubai. Dubai appears to be a major gateway for the movement of counterfeit and contraband goods into Iraq, Afghanistan, and Pakistan.

TERRORISM AND COUNTERFEITING:

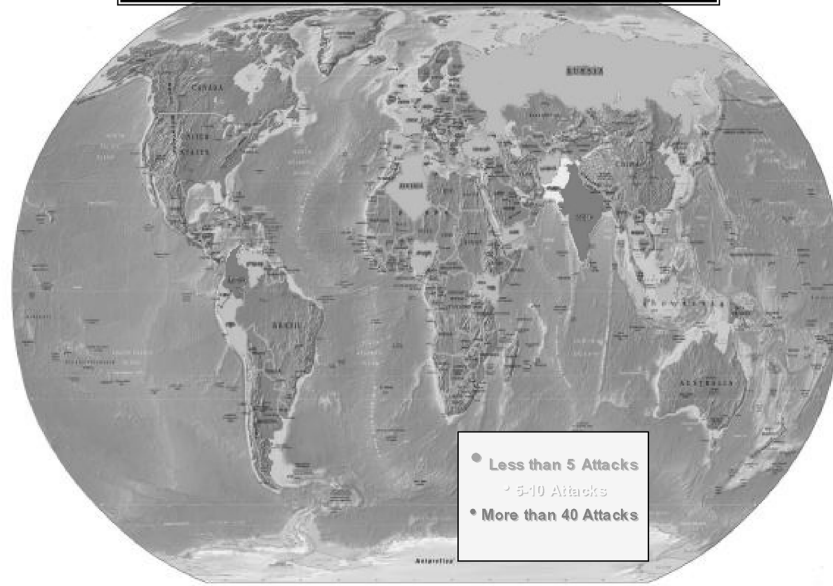
It is important to understand the facts about international terrorism, particularly terrorism in Latin America, in order to appreciate the full implications of the counterfeiting activity. [The following is drawn from the recently published US Department of State, PATTERNS OF GLOBAL TERRORISM 2002.] Last year international terrorist incidents fell to their lowest level in 34 years—199 attacks in 2002. If we examine the details we find that the incidents and fatalities are concentrated in two specific areas of the world, Latin America and South Asia (see Figure 2).

- India and Colombia together accounted for almost 60% of all international terrorist attacks (34% in India and 23% in Colombia). For the first time in five years, a country other than Colombia accounted for most of the terrorist attacks.
- There were 725 deaths worldwide from international terrorism. 80% of these were caused in 68 attacks that occurred in five countries (India, Pakistan, Israel, Russia, and Indonesia). Islamic extremists were implicated in all of these attacks.
- India, with 31, and Israel, with 25, experienced the most attacks that caused deaths.
- Out of 2013 injuries worldwide from international terrorist attacks, 99% of these occurred in seven countries (India, Pakistan, Philippines, Israel, Russia, Indonesia, and Kenya).

Looking back over the last two decades, the vast majority of international terrorist activities in our Hemisphere have been planned and carried out by Marxist-Leninist groups rather than Islamic extremists. The Colombian terrorism has been directed chiefly against the people of Colombia and the foreign companies who are building and maintaining oil pipelines. Although the FARC and the ELN have shied away from attacking foreign targets outside of Colombia, they have conducted vicious bombings and kidnappings inside Colombia. These attacks have left thousands of Colombians grieving and suffering.

Although not very active, Islamic extremists have made their presence felt through isolated terrorist attacks in South America. The 1992 bombing of the Israeli Embassy and the 1994 attack on a Jewish Community Center, both in Buenos Aires, reportedly were staged from the tri-border area in northeast Argentina.

2002 International Terrorist Incidents



WHAT TO DO ABOUT THE PROBLEM?

I can illustrate what we should do about the problem of counterfeiting by recounting an anecdote based on my experiences with aviation security during the 1990–91 Gulf War. In the fall of 1990 the U.S. Government led an international effort to upgrade aviation security standards and practices in order to prevent possible Iraqi retaliation. The ensuing international cooperation was terrific. When hostilities began in January of 1991 the security measures were put in place and there were no terrorist attacks. We did not anticipate, but were pleasantly surprised to learn, that as a result of the security measures there was a dramatic increase in the number of people apprehended carrying stolen airline tickets, money, and drugs. We learned that security measures designed to defeat terrorism would also deter and interdict other criminal behavior.

Although there is no obvious, significant link connecting terrorist attacks to product counterfeiting, the infrastructure for the activity and threat is in place. Let me suggest that strong national and international efforts to crackdown on this activity are likely to serve as a deterrent and preventative measure against future terrorist attacks. In this regard there are some specific things that can and should be done.

First, we are plagued by the classic problem—since there is no apparent immediate threat there is no urgency about concentrating resources to address this threat. At present only the IPR Center at what was once known as US Customs is the only US Government organization focusing on this problem. The Congress and the President can perform an important service by encouraging the various law enforcement and intelligence agencies to pay more attention to this activity.

Second, we need to impose some significant penalties on those who are involved with counterfeiting. Many of the merchants who traffic in counterfeit goods attend merchandise conventions in the United States. One merchant in Venezuela, for example, was convicted and fined for counterfeiting video games. The US Company that owned the intellectual property rights asked the US Embassy to refuse to grant the merchant a visa. The US Embassy refused to grant the request claiming that under current visa laws they had no power to refuse a visa to a prominent merchant.

Third, we need better international cooperation and coordination in addressing the threat of counterfeit goods. China in particular should be a focus of international pressure. As long as China continues to provide factories for manufacturing

counterfeit goods the problem will continue. Stop the production and you significantly reduce the problem.

Fourth, we need the companies who are the victims of counterfeiting to work together in a coordinated fashion. I realize that companies need to protect proprietary information. Companies like Sony and Hitachi, for example, have been unwilling to cooperate with each other in going after merchants who are selling counterfeited products, putting more emphasis on keeping corporate information secret rather than stopping the counterfeiters. Better cooperation among the private sector is just as critical as improved cooperation between governments.

Finally, we should not be myopic in the war on terrorism. If we view terrorism as one phenomenon and ignore the other activities, like counterfeiting and drug trafficking, we run the risk of Balkanizing our national security/law enforcement apparatus. The threats of the 21st Century require an integrated coherent approach. We ignore the interrelationships at our peril.

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Chairman HYDE. Thank you very much, Mr. Johnson.

Ms. Watson?

Ms. WATSON. I want to thank all of you and particularly Mr. Johnson. Interpol seems to be an organization that coordinates around the globe. What is it that we can do here in Congress to be able to support your contention and what the rest of you are trying to do through Interpol? I mean, what is it that is missing that we might be able to fill in?

Mr. JOHNSON. Apart from the things I have mentioned, I am not sure there is a lot because really the problem resides in these countries.

Example. To carry out an enforcement activity against a violator of an intellectual property right, whether you are talking a copyright, trademark, patent, in a place like Panama the company has to follow the laws of Panama, register the product and make sure that they have not made any mistakes in that regard.

Once those are registered, then you are looking at what those governments will do in order to enforce, and that varies country to country. Different countries have different procedures. Some are tough. Some are not.

Ms. WATSON. Let me just query that a bit. The rule of law changes from country to country. The Attorney Generals in these nations; would a conference of these Attorney Generals, Interpol and other agencies coming together to see this piracy issue as a global problem impacting on their countries, as well as ours, would that be helpful? I am talking about the rule of law because I know it gets shaky as you move in various places.

Mr. JOHNSON. I agree with you. I think something like that could be helpful. U.S. leadership on this will play a role.

Up to this point, as has been noted before by Members of the Committee, as well as some of the other witnesses, because counterfeiting is viewed as a victimless crime and because the cost is dispersed among so many different industries, those particular industries that are hurt by it are concerned, but it is tough to awaken folks to this problem, so it does not really get the attention. It is never on the top of the list when the President goes overseas to deal with a foreign government.

I think once the signal is sent by the United States and with it an assembly of Attorney Generals to say let us look at this, because what we now know about the nature of terrorism is that the days

of state sponsorship where direct funds from states are passing. These groups increasingly are turning to the entrepreneurial activity, whether it is cigarette smuggling, arms trafficking, counterfeiting or even setting up legitimate front businesses.

That is where it is important that law enforcement, by acting proactively against these threats, can actually accomplish a lot, so I think your suggestion is quite good.

Ms. WATSON. WIPOL, the unit within United Nations, is an organization we have been talking to about this exact issue, and I am thinking should we raise it to the level of the United Nations or use the influence of the United States? Can you respond?

Mr. JOHNSON. I have not had any experience with the United Nations on this. I have not found them useful in my experience. Perhaps my other colleagues on the panel might have some other views on that.

Mr. GRANT. I would like to say that if you are asking what the American government can do to help with this problem—

Ms. WATSON. That, too.

Mr. GRANT [continuing]. I think one of the major things is the priority watch list under the 301. That seems to have an effect to focus the minds of governments.

I find that where we have a political way, we are likely to follow on in that country with, first of all, you have to rightfully play a role in getting effective legislation. When you have effective legislation, that can follow with effective enforcement, and then you come to the criminal justice system part with the Attorney General so the prosecutions go through, and you end up with the sentences.

You need the whole criminal justice system to be engaged to tackle this problem, so I think that is one area in which the American government can galvanize a more standard approach across the globe.

Ms. WATSON. Thank you.

Chairman HYDE. The gentlelady's time has expired.

The other gentlelady from Florida, Ms. Harris?

Ms. HARRIS. Thank you, Mr. Chairman.

I really appreciated your testimony. It was very interesting and intriguing, and I think the real issue is the communication across the board to make citizens aware of the consequences of buying these things not only in the U.S., but other nations.

Number one, how can the United States best assist other countries in terms of making their enforcement issues a bigger priority, and where do you think we need to begin concentrating our efforts? I read that in Latin America over 50 percent of the compact discs are counterfeit that are being produced. In Pakistan, they say that they are responsible for exporting millions of pirated optical discs that are being shipped to the United States.

Those are my first two questions, and then I have some more. What can we do to make stronger enforcement? What can we do to assist other nations first, and where should we begin?

Mr. TRAINER. If I may, I think, first of all, there have been for a number of years many technical assistance programs going on. Whether it is U.S. Government supported, the World Intellectual Property Organization, the World Customs Organization or other

intergovernmental organizations, frankly, there have been training programs going on for years.

I think that what we really need to insure is a multi-level approach both at the policy level with our trading partners and also at the practical level, the guys on the streets. You have to hit the different levels, and it really has to be an operational type of style, of approach. We cannot talk about it just from a policy level.

Also, I think through trade agreements that we have recently concluded, like with Singapore and Chile in the bilaterals, we have upped the ante a little bit on enforcement of intellectual property. One, yes, get it in the agreements, but, two, insure that they are being implemented appropriately.

Ms. HARRIS. Did we up the ante enough, number one? Are we seeking indictments and arrests? Is it too premature? Are our resources not focused enough? Are there any jurisdictional hurdles, or are these mainly overseas problems?

I mean, I know that we are saying we are doing these things, but just to see the kind of active results.

Mr. GRANT. I think if you are looking at physical piracy, it is actually quite simple because the criminals involved have to make it, they have to move it, and they have to sell it, so from an enforcement point of view it is not difficult to focus on these three areas.

The message is simple to government. They should get their law enforcement agencies fully engaged in this problem because it has been very well articulated already today of the organized crime involvement and links to terrorism, so it is a problem that has to be tackled.

Mr. JOHNSON. I would just add as well that I think the notion of putting this into a database that is integrated and accessible by law enforcement is important.

You know, sometimes these folks engaged with the counterfeiting, they dummy up the invoices. I recall there was a shipment of eight containers of Philip-Morris cigarettes that came into the Colon Free Zone to a guy named Sacadeo Hidore. They were all packaged as toys, clothing and tennis shoes for children.

Putting that information into a database once you have identified an offender and then the follow up and monitoring, that is critical. That is something that does not happen, I do not think.

Ms. HARRIS. The data says from 1998 to 2002 there were over 19,000 shipments valued at \$375 million that were in counterfeit goods. Is there a database? Do you track the shipping company? Do you track the ownership? I mean, is there this kind of thing so we can see, you know, and follow actually who the criminals are?

Mr. JOHNSON. I do not think so.

Mr. GRANT. I do not think there is an international database. I think individual, private companies do some intelligence gathering, which they pass to law enforcement agencies.

I think Mr. Noble's point about getting a central database is a very valid one and one that should be taken forward.

Mr. TRAINER. I would also add that I think with Mr. Grant's industry where it is music only there are certain things there that you can focus on, but when you look at the examples of counterfeits on that table over there the reality is that anything and everything that has risen to a level of fame or well-recognition by the con-

sumer counterfeiters will take advantage of. It really does not matter.

I mean, there is a fire extinguisher up there bearing a counterfeit Underwriters Laboratories certification mark because the counterfeiter knows that the UL mark means something to the buyer. The counterfeiters do not exclude any kind of product from counterfeiting or piracy. This does raise a challenge for not just industry, but for law enforcement.

Ms. HARRIS. Is my time up?

Chairman HYDE. The gentlelady's time has expired.

Ms. HARRIS. Thank you.

Chairman HYDE. The gentleman from Florida, Mr. Wexler?

Mr. WEXLER. Thank you, Mr. Chairman.

In the last panel, Under Secretary Hutchinson, when asked which countries were the biggest violators or biggest problem, he indicated roughly that China was responsible for a little bit less than half of the detected counterfeit or pirated materials by the Customs Department, that Taiwan was about half of that, I think he said roughly 25 percent, and that Hong Kong was four or 5 percent.

I would be curious if you could detail for the Committee what you believe would be the most effective strategy in terms of persuading those countries and governments to be more diligent, and I say this with a bit of background in that at the beginning of this year I, along with others, was in Taiwan and talked about this issue with President Chen.

In contrast to China, President Chen as an individual, the President of the country, seems to be as vigilant as possible in terms of both acknowledging the problem and wishing to deal with it. When many Members of Congress talked to our counterparts in the Parliament in Taiwan, many of them also expressed a willingness to deal with the issue both through legislation and through enforcement, but the facts speak for themselves, and still a significant amount of pirated material is being manufactured in Taiwan.

In China, on the other hand, while I think some people can point to some degree of cooperation, I do not think we could say that the same elements of acknowledgement exists in their political leadership as does in Taiwan.

I would be curious if you could identify what you think is the best strategy to deal with the problem, particularly in China where they do not have a democratic government and where they do not acknowledge the problem and then contrast that to a place like Taiwan where it is a democratic government where they do acknowledge the problem, but yet either through a lack of enforcement or other means do not appear to be getting the results that we would hope that they would.

Mr. JOHNSON. What I would like and what is feasible are probably two different things. In fact, in my experience what I have seen, material coming out of Taiwan actually comes across the strait out of the Fujian Province and then is shipped from Taiwan to make it appear that it actually came out of Taiwan when it is originated as well as in China. At some point, China has got to pay an economic price on this.

Mr. WEXLER. Could you just go back to that for 1 second?

Mr. JOHNSON. Sure.

Mr. WEXLER. Assuming what you are saying is so, then the statistics that Secretary Hutchinson would have provided, and I am not judging Secretary Hutchinson; just in terms of the accuracy of the place in which the pirated material would have been designed or we would be counting it towards. Would it be your view that the numbers then are probably even more for China and less than Taiwan?

Mr. JOHNSON. Yes, but Taiwan is involved as well.

Mr. WEXLER. Okay.

Mr. JOHNSON. I am not trying to exonerate them, but I think at some point—the United States by itself cannot do this. It is going to require coordinated international pressure.

I think if the United States and the European Union got together—and perhaps even with the OAS—and put pressure on China and say we are not going to allow your goods into this country unless you agree to a certain regime of authenticating what is being put on those ships, and this can be, I think, wrapped up in the broader issue of combating terrorism.

Whether you are putting a counterfeit pack of cigarettes on a ship or a potential nuclear device on a ship, as long as it is being concealed and put in there without somebody knowing about it, if you do not have some procedures to verify what is actually going into that ship, you can smuggle and move anything.

I think at some point it is going to require international pressure to compel China to provide some guarantee and certainty that what is getting on board a ship is authentic material.

Mr. WEXLER. And in what forum would you recommend that happen?

Mr. JOHNSON. I do not know. I mean, if we can impose economic sanctions, coordinated economic sanctions through the United Nations on this issue, I think that would be the first best option. Whether that is feasible, you know, I think I would see a lot of people fighting it.

Mr. WEXLER. What role does the World Trade Organization have in this?

Mr. JOHNSON. I see them as a toothless giant. My other partners may have a different view.

Mr. TRAINER. I think one of the problems here is despite the fact that all industries are affected by counterfeiting in China, the problem is that not all industries are affected in the same way or at the same levels.

Within a particular industry, some companies may be making a little bit more progress than others and so, frankly, the answer is, in my view, we have to find out from industry exactly what is it they want because until we know that it is hard for us to say to you here are the exact steps to take by the U.S. Congress and the U.S. Government because things are always up and down.

You also look at different parts of China. For example, the area around Shanghai was for years always better at anti-counterfeiting efforts than other parts of China. It is always a changing landscape in China with some of this. It may be that you get things going on in the domestic market, and yet the exportation of counterfeit goods is still an open flow spigot moving out.

Our problem here is we really need to go straight to the particular companies and say what do you want us to do and how do you want it done if you are given these options? I think the problem is we get different answers.

Even myself, talking to my member companies, I have a difficult time saying yes, you want to see more enforcement, but here is the question. If they do not do it, what do you want the U.S. Government to do?

Chairman HYDE. The gentleman's time has expired.

Mr. WEXLER. Thank you.

Chairman HYDE. The gentleman from Iowa, Mr. Leach?

Mr. LEACH. What is new, and I am very impressed with the Chairman holding this hearing, is not the issue of counterfeiting, but the tie to terrorism.

Of the spectacular amount of counterfeiting that occurs, do you have a sense of what percentage? I mean, I would think it would be a rather small percent. I mean, one always hesitates to say de minimis, but, you know, a half of 1 percent of this multi-hundred million dollar market is a lot of money.

A tenth of 1 percent is an exceptional amount of money and much more than has ever been used against the United States in terrorism efforts, so I assume it is relatively in one sense an insignificant percentage, but, taking another bit of relatively, could be a very high number in relationship to the total amount of dollars that goes into international terrorism. Is that a correct way of looking at it?

Mr. GRANT. I think your understanding is probably pretty strong because I think over the last few years the increase in organized crime involvement and intellectual property infringement has increased, and the reasons for that are because of the profits and the low risk.

We are now seeing terrorist groups becoming involved, and unless something is done at this stage to try and stem that flow I can only see that increasing exponentially. Though it may start from a low base, it is obviously going to increase, and the potential for damage increases with that.

Mr. LEACH. What seems awkward to me is once you get involved, you get involved in establishing distribution channels, and distribution channels of one kind can quite easily become distribution of another.

In addition, for whatever reason, the countries that appear to be active in terrorism are countries that have not adapted to change in the modern world, at least modern commerce, and so this becomes a kind of way to establish themselves when they have not been able to establish themselves in more competitive ways involving following the rule of law. Is that a valid observation?

Mr. GRANT. I think as well where you find the regime in a particular country allows criminal activity to go relatively unfettered, that will attract other criminal elements. We have seen that in the drug world where drug traffickers are obviously attracted to countries or territories where their activities are going to be least hindered.

We are seeing from the music industry's perspective a lot of production in Pakistan. We are also seeing a lot of production in Rus-

sia. They are two very different regimes, but again we are in the situation where they are least fettered.

We are seeing problems not just in Russia. They are exporting the problem, and that is when it affects the markets beyond the original source territory. That gives us a concern.

Mr. LEACH. Okay. You are choosing to use or were choosing to use the word counterfeit, which historically is applied to currency virtually exclusively. It is an interesting word. One could use the word copy.

When we do use that word, it does raise the question that if one counterfeits a purse, it is the same principle as counterfeiting a currency. Both in a way are mediums of exchange and of value, so that does raise the intriguing way the United States Government looks at issues.

I mean, when it comes to currency, the Secret Service, under the Department of Treasury, although now it has been moved, but the Department of the Treasury has always had a very strong and active role, and law enforcement immediately gives it a high priority. When it comes to stamping someone's private sector copyrighted insignia on a purse, you have a very different law enforcement response.

One of the questions is obviously how you get priority. The other is where do you posit that authority, and then the third is in a law enforcement way, what are the new institutions that come into being?

The comment Mr. Johnson made basically asked whether the WTO is a toothless giant. Well, the WTO is an institution in the making, and I think it has not altogether served America's interests as well in some areas. In some areas it has been a little better, but a lot depends on what the American government wants to make of it.

It strikes me of all the startling facts that have been brought to me that I had not followed was the size of this market. I mean, frankly, if you are dealing with a few hundred million dollars it is de minimis in international trade. Once you get into billions it is more meaningful. When you get into the hundreds of billions on a yearly basis it is astonishing. I think that that is a perspective that this Congress has to take note of.

Then you get to the terrorist dimension. It might only still be in the millions, which I assume is the case, but from a terrorist perspective that is not something that can be overlooked with any ease at all, and so I just want to say, Mr. Chairman, I think this hearing is one of the surprise hearings of the year.

I am very appreciative that we have expertise that has been brought from the private sector and parts of the public sector to raise this with Congress. I thank you all.

Mr. BALLENGER [presiding]. Since I have shifted gears here, I never got to ask my question. Joe, if you do not mind, I will go before you.

As you probably know, I am pretty concerned about the widespread piracy problems. The International Chamber of Commerce, and this is rather fascinating to me, estimated in 1998 that five to 7 percent of the world trade is counterfeit goods. That is a market worth about \$350 billion.

That is why I supported a provision in the State Department authorization bill authorizing funds to be spent on working with foreign law enforcement officials to increase enforcement of intellectual property laws.

The one question that sticks in my mind, and China keeps popping up in this thing over and over again, is this past year we had a \$300 billion trade deficit. \$100 billion of that \$300 billion, \$100 billion of it was with China, but that is the legal. Somebody measured that. Who is to say how much the actual is?

Can you think of any ways that the State Department could concentrate its efforts on finding some way to handle something like this? It is a pretty big thing to take a shot at.

Mr. Trainer, you represent a whole bunch of industries that probably are getting very shortchanged in all of this bootleg stuff.

Mr. TRAINER. Well, Mr. Chairman, I would say this is why in our statement we recommended that we actually undertake a study. Perhaps the Congress, the Administration, could support a study as to the extent or the level of counterfeit and pirated product in the U.S. market. We have not had such a study done in the United States in almost 20 years.

As we have noted, all industries are affected by this. We actually had some monies appropriated 2 years ago, but it never happened. You know, I do believe that we cannot get a handle on the level in the United States without a very broad-based study conducted on the level of copyright piracy and trademark counterfeiting going on in the U.S. market.

I believe the International Trade Commission did this back around 1986, and we have not seen anything since. The world has changed dramatically since then.

Mr. BALLENGER. All I know is in North Carolina where I come from, our textile industry is moving to China. Our furniture industry is moving to China. How much of it is legal and how much is illegal I have not the foggiest idea.

International Trade? Who did you say did the study the last time?

Mr. TRAINER. This was the International Trade Commission, ITC.

Mr. BALLENGER. Funded by whom?

Mr. TRAINER. Well, it is a government organization, so my guess is that the Congress helped fund the study.

Mr. BALLENGER. Well, obviously it would mean something to me to see if I could not push that. I think all of you would be interested in it.

Mr. Grant, I was in Ciudad del Este. I do not know if you saw the picture of that machine that would turn out 20,000 discs every day. What does something like that cost?

Mr. GRANT. The machine looked to me like a CD line producer or replicator and not a burner. It would probably cost at one time about \$1 million to set up a machine like that.

Unfortunately, as technology has moved on, there is a second-hand market. Of course, you can actually set up a lot cheaper than you could before, and actually the return from setting up a factory with these volumes is in some cases within a week to a month you can recoup your initial investment.

Mr. BALLENGER. The recording statistics that we have, 50 percent of all music discs or whatever you want to call it in Central and South America are counterfeit. Does that sound logical to you?

Mr. GRANT. It is an unfortunate fact. In Brazil, for example, they were the sixth largest music market in the world in the year 2000. It is now the twelfth. Mexico was the eighth and is now the tenth. These are two of the most vibrant music cultures in the world. Literally, it is very difficult to find legitimate product in some of the major cities.

Mr. BALLENGER. That bootlegging could very well be funding and traveling to the Far East to the terrorist areas of the world.

Mr. GRANT. It could well be. There are linkages which have been seen, which inferences could be drawn from that. They clearly would need conventional law enforcement to put resources into that because, as I have said earlier, they need to lift the stone and look at what is underneath it.

Mr. BALLENGER. Right. I have used my time up.

Congressman Pitts, I think you are next.

Mr. PITTS. Thank you, Mr. Chairman.

This question is for anyone on the panel that wishes to respond. As currently written, are you satisfied that the enforcement directive of the European Union will fully support the WTO agreement on trade related intellectual property or TRIPS?

Would it not be important that the EU adopt a TRIPS plus approach, given that the standards will also apply to the newly acceding countries of eastern Europe?

Mr. Trainer?

Mr. TRAINER. Thank you very much. I think from our organization's perspective, certainly we have been pressing for TRIPS plus IP enforcement provisions.

Given the fact that my membership includes companies from the copyright, trademark and patent industries, we would look at this across the board, which is why we supported some of the provisions, in fact recommended some of the provisions, in the Chile and Singapore Free Trade Agreement mainly because they do have TRIPS plus provisions.

Given the change in technology, given the fact that counterfeiters and pirates are even more emboldened today than perhaps 6 or 7 years ago, the TRIPS enforcement provision of the WTO may have been a good document 10 years ago, but the world has changed, and these agreements need to reflect that and so we are pressing for more aggressive provisions.

Mr. PITTS. Anyone else? Mr. Grant?

Mr. GRANT. From a music industry perspective, we feel that the European copyright directive does not go far enough. We would like to see more harmonization in the penalties across Europe, and they should be realistic in determining penalties.

With regard to the accession countries, that clearly gives the industry some cause for concern because the Customs capabilities of the countries on the border are not nearly as great as the ones that exist at the moment. That just goes not for music. Clearly all kinds of contraband, whether it be drugs, firearms, they are all going to be vulnerable.

The good news is a lot of people realize that. A lot of effort is being made in training the Customs authorities in the countries which will form the new border, but it will be a problem in the future.

Mr. PITTS. Also, does article 61 of the TRIPS agreement not require infringements to be penalized if they are not committed for commercial purposes? Most of the file sharing today is not for profit, but still can cause great damage to rights holders.

Are you concerned about this omission in the directive? Mr. Trainer?

Mr. TRAINER. Referring specifically to article 61 of the TRIPS text, certainly from our perspective we feel that today it is not sufficient as written, and for that reason you see a lot of added language in the two bilateral free trade agreements, also additional language in there regarding criminal enforcement.

We do not believe that in today's world that article 61 is going to provide intellectual property owners with sufficient protection against those involved in criminal intellectual property theft.

Mr. PITTS. Does the directive also overlook the need for seizure of physical evidence of infringement, including machines, discs, and tapes? Are these and other concerns shared by the European copyright community? Mr. Grant?

Mr. GRANT. I do not feel qualified to answer that.

Mr. TRAINER. I have to make an interesting comment here when we are talking about the seizure of equipment because there is a difference between the copyright industry and the trademark industry.

One of our problems actually with regard to equipment and things such as that is that we need to get that into the U.S. law. At the moment, we do not see sufficient protection even in U.S. law with regard to trafficking and counterfeit goods, so it has become very difficult for us to get the language about seizure, forfeiture of equipment, in our bilateral agreements because we do not have that specific language here, which is something we are trying to obtain through a proposed amendment in the U.S. law.

That is some work we are trying to do domestically, even though we are pressing for it abroad.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. BALLENGER. Mr. Gallegly?

Mr. GALLEGLY. Thank you very much, Mr. Chairman. Mr. Chairman, as you know, I have been on this Committee for many years and served on the Intellectual Property Subcommittee. Intellectual property has been a very important issue to me for a long time.

While we have discussed issues like music this morning, and I certainly do not want to minimize my concerns for that. I think I have been in the trenches fighting to protect intellectual property rights of the music industry for a long time and absolutely commit to continuing to do so, but the issue of counterfeit drugs has a dimension that the music industry does not have.

One could argue that the quality of the music would be close to what the legitimate publishers would provide the consumer. However, that is not the case with pharmaceuticals. Maybe Mr. Grant or Mr. Trainer could respond to this.

The World Health Organization, according to the information I have, estimates that counterfeit drugs account for approximately 10 percent of all pharmaceuticals around the world. That number can rise in some cases to as high as 60 percent in developing countries.

According to the WHO, 16 percent of the counterfeit drugs contain the wrong ingredients, 17 percent contain amounts of improper ingredients, and 60 percent have no active ingredients whatsoever. I think those things speak for themselves.

Either Mr. Grant or Mr. Trainer, do you have any indication that the folks that are involved in this industry, the percentage of them are directly or indirectly connected to international terrorist cells. Is money that would be derived from the sale of these be going into the coffers of helping to perpetuate international terrorism?

Mr. TRAINER. Our companies and members have not provided any evidence that says there is an absolute direct link between the movement of counterfeit pharmaceutical products and the funding of terrorist organizations.

Mr. GALLEGLY. Worldwide?

Mr. TRAINER. Worldwide, right.

Mr. GALLEGLY. Mr. Grant?

Mr. GRANT. My industry has not come across any definite nexus, but I would say, as we said before, that criminal entities are not exclusive to one type of criminal activity, so it would not surprise me if groups who were involved in one type of criminal activity were involved in another, and it could well be within the ambits of your question that people who are involved in counterfeit drugs could be linked to these organizations.

Mr. GALLEGLY. More locally or here at home, do any of you see a connection or a threat with counterfeit or bogus drugs entering the U.S. illegally from offshore? Any connection with the terrorist organization we are receiving here or organized crime?

Mr. TRAINER. I think in part it may depend upon your definition of organized crime. I mean, I guess I use the broad one.

Mr. GALLEGLY. The fact that it is illegal, I guess.

Mr. TRAINER. Right. I mean, obviously there is certainly counterfeit pharmaceutical products in the United States that get into the U.S., and certainly the recent Lipitor reports show that there are people that may be engaged in this. There were recent reports from Florida with regard to several people involved in counterfeit pharmaceutical products.

If they did not feel they could make money and hopefully get away with it, they probably would not get involved in it, but the interesting thing is that some of the tactics being used are similar to people involved in the movement of other contraband.

I know in our White Paper we have this one report last year that the New York County District Attorney charged seven people, five companies in the United States, China and India, with selling counterfeit Viagra. Interestingly, the undercover officers purchased 25,000 pills, a fairly good amount.

Interestingly, too, is some of the pills were smuggled into the United States in stereo speakers and stuffed toys, so it tells us that they are willing to go to some interesting extremes and use inter-

esting tactics because they feel that they have a market here for it.

Mr. GALLEGLY. I do not think there is any question about the market. The question is where is the money going once these folks acquire this as a result of the illegal activity?

Is there any connection that any of you have that you could tie either directly or indirectly to terrorist cells?

Mr. JOHNSON. I do not.

Mr. TRAINER. No.

Mr. GALLEGLY. Okay. Thank you, Mr. Chairman.

Mr. BALLENGER. I think Representative Harris had a final statement.

Ms. HARRIS. Yes. I was going to follow up on the drug question earlier, but I am glad that was raised.

I just wondered if the Committee could write a letter requesting that this study be carried out—the one that has not been done in 20 years; if the Committee could send a letter requesting that study.

Mr. BALLENGER. You and I can get together and make sure we write that letter.

Ms. HARRIS. Thank you. Thank you, Congressman.

Mr. BALLENGER. Yes. I would like to just, first of all, offer the entire panel if you have some other information that you think we have not covered that would fit this, I would greatly appreciate it, and I am sure the Chairman would also, if you would submit it in writing.

Let me ask you this question because I know this happened in Ciudad del Este to that lady who happened to be the District Attorney down there. We were just saying she was doing such a good job. If she did not get killed, everything would be okay. It turns out now that she has a big house, and she is driving big cars and so forth, so she took the safer way out of it.

Enforcement has become really a much more dangerous situation. Are you aware of the retaliatory actions taken against officials trying to stop this trade?

Mr. GRANT. Absolutely. There has been an increase in retaliation or intimidation against both public enforcement officers and industry enforcement officers. We have seen incidents of shooting in Venezuela.

We have seen situations which are in our submission where in Mexico when the police were seizing goods they were attacked by a gentleman with an AK-47 rifle, who was subsequently charged with attempted murder.

Very often we see law enforcement going very heavy-handed to certain areas, very hot spots. For instance, in Manila only earlier this year there was a raid on a particularly notorious location, and there were 500 armed police officers in attendance, including a presidential guard who was assigned to look after the industry investigators.

That is the scale, and that is obviously a response from people who are in the know because they would not take 500 people along unless they expected that they may have some opposition. That is an unfortunate escalation, but perhaps it shows what is at stake when people are going to openly defy law enforcement.

Mr. BALLENGER. Right.

Mr. GRANT. Obviously what they are protecting is worth something to them.

Mr. BALLENGER. Mr. Johnson, let me just throw one at you because you have been involved across the board in this.

Do you have an opinion as to which is the weakest link in the chain between the manufacturer, the broker and the distributor? How can we penetrate that?

Mr. JOHNSON. The U.S. Government has not devoted any resources to try and penetrate these organizations. We have been able to do somewhat in the private sector, but I think that is a real vulnerability. The key is to look at it as a global problem.

The one major free trade port we have not talked about today that has a direct tie into the terrorism side is Dubai. Dubai is a major pathway for movement into Iraq, into Iran, into Pakistan and Afghanistan. Huge. We have actually seen evidence of material moving out of the Colon Free Zone ostensibly going to Cyprus, but actually it winds up being diverted to Dubai.

There you get to the issue of the local enforcement, and I just wanted to reinforce what Mr. Grant was saying, because we have been unable to conduct enforcements, and this is the weak link, in places like Ecuador and Colombia because in these areas they have these places. In Bogota they are called san adresitos. They are lots of little shops that sell small quantities of items.

The police and prosecutors will say—well, the prosecutors primarily—that they are not going to go in there and seize four or five items. Well, the distributors actually set up all of these different shops, so they will spread out four or five items per shop, but trying to get back to the original distributor they end up insulating themselves, and then you face the threat of actual physical violence from those people.

Mr. BALLENGER. Right.

Mr. JOHNSON. Bolstering the ability of local law enforcement in these other countries to conduct enforcement activities with the added confidence that it is actually seen by the United States as an important issue because right now I think it is not seen as something that the United States puts as a high priority item.

Mr. BALLENGER. Right. I would like to thank you three gentlemen for sticking around for the length of this because, in my considered opinion, it may be one of the more important things. Your request for the study obviously makes a great deal of sense.

The more we can do, in my considered opinion, to pull the teeth of this tiger—I mean, you know and I know in Ciudad del Este they are trying to blow up the Jewish Center in Buenos Aires. They tried to blow up the Israeli Embassy and so forth. The terrorism does not have to stay in the Middle East.

Let me again thank you all for participating in this. I think it is, to my way of thinking, a very educational program. I know the cameras disappeared after the first panel, but my understanding is you all may be on some big TV program coming up. Watch it when you go outside. They might be grabbing you immediately.

Thank you again.

Mr. GRANT. Thank you, sir.

[Whereupon, at 11:58 a.m. the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE NICK SMITH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

I want to thank Chairman Hyde for holding a hearing on the links between international terrorism, international criminal networks, and intellectual property crimes. Today, we consider an international side of the complicated issue of intellectual property counterfeiting. I would also like to thank our distinguished witnesses for joining us today.

International criminal networks are a national security concern. Often, they are also narcotics and weapons trafficking networks, and it has been shown that profits also go to terrorists. We have seen counterfeit goods frequently provide financial support for terrorism. Furthermore, these networks give dangerous people the opportunity to refine their tools together. Intellectual property crimes are not victimless crimes.

Intellectual property piracy is well suited to terrorists. Intellectual property counterfeiting often requires little infrastructure. Production sites are often portable, such as a laptop computer for music piracy, and they are almost always dual-use. That makes detection difficult. Cheap and hard to detect counterfeiting breaks the law and has the potential to undermine the business models of intellectual property holders.

Counterfeiting is also used to fund terrorism. We will hear testimony pointing to compact disc covers with pictures of airplanes crashing into the World Trade Center. These were recovered in the tri-border area of South America, which has ties to a number of international terrorist organizations including al-Qaeda. The tri-border area is a miniature failed state. No state fully exerts its authority there, and, consequently, it has become a locus for terrorist and criminal behavior of all sorts. I fully support strengthening international intellectual property agreements. They would help encourage foreign direct investment throughout the world and protect entrepreneurs and innovators in developing countries. I would also encourage the private sector to develop copy-protection technology. This would help the companies hurt by counterfeiting and limit the ways that terrorists could benefit from piracy. In the end, defeating terrorists is a multi-faceted and complex effort. In this effort that we must succeed, and we are succeeding.

Again, I would like to thank the Chairman for holding this hearing today on this aspect of the interaction between international terrorism and international crime. Part of the challenge for the American and other shoppers is to resist the temptation to buy goods that are cheap but obviously stolen. I look forward to hearing the thoughts of the witnesses on this important and interesting matter.

PREPARED STATEMENT OF JACK VALENTI, PRESIDENT AND CEO, MOTION PICTURE
ASSOCIATION OF AMERICA

Organized criminals worldwide are stealing the profits from the work products of some of the most talented Americans. Organized, violent, international criminal groups are getting rich from the high gain/low risk business of stealing America's copyrighted works. This is a subject that has greatly concerned the Motion Picture Association. We are issuing today a new report on this subject, drafted by Mike Ellis, Director for Anti-Piracy in Asia/Pacific. A copy of this report is being submitted to the Committee to aid in its deliberation of this important topic.

US industry alone will never have the tools to penetrate these groups or to trace the nefarious paths to which those profits are put. Only Governments have the tools

necessary for this kind of investigation. Recently, both the US Government and foreign governments have made the case linking piracy to terrorism.

GOVERNMENTS NOTE LINKS TO TERRORISM

U.S. government agencies are bringing attention to the link between terrorism and copyright piracy. An article by Kathleen Millar in the November 2002 issue of *US Customs Today* entitled “*Financing Terror: Profits from Counterfeit Goods Pay for Attacks*” outlines the “close connections between transnational crime and terrorism.” It states that the participants at the 1st International Conference on IPR hosted by Interpol in Lyon, France in 2001 “all agreed the evidence was indisputable: a lucrative trafficking in counterfeit and pirate products—music, movies, seed patents, software, tee-shirts, Nikes, knock-off CDs and ‘fake drugs’ accounts for much of the money the international terrorist network depends on to feed its operations.” The article concludes that “The new link between commercial-scale piracy and counterfeiting has redirected public attention in 2002, and law enforcement agencies like Customs and Interpol are going after the organized crime syndicates in charge of what was too often viewed as a ‘victimless crime.’” September 11 changed the way Americans look at the world. It also changed the way American law enforcement looks at Intellectual Property crimes.”

The Federal Bureau of Investigation’s website home page states the following:

“Unlike criminals who engage in other types of criminal activity, those who commit IP crimes can not easily be categorized. Counterfeiters, software pirates, and trade secret thieves are as different as the intellectual property they counterfeit, steal, and sell. In general, software pirates have an acute interest in computers and by extension, the Internet. Many counterfeiters hail from foreign countries, such as South Korea, Vietnam, or Russia. They are frequently organized in a loosely knit network of importers and distributors who use connections in China, Southeast Asia, or Latin America to have their counterfeit and imitation products made inexpensively by grossly underpaid laborers. There is also strong evidence that organized criminal groups have moved into IP crime and that they are using the profits generated from these crimes to facilitate other illegal activities. There are a number of reasons for the dramatic increase in IP crime in recent years. First, many forms of IP can be produced with minimal start-up costs making IP crimes accessible to large numbers of people; second international enforcement of IP laws is virtually nonexistent; and finally, domestic enforcement of IP laws has been inadequate and consequently the level of deterrence has been inadequate.”

The link between piracy and organized crime has been widely accepted by the European Commission, which recently organized a forum to address the prevention of organized crime and included a discussion of piracy and counterfeiting. Interpol has also acknowledged the link with organized crime and established the Interpol Intellectual Property Crime Action Group. Many national enforcement authorities, from the United Kingdom to Australia have recognized that piracy and organized crime go hand in hand.

The Police Service of Northern Ireland’s (PSNI) Anti-Counterfeiting and Racketeering Unit also reports that paramilitary organizations in Northern Ireland regard counterfeiting as their preferred fund-raising option. According to the PSNI, these paramilitary groups last year made specific threats against officers involved in anti-piracy raids at Newtownards Market after PSNI officers had seized over £50,000 worth of counterfeit goods, including DVDs.

VIOLENCE AND INTIMIDATION

Pirates employ violence and intimidation. A raid on a street market in Malaysia last summer turned into a riot. A vehicle driven by the pirates rammed the van transporting the Malaysian enforcement officials and MPA’s anti-piracy investigators to the raid. Bat wielding pirates attacked the enforcement team. Only after the Malaysian enforcement officials fired their weapons into the air did the crowd disperse.

Pirates have directly threatened Government leaders. Last year, the President of the Municipal Council in a city in Malaysia received a personal death threat along with a threat that his daughter would be raped if the crackdown on illegal VCD traders continued. The Minister of Domestic Trade and Consumer Affairs in Malaysia also received a personal death threat.

In the Netherlands two years ago, our local program helped smash a sophisticated and violent criminal organization that was distributing compilation pirate optical discs under the HiteXplosion and MovieBox labels. The discs contained monthly

compilations of interactive games, movies and music. Two of the pirates had organized the torture of two associates for under-reporting their sales of pirated CDs and DVDs. The two were subsequently sentenced to four and a half year prison terms on charges of extortion and accessory to kidnapping and attempted assault.

In the UK, there is increasing evidence that Chinese crime gangs control much of the pirate DVD business in London and the South East. Illegal immigrants have, it appears, been pressed into selling pirate DVDs by Chinese human traffickers (known as Snakeheads) to pay off family debts to the gangs.

CASE EXAMPLES OF ORGANIZED CRIME

Pirate factories go to great lengths to conceal and harden their operations. One raid in October 2001, near Bangkok, revealed an underground tunnel linking a factory to a residential house. Pirate products were moved out of the factory on a meter-wide, specially installed electric rail system that ended under the kitchen sink of a near-by home. The products were trucked away from the back of the house, effectively hiding the movement of pirated goods out of the factory.

The pirates employ sophisticated security systems, such as hardened front doors and surveillance cameras, to delay entry by enforcement officials into the factories. These security devices give the pirates the 10–15 minutes they need to destroy the evidence of their crimes in vats of acid kept specifically for this purpose. Local police have been forced to adopt equally sophisticated responses. In the raid on a factory in Thailand the police, accompanied by our anti-piracy enforcement team, broke through the roof of the factory and rappelled down ropes in order to maintain the element of surprise.

SOPHISTICATED SMUGGLING

The pirates also use highly sophisticated smuggling methods. Macau Marine Police, working with Hong Kong Customs, intercepted two submerged, un-powered, purpose-built “submarines” in two, separate raids in April and May 1999. These submarines were towed behind fishing boats and had ballast and compressed air tanks that enabled the sub to be raised and lowered. If enforcement officials intercepted the fishing vessel, the towline could be cut, the barge’s location marked with GPS positioning, and later recovered when the coast was clear. In these cases, however, the authorities, relying on sophisticated intelligence, knew what they were looking for and were able to recover 174,000 pirate optical discs in one seizure and 73,000 in the second. These cases demonstrate the scale and level of sophistication that criminal syndicates employ to evade detection. Traditionally, such methods have been reserved for the smuggling of drugs and other contraband, including firearms.

Pirates use other ingenious methods to smuggle their products. The International Federation of the Phonographic Industries, in a raid with Polish Customs last year, intercepted a car suspected of transporting pirate CDs from Russia. When the authorities removed the car’s fender, they found a hidden compartment full of pirated CDs. MPA has found hidden compartments in shipping containers, stacks of DVDs concealed in bags of asphalt, and ingenious concealed cavities in what appeared to be stacks of flattened cardboard boxes.

Sometimes the pirates try to ship pirated products by disguising them as legal products. A law enforcement official in Australia thought he had a shipment of blank DVDs—until he peeled back the label on one of the copies—and uncovered a shipment of pirated copies of the film “Ali.”

With the cooperation of major express mail delivery services, MPA made progress in cutting down the shipment of pirated DVDs from Malaysia. In a major raid last July in Penang, Malaysia, MPA discovered 418 separate parcels containing about 10,000 pirate DVDS destined for Australia, the Middle East, Europe and even the United States.

A SNAPSHOT OF OPTICAL DISC PIRACY AROUND THE WORLD

The problem of large-scale pirate optical disc production began in China in the mid-90s. When China cut off the export of piratical discs in the late 1990s, the pirates packed up their equipment and relocated to more hospitable areas where enforcement was lax or absent. Now we are seeing major problems with DVD production in Malaysia, Thailand, Taiwan, Philippines, and Indonesia. Pakistan, Bangladesh, Ukraine, and elsewhere in Central Europe are host to factories replicating pirate copies of music CDs. The music industry’s problems today are always a danger sign for us, since pirates often start with music and then move on to movies, video games and other products.

In the past year, we have also witnessed a major surge of large-scale factory production of DVDs in Russia. Today there are at least 28 optical plants in Russia, including five or six that specialize in the production of DVDs. The number and overall capacity of these plants has more than doubled in the past two years. Nine of these plants are located on property owned by the Russian Government.

Pirate DVDs have devastated the local market in Russia. Pirate DVDs have so saturated the Russian market that the pirates have resorted to selling them on the streets *by the kilo*. Pirate DVDs are sold everywhere—at street markets, in kiosks, in retail stores and over the Internet.

The Russian pirates are targeting export markets—OUR export markets. Piracy in Russia poses a major threat to revenues across Europe. In 2002 MPA's anti-piracy operations seized pirate Russian DVDs in markets across Central and Eastern Europe. In July a raid at a retail market in Poland turned up over 4000 copies of pirate discs from Russia. Those discs contained 15 different language tracks—from Finnish and Swedish to Greek and Turkish, Dutch, Danish, to Indian and Arabic. If bold actions aren't taken quickly to shut down this piracy, American sales of copyrighted works to Western Europe—our most lucrative market in the world—will be demolished by these pirated imports from Russia. The time to act is now before these criminals further build out their distribution networks and alliances throughout Central and Western Europe.

The film industry has seen some recent evidence that leads us to be cautiously optimistic that Russia may be poised to tackle this problem more vigorously. In April, Russian police conducted a successful raid against a large DVD factory that had been the source of approximately 30 % of the pirate DVDs produced in Russia. The factory has remained closed since the raid was conducted. As a result, we have noticed a marked decrease in availability of pirated DVDs in at least one neighboring country, the Ukraine. In another recent development, the government banned all street sales of DVDs, which thus far has succeeded in forcing pirates off the street markets and out of kiosks, which had been the principle sales point for pirated materials.

Even before large-scale factory production has been brought under control, we are now seeing the rapid growth of local burning of movies and other forms of copyrighted content onto blank recordable media—CD-Rs and DVD-Rs. This kind of piracy is more dispersed geographically, since the piracy takes place in medium to small "labs" with banks of CD burners, but is often still highly organized. The retail markets in Taiwan are filled with this kind of pirate product; not coincidentally, Taiwan is one of the world's largest producers and exporters of blank optical discs, fueling this problem around the world.

AN APPEAL FOR ASSISTANCE

The distinguished Members of the Committee on International Relations are uniquely positioned to help us in our efforts to engage foreign governments in the fight against piracy. Foreign dignitaries from all over the world flood to your doors for advice and assistance. We hope that they will not leave without also hearing about your concerns about the devastating affect of piracy and about the need for action within countries and across borders to combat the organized criminal groups that threaten the creative output of American creators and creators around the world. And, when you travel abroad, we also hope you'll let it be known that inaction is not an acceptable option in the fight against piracy. The continued vitality of the copyright industries, one of America's signature industries, is at stake.

Recently negotiated trade agreements are playing a crucial role in raising the standards of copyright law and enforcement around the world. The Office of the US Trade Representative has done an excellent job in the newly negotiated FTAs with Chile and Singapore incorporating provisions that raise the standards for copyright protection to the level of US laws and help provide the tools we need to combat this menace. The agreements also help open markets—and the more open the market, the less the incentive for piracy. I hope you will support these Free Trade Agreements when they come before Congress later this month.

THE ECONOMIC WORTH OF THE COPYRIGHT INDUSTRIES

The copyright industries were responsible in 2001 for some five percent of the GDP of the nation. Over the past quarter century, these industries' share of GDP grew more than twice as fast as the remainder of the economy. They earn more international revenues than automobiles and auto parts, more than aircraft, more than agriculture. The copyright industries are creating new jobs at three times the rate of the rest of the economy. The movie industry alone has a surplus balance of trade with every single country in the world. No other American industry can make

that statement. And all this comes at a time when the U.S. is suffering from some \$400 billion in trade deficits.

IN CONCLUSION

Large, violent, highly organized criminal groups are getting rich from the theft of America's copyrighted products. Only when governments around the world effectively bring to bear the full powers of the state against these criminals can we expect to make progress. Only when industry and governments join forces to fight these organized groups will we succeed in protecting America's greatest trade asset.

MOTION PICTURE ASSOCIATION,
Washington, DC, July 16, 2003.

Hon. HENRY J. HYDE, *Chairman,*
Committee on International Relations,
House of Representatives, Washington, DC.

This in-depth examination of piracy in Asia is a wake-up call for the U.S. government and for all countries that work each day to protect their intellectual property from thieves. As the digital world advances, the high priority for governments and owners of copyrighted property is to confront and conquer the menace of digital theft. I am absolutely convinced that we will soon have in place sturdy protections for valuable creative works. This document is important because it specifies the dangers that challenge intellectual property around the world.

Sincerely,

JACK VALENTI, *Chairman and CEO*

REPORT SUBMITTED FOR THE RECORD BY JACK VALENTI, PRESIDENT AND CEO, MOTION PICTURE ASSOCIATION OF AMERICA, ENTITLED "ASIA PACIFIC REGION: ORGANIZED CRIME AND MOVIE COPYRIGHT PIRACY: SECOND QUARTER 2003," PREPARED BY MICHAEL C. ELLIS, VICE PRESIDENT AND REGIONAL DIRECTOR, ASIA PACIFIC REGION

1. INTRODUCTION

"Pirate syndicates are like giant sinkholes sucking the life out of legitimate businesses. Governments need to plug this black hole of organized criminal activity." Jack Valenti, President and Chief Executive Officer, Motion Picture Association of America

The illegal business of copyright piracy—especially optical media piracy—has experienced a growth rate similar to a successful Fortune 500 company whose gross margins are high and profits are huge. Access to and control of large amounts of capital by pirate businesses allows for profits to be funneled into complex distribution networks that engage in a myriad of criminal activity. These highly organized criminal syndicates operate like powerful corporations and are linked across national borders, and often have influential friends within government bodies. In many cases, these criminal networks may use copyright piracy profits to fund other illicit businesses, such as drug distribution, illegal immigrant smuggling, trade in illegal munitions, and money laundering.

Increasingly, the current trend for organized pirate syndicates is forward integration of their business by expanding into and controlling optical media production facilities in countries where legislation is weak and enforcement ineffective. These syndicates control not only the production but also the distribution of pirated and counterfeit products within the domestic market and around the world. There are clear indications of emerging cooperation between organized crime syndicates rather than the traditional adversary relationships. For example, syndicates with control of optical media production facilities in Southeast Asia are aligned with partners in other continents to conduct not only the acquisition of camcorder copies of recent theatrical movies, but have also branched out into the illegal trade in pirated optical media products. In fact, piracy in Asia is so deeply rooted that, in relation to cases that the Motion Picture Association (MPA) is involved in, 91% of the world's optical discs were seized in this region in 2002 and it is estimated that 95% were replicated here. These criminal networks are entrepreneurial, business savvy, highly sophisticated and becoming increasingly dangerous to deal with.

Beyond the attraction of copyright piracy being a highly-lucrative and successful business for organized crime, there are a number of other reasons that this type of

criminal activity has dramatically risen in recent years, the foremost of which is the lack of deterrent coordinated government enforcement and inadequate criminal sentencing of those caught. Moreover, international law enforcement coordination in addressing copyright piracy is also limited.

Fighting organized criminal activity linked to copyright piracy requires governments to assign a much higher priority to the task. There needs to be highly visible acknowledgement of the issue and enactment of new legislation to allow for the proceeds of this crime to be identified, traced and recovered as well as perpetrators identified, arrested and prosecuted. What is now required is for copyright offences to be unequivocally designated as an organized crime under organized crime and money laundering legislation.

The Bush Administration has said that the war on terrorism includes measures to prevent proceeds from intellectual property piracy from becoming a vehicle for financing terrorist networks. Deputy Assistant Attorney General John Malcolm stated at a Congressional Hearing that while there are no precise numbers linking profits from piracy with terrorist activities,

“ . . . it would surprise me greatly if the number were not large . . . This is any easy enterprise in which to enter. The barriers to entry are very small. The profits are huge.”

He also stated:

*“On this point, I want to be crystal clear. Stopping terrorism is the single highest priority of the Department of Justice. We are constantly examining possible links between traditional crimes and terrorism, and we will continue to do so.”*¹

Several U.S. government agencies are bringing attention to the link between organized crime and copyright piracy.

*“Unlike criminals who engage in other types of criminal activity, those who commit IP crimes can not easily be categorized. Counterfeiters, software pirates, and trade secret thieves are as different as the intellectual property they counterfeit, steal, and sell. In general, software pirates have an acute interest in computers and by extension, the Internet. Many counterfeiters hail from foreign countries, such as South Korea, Vietnam, or Russia. They are frequently organized in a loosely knit network of importers and distributors who use connections in China, Southeast Asia, or Latin America to have their counterfeit and imitation products made inexpensively by grossly underpaid laborers. There is also strong evidence that organized criminal groups have moved into IP crime and that they are using the profits generated from these crimes to facilitate other illegal activities. There are a number of reasons for the dramatic increase in IP crime in recent years. First, many forms of IP can be produced with minimal start-up costs making IP crimes accessible to large numbers of people; second international enforcement of IP laws is virtually nonexistent; and finally, domestic enforcement of IP laws has been inadequate and consequently the level of deterrence has been inadequate.”*²

“As in other crime areas, digital products and the Internet have complicated intellectual property enforcement. At the same time as it revolutionizes distribution methods for licensed digital products, the Internet will also facilitate global piracy of digital products as increasing numbers of products are converted to a digital format. Digital products can be reproduced almost instantaneously, surreptitiously, repeatedly, and inexpensively.

*These developments present growing concerns for U.S. law enforcement and for law enforcement around the world. We are concerned about the rise of organized criminal gangs and syndicates involved in counterfeiting and piracy—people who see the high profits and low risks associated in trafficking in this merchandise.”*³

The escalation of violence against industry representatives, who are playing an important role in the fight, has recently reached alarming heights. Threats on operative's lives or physical intimidation when their investigations begin to make significant progress in tracking criminal activity, requires that governments make renewed efforts to attack the problem. Bulletproof jackets and firearms are increasingly becoming the required raiding tools for law enforcement officers conducting

¹ March 13, 2003, Testimony on Capitol Hill, House Judiciary Subcommittee

² Federal Bureau of Investigation's website home page

³ July 23, 1999, Remarks of Eric H. Holder, Jr., Deputy Attorney General, U.S. Department of Justice, at a Press Conference Announcing the Intellectual Property Rights Initiative, San Jose, California

raids. Recent raids in Asia have seen the deployment of over 500 law enforcement officers conducting raids against manufacturing facilities. Effective management of this situation needs to be taken before the infection of sophisticated and cash-rich syndicates establish tighter control over the market place both domestically and internationally.

The deplorable situation in Malaysia, where death threats were issued by optical media pirates against more than a dozen Malaysian senior government enforcement officials, cannot and should not be allowed to continue. In Taiwan, organized crime syndicates who are behind the distribution of pirate optical discs, openly taunted the Minister of Justice and Taiwanese Government. Inserted into stolen movies that were copied onto CD-Rs was the challenging message “Catch Me If You Can,” which was directed toward the Taiwanese minister and government officials. This flagrant message combined with the blatant manner by which this communication was sent shows the total lack of respect for the government and its laws.

Additional leadership by governments is needed to assist in bringing forward the issue of effective copyright piracy enforcement on the agenda of agencies tasked to deal with organized economic crime. Some senior government officials are acknowledging the relationship between organized crime and copyright piracy—this is encouraging.

“Our investigations have shown that organized criminal groups are heavily involved in trademark counterfeiting and copyright piracy. They often use the proceeds obtained from these illicit activities to finance other, more violent crimes. These groups have operated with relative impunity. They have little fear of being caught-for good reason. If apprehended, they face minimal punishment. We must make them pay a heavier price.”⁴

2. ORGANIZED CRIME—DEFINITION

“Organized crime constitutes any enterprise or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries and who in at least part of their activities, incorporate the use of threat, violence, intimidation or corruption to establish and maintain control.”⁵

Organized crime groups possess certain characteristics, which include but are not limited to the following:

- Their illegal activities are conspiratorial;
- In at least part of their activities, they commit or threaten to commit acts of violence or other acts, which are likely to intimidate;
- They conduct their activities in a methodical, systematic, or highly disciplined and secret fashion;
- They insulate their leadership from direct involvement in illegal activities by their intricate organizational structure;
- They attempt to gain influence in government, politics, and commerce through corruption, graft, and legitimate means; and
- They have economic gain as their primary goal, not only from patently illegal enterprises such as drugs, gambling, and loan sharking, but also from such activities as laundering illegal money through investments in legitimate business.

3. ORGANIZED CRIME AND MOVIE PIRACY IN ASIA—CASE EXAMPLES

A. Australia

On March 14, 2002, Australian Federal Police (AFP) and Australian Customs Service (ACS) officers executed search warrants on premises in Melbourne and neutralized what is believed to be the major supplier of pirate optical discs in Australia. In the operation, approximately 35,000 recently imported pirate VCDs and DVDs from Malaysia were seized, worth approximately \$12 million. The discs seized represent what was on hand at the time of the raids. Many thousands were in circulation and subsequently recovered in earlier raids at Melbourne Market centers. One Malaysian National was arrested and charged with importing infringing copies of optical discs for the purpose of sale, contrary to the Copyright Act 1968. Follow up coordinated activities between the AFP, Australian Immigration Department, ACS

⁴February 12, 2002, Former Commissioner Ray Kelly, United States Customs Department, Congressional Testimony before the Senate Committee on Foreign Affairs

⁵The MPA definition of organized crime

and the Malaysian authorities resulted in the arrest of a Malaysian accomplice who was re-entering Australia under false documentation. Subsequently, both defendants received six-month suspended sentences and were each fined \$20,000 (immigration authorities deported the defendants without them paying their fines).

This was the largest seizure ever of pirate optical discs in Australia. This well-organized operation involved Malaysian and Australian based members of an international crime syndicate that sources have indicated were operating in cell-type structures to protect the levels of the operation and ultimate king-pins. The ease with which one of the suspects could obtain false documentation and his audacity to re-enter the country demonstrates the complete lack of fear that this crime would be treated seriously. The Australian federal police agents stated that they are disappointed that some organized crime gang members involved in black market films have only received fines rather than being jailed. The resulting inadequate sentences have not provided the deterrence for up-and-coming criminals involved in the syndicate.

The ability of this criminal syndicate to import pirate products and distribution of them in Australia is an example of the cross border issues that these criminal syndicates participate in. In July 2002, it was reported by the media that Asian organized crime gangs are flooding Australia with illegal pornographic films and pirated copies of Hollywood blockbusters. Police say Victoria is the distribution capital of the multi-million dollar piracy trade. Many of the state's weekend markets are being used to sell the cheap DVDs and VCDs, which can be watched on a computer CD drive or on a DVD player.⁶

AFP general manager (southern region) Graham Ashton said Asian organized crime gangs involved in the illegal DVD trade had singled out Australia, and Victoria, in particular, as a major market. Mr. Ashton said most of the gangs were Malaysian-based, but syndicates from China were also involved.

"These syndicates are international by nature. We have found the level of sophistication is such where they operate almost in a franchise structure. Operators in this country are given fairly strong written instructions on how to conduct their business in Australia."

*"They are required to keep very detailed records to report back to their syndicate bosses overseas as to how they are traveling financially in terms of sales and marketing."*⁷

B. Hong Kong

In January 1999, two firebomb attacks in a Mongkok shopping mall were prompted by a shop stocking pirate copies of a local movie "Big Spender". One firebomb was thrown inside the pirate optical disc shop and the other at the door. The attack caused the death of one person and seriously injured a second. Police sources indicated that triad gang rivalry for control of pirate business in the area was a contributing factor.

In February 1999, the Anti-Triad Squad of Hong Kong Police raided a pirate and pornographic disc-packaging center at an industrial building in San Po Kong, which was suspected to be under the control of the triad group "Wo Sing Wo". Approximately 150,000 pirate discs worth more than HK\$3 million (US\$384,000) were seized and three men arrested.

Several shopping arcades in Tsuen Wan, which had pirate discs on sale, were under the direct control and protection of triad organizations ("Wo Sing Wo", "Sing Yi" and "Fuk Yi Hing"). As confirmed by the officer-in-charge of the Anti-Triad Squad, the three men arrested were all members of Wo Sing Wo.

In June 2003, the Anti-Triad Squad acting on information provided by the public, raided a premises linked to Wo Sing Wo in Mongkok resulting in the arrest of six gang members and the seizure of one-thousand pirate optical discs along with 200 grams of Ketamin and three machetes.⁸

C. Indonesia

In February 2001, an optical disc factory raid conducted with the Indonesian authorities in Battam, resulted in the detection of four replication lines, of which three were replicating pirate products. Unfortunately, the raid was abandoned when a local armed militia group sought to disrupt the operation by engaging the raiding police in an exchange of gunfire in an attempt to recover the premises.

In November 2001, an optical disc factory raid against a target in Surabaya, confiscated sophisticated replication equipment and thousands of pirate optical discs.

⁶ July 2002, *Herald-Sun*

⁷ July 2002, *Herald-Sun*

⁸ July 2003, Report of Victor Chan of Hong Kong Film & Video Security Limited

In addition, the discovery of a comprehensive business plan for operating and financing a pirate factory was recovered in the raid. The business plan illustrates the systematic and strategic approach taken when entering into the illegal replication business.

D. Macau

In 1999, highly sophisticated pirate smuggling methods were detected by Macau Marine Police, which coordinated efforts for interception of two submerged, un-powered, purpose built "submarines" with the Macau Police and Hong Kong Customs. Such submarines are towed behind fishing boats and have ballast and compressed air tanks that enable raising and lowering of the submarine to avoid detection. The first seizure of this type was made in April 1999 by Hong Kong Customs, who intercepted a trawler towing one such submarine on route from Macau to Hong Kong. On inspection, the submarine was found to contain 174,000 pirate optical discs. A subsequent and, similar, interception by the Macau Marine Police in May 1999 resulted in the seizure of 73,000 pirate discs on route from Macau to Hong Kong.

These cases demonstrate the scale and level of sophistication criminal syndicates are operating at to evade detection for the trans-shipment of pirate optical discs. Traditionally, such methods would have been used for the smuggling of drugs and other contraband, including firearms.

In July 2000, a raid against a suspected factory resulted in uncovering an optical disc factory, equipped with three VCD production lines and two printing machines. Seized in the raid were five mold heads, two stampers and various types of production software. On October 17, 2001, during an inspection by Macau Economic Services at the same premises, all sealed production lines and machines were removed without prior notice to the authority. Enforcement sources confirmed that a notorious senior triad member "Broken Tooth", who, at the time, was incarcerated pending organized crime related offences, controlled the factory.

E. Malaysia

In July 2001, the Petaling Jaya Municipal Council President received a personal death threat along with a threat to rape his daughter if the crackdown on illegal VCD traders continued. He also received a handwritten note packaged with a 10cm long razor blade via post. Newspaper reports cited that there had been 7 death threats reported to the police in the months following aggressive action by the enforcement officers against VCD pirates. Further, the Minister of Ministry of Domestic Trade and Consumer Affairs (MDTCA) also received a personal death threat. Of note, is that the Deputy Prime Minister stated that it was clear that the illegal trade is linked to criminal elements.

Also in July, 2002, pirates set fire to four vehicles being stored in the MDTCA Penang office parking lot. These vehicles had been seized in a piracy raid, which occurred the previous day.

In July 2002, a police report was filed after a van used by law enforcement authorities and industry operatives was hit three times by a car engaged in protecting the pirate market place. While operatives were conducting retail raids in Pandan Jaya, they were followed by seven cars, one of which deliberately rammed the raiding vehicle and caused significant damage to it. Industry staff and MDTCA officers were in the van at the time of attack.

In July 2002, it was reported in the media that MDTCA Minister, Tan Sri Muhyiddin Yassin, said investigations by the police and the ministry showed that piracy of intellectual property in the country was an organized activity involving triads and gangsters.

"It has a lot to do with the underground movement. The scope is certainly not small, it goes deep," . . . stated Yassin.⁹

In September 2002, a VCD trader tried to "zap" one of the officers with a stun gun while they were conducting raids at the trader's stall in Puchong. However, it missed and hit a stationary car instead. The man escaped into the crowd. No one was injured.

In October 2002, there was an escalation in the level of physical violence against raiding officers. In a raid in the Harian Metro District, four MDTCA enforcement officers were attacked by the pirates while conducting raids in Petaling Street. All of the officers were injured during the fight. Later that month, five VCD traders using a helmet and huge wooden sticks attacked local enforcement officers.

In October 2002, it was reported in the media that in the latest move to avoid detection by the authorities, manufacturers of pirated VCDs and CDs have resorted

⁹ July 2002, *The Star*

to producing them on board vessels anchored in international waters. The pirates have capacity to produce “thousands of discs daily” and later dock their vessels at the various ports or jetties along the state’s coastline. From there, they unload their illegal goods for distributors waiting to send them to retailers and traders all over the state.

In December 2002, Malaysian Police reported that a man was murdered in Petaling Jaya. He was in charge of controlling several pirate VCD stalls in the area. It is suspected that business rivalry for control of the stalls may have been the motive for the crime (he was murdered while inspecting one of the pirate stalls). Police are still investigating the case.

In January 2003 enforcement officers of the MDTCA will be provided firearms for protection against violent and aggressive vendors of pirated goods. Outlining the need to arm the officers, Minister Tan Sri Muhyiddin Yassin said a “real war” had started with enforcement officers facing life-threatening situations in the course of their work, particularly against pirated VCD operators.

“The situation is alarming and has reached a critical stage. Our officers on the ground are outnumbered by thugs employed by the piracy syndicates.”

He said the ministry’s fight against piracy had caused the syndicates to lose millions of Ringgit, and they were now desperate and becoming violent in preventing enforcement officers from carrying out their duty.

*Muhyiddin said “The incident reflected the dangers faced by the enforcement officers, adding that intelligence reports showed that the optic disc piracy industry involved syndicated crimes with international networks.”*¹⁰

In March 2003, it was reported in the media that *tontos* (gang members) in Batu Ferringhi tourist belt are fast gaining reputation as “Men in Black.” The Domestic Trade and Consumer Affairs enforcement unit Chief, Fahmi Kassim, said in an area where tourists were dressed in tropical attire, the *tontos* stood out in their distinctive style of dressing. One of the *tontos* who was also a stall owner took out a *parang* (sword) and threatened to harm his officers. He said seven of the officers were in the midst of confiscating fake watches and pirated VCDs when a man suddenly jumped out from his motorbike and pulled out a *parang* hidden in a sheath tied around his waist.

*“The man warned our officers to leave and not to disrupt their business,” Fahmi said. “The angry tonto used his parang to hack his own motorbike handle as a warning that he would not hesitate to harm the officers. To date over 30 police reports had been lodged against the tontos who disrupted their duty and those who tailed them during raids.”*¹¹

In May 2003, Malaysian police stated that they are considering using preventive laws against *tontos* who constantly harass enforcement officers. Outgoing state police chief Deputy Comm Datuk Arthur Edmonds stated the following:

“The ministry’s officers have already lodged more than 30 police reports against the tontos over the past two years. They will wait outside the officers’ houses and tail them wherever they go. There have been cases of these tontos getting violent when the officers try to confiscate pirated video compact discs (VCDs), digital versatile discs (DVDs) and compact discs (CDs),”

*The tontos, who have links with the secret societies in the state, are an “irritant” which needed to be taught a lesson, adding that there had been a few arrests but none had been charged in court so far.*¹²

F. Philippines

There is evidence that Muslim-Filipino organized gangs are cornering the retail market for pirate optical discs within Metro Manila. Government enforcement action over the last few years, however, suggests that manufacturing is being conducted by Chinese organized crime syndicates (PRC, Malaysia and Taiwan) as well as Filipino-Chinese gangs working directly for these overseas organized crime syndicates. Incidents of violent retaliation against raiding enforcement officers within Metro Manila are occurring with increased frequency. On a number of occasions raiding officers have had to resort to drawing firearms and firing to disperse the assailants. While some Muslim areas in Manila are virtually “no go” areas for enforcement officials due to the threat of violence, raids are taking place but, raiding teams are

¹⁰ January 2003, *The Star*

¹¹ March 2003, *The Star*

¹² May 2003, *The Star*

often over several hundred officers strong. Complicity between the Muslim groups and local government officials and municipal law enforcement remains an ongoing concern and continues to stymie enforcement action.

The government is looking at the possibility that international crime groups, such as the notorious Hong Kong Triads, could be behind the surging piracy rate in the Philippines, particularly in the movie and software industries. According to the Videogram Regulatory Board (VRB), a government department tasked with the mandate of fighting video piracy, organized crime groups appear to be involved in piracy by "assisting" illegal disc makers, particularly, in the purchase of replicating machines.

*"It is likely that international crime groups may have given seed money for illegal disc makers to buy these imported replicating machines, which can churn out some 21,000 CDs per hour."*¹³

*Foreign firms finance the syndicates that produce fake videos. These syndicates are also involved in the illegal drug trade.*¹⁴

*The truth of the matter is that the duplication, manufacture and smuggling of pirated videos from China, Malaysia and Thailand have become a multibillion-dollar business in Asia now in the hand of Chinese criminal syndicates that dole out millions of pesos to corrupt "scalawags in uniform," law enforcers, prosecutors and "scalawags in robes" and customs people. Would you believe that of some 500 pirates apprehended, not a single one has been convicted or jailed? Members of the PNP and other law enforcers either do not appear before prosecutors and judges, or claim insufficient evidence to convict the pirates.*¹⁵

G. Taiwan

A number of recent pirate cases in Taiwan demonstrate the proliferation of organized syndicates and the use of firearms to protect their illegal business.

In May 2002, during a raid on a house in Tainan Fruit Farming Zone, police seized two rifles, three handguns, four cartridge clips with bullets, one knife, one machine for making bullets for the weapons, drugs and 5,877 pirate optical discs for supplying the street vendors in the night markets. One male was arrested.

In June 2002, during a raid on an underground warehouse, police seized 17 CD-R burners, 21,843 illegal CDs and VCDs (in CD-R format) and a handgun. Six people were arrested, of which, four were under the age of 18. These juveniles were operating pirate optical disc stalls in the night markets.

In September 2002, in central Taiwan, the police arrested a 19-year-old in connection with the production of underground firearms to equip gang members who were required to protect the pirate optical disc syndicate's market place. The case demonstrates the extreme measures criminal syndicates will take to protect their illegal business even at the street distribution level.

In September 2002, police arrested two suspects in Taoyuan City whom were involved in an open-gun fire case in Rao Her Street Night Market in Sungsang City, Taipei, on 25th August. The two suspects fired two rounds in the air trying to control the pirate optical disc market without regard for the safety of a very large number of shoppers in the night market.

H. Thailand

In October 2001, near Bangkok, a successful raid against a DVD factory detected an underground tunnel linking a factory to a residential house. Pirate products were shipped between the two by an electric rail system, packaged in the house, and then distributed by road. Seized in the raid were millions of dollars of replication equipment. In a subsequent raid in March 2002, in an apparently abandoned building near Bangkok, police found hidden behind a secret door in a wardrobe unit, a DVD replication facility using highly sophisticated and automated DVD replication equipment. The discovery of a second secret door hidden inside the generator cupboard revealed illegal immigrants from Burma, Taiwan, Hong Kong and Mainland China who were responsible for operating the factory as well as packaging the product for distribution.

Numerous factory raids in recent years have failed to stop the proliferation of optical discs factories and, as a result, production facilities have risen by roughly 300% since 1999. Total annual output capacity is now conservatively estimated to be in excess of 350 million units. It is worth noting that total MPA unit sales of home

¹³ October 2002, Ramon Revilla, Jr., Chairman of Videogram Regulatory Board, Philippines Quadmedia News Agency, INQ7.net

¹⁴ January 2003, Ramon Revilla, Jr., Chairman of Videogram Regulatory Board, *Manila Standard*

¹⁵ February 2003, excerpt from the *Manila Standard*

video product in Thailand (including videocassettes) amounted to only 1.72 million units.

In December 2002, it was reported in the media that video piracy in Asia has exploded into a billion-dollar business as organized gangs elbow out back-alley operators and fast-evolving technology makes copying easier than ever, stated officials.¹⁶

In Thailand, counterfeit CDs, VCDs and DVDs are openly sold on the street for a fraction of their retail price.

“Authorities in Asian nations have made only a dent in a practice that costs copyright owners worldwide an estimated US\$60 billion a year, said Tan Sri Mohyiddin Yassin, Malaysia’s minister of domestic trade and consumer affairs.”

International syndicates are collaborating with the local music and movie industry to produce pirated VCDs using smuggled master files. Domestic Trade and Consumer Affairs Minister, Tan Sri Muhyiddin Yassin, said that inside jobs, with connections in Hollywood, was why the illegal VCD trade could not be wiped out entirely despite the numerous raids that had been carried out.

“I believe the syndicates are using facilities in Malaysia to produce pirated VCDs using the master files smuggled into the country, said Yassin”¹⁷

He noted that those involved in the production of pirated VCDs have vast knowledge about the music and movie industries and used international links to market their goods.

In May 2003, two enforcement officers were stabbed during operations and there is intelligence circulating that the pirate syndicates have recruited a more sinister level of criminals to intimidate and attack enforcement officers. It is timely to recall that back in 1998, the pirate syndicates, in response to a government crackdown and raiding activities, were believed to have been responsible for detonating a bomb at Phontip Plaza. Intelligence is circulating that a similar retaliation is being planned by the pirate syndicates to deter shoppers from Phontip Plaza.

I. Other

The International Federation of the Phonographic Industry (IFPI) has been tracing links between terrorism, organized crime and disc piracy and they have uncovered a sinister network of criminal activities funded by a global demand for pirated CDs, software and DVDs.

“We are tracking an individual from the Middle East who went to Paraguay and sold pirated discs worth millions of US dollars,” stated Mr. Marino Radillo, anti-piracy coordinator for Latin America IFPI. “The money was used to fund known terrorist organizations in the Middle East. Most of the discs originated from South-east Asia.”¹⁸

The IFPI declined to reveal exactly how the terrorists make money but did say they sold the discs for a profit. The IFPI also discovered anti-American propaganda messages from extremist groups on pirated discs in Argentina, Mauritius, Pakistan and Paraguay.

4. MPA STRATEGY

The MPA’s worldwide anti-piracy program works to: strengthen existing copyright protection legislation; assist local governments and law enforcement authorities in the investigation and prosecution of piracy cases; provide assistance in the criminal and civil litigation generated by such investigations and conduct education outreach programs regarding the harmful effects of piracy.

In dealing with the alarming occurrences of organized crime in copyright piracy, the MPA is fully committed to the support of governments and law enforcement agencies. The MPA appraises them of related transnational issues and intelligence, assists them in developing strategic action plans, and provides technical training and support for operations and litigation of cases stemming from successfully executed raids.

The MPA has a clear vision that criminal sentencing including confiscation and forfeiture of replication equipment is required to bring a level of deterrence to the copyright crimes being committed in Asia and that governments must take the lead in such prosecution actions. As required, strategic civil litigation is taken as a tactical tool to bring support to government actions and to raise awareness of the issues at hand.

¹⁶ December 2002, *Bangkok Post*

¹⁷ January 2003, *The Star*

¹⁸ March 2003, *The New Paper*

The MPA strategy is to ensure that we protect our member companies in combating movie piracy through the building of mutually beneficial support with governments and law enforcement authorities and we are recognized as professional partners in addressing all forms of piracy. In particular, the increase of organized crime will require a renewed vigor and commitment of resources not only by governments, but also by us. We are committed to such investment of resources and will work with governments to address the social and economic damage caused by criminal syndicates in movie piracy.

Our efforts have been substantial:

Asia Pacific Regional Operation Results

	Investigations	Raids	Legal Actions	Court Results	VCD Seizures millions	DVD Seizures millions
2002	7,414	9,254	8,994	7,970	24.6	6.1
2001	9,564	10,758	9,580	8,620	23.2	4.7
2000	8,898	5,681	5,011	5,522	17.8	1.9
1999	13,609	5,802	4,517	3,673	14.3	0.5
1998	11,264	6,130	2,590	2,353	42	0

Source: MPA

In 2002, in addition to the pirate VCDs and DVDs seized, there were an additional 4 million CD-Rs seized that had content of our member companies' films.

It should be noted that these figures only represents cases that the MPA is actively involved in and, generally, governments are conducting far more investigations and raids resulting in seizures than we are reporting here. Notwithstanding these efforts, our total losses continue to rise in the Asia Pacific Region and it is estimated that our 2002 losses were in excess of US\$ 640 million. Over 99% of the legal actions taken are criminal in nature. The significant improvement in the number of legal actions initiated and, subsequent court results, demonstrates that we are putting into action the strategy of pursuing criminal cases. Regrettably, the majority of sentences meted out by the court fail to act as a deterrent and the theft of member companies' films continue.

MPA LOSS ESTIMATES—ALL MEDIA (1998 to 2002)

ASIA PACIFIC REGION

COUNTRY	1998 US INDUSTRY LOSSES (in millions)	1999 US INDUSTRY LOSSES (in millions)	2000 US INDUSTRY LOSSES (in millions)	2001 US INDUSTRY LOSSES (in millions)	2002 US INDUSTRY LOSSES (in millions)
AUSTRALIA	21	21	21	26	34
BRUNEI	N/A	N/A	N/A	N/A	N/A
CHINA	120	120	120	160	168
HONG KONG	30	35	25	24	29
INDIA	66	66	47	70	75
INDONESIA	25	25	25	28	28
JAPAN	149	151	150	110	110
KOREA	20	20	20	25	27
MACAU	N/A	N/A	N/A	N/A	N/A
MALAYSIA	40	42	41	40	42
MYANMAR	N/A	N/A	N/A	N/A	N/A
NEW ZEALAND	2	2	2	2	4
PAKISTAN	9	9	10	11	12
PHILIPPINES	18	18	25	28	30
SINGAPORE	8	8	8	8	8
SRI LANKA	N/A	N/A	N/A	N/A	N/A
TAIWAN	15	20	30	35	42
THAILAND	19	21	24	24	26
VIETNAM	5	5	7	7	7

Note: All figures are in U.S. dollars, and exclude losses due to Internet piracy.

5. CONCLUSION

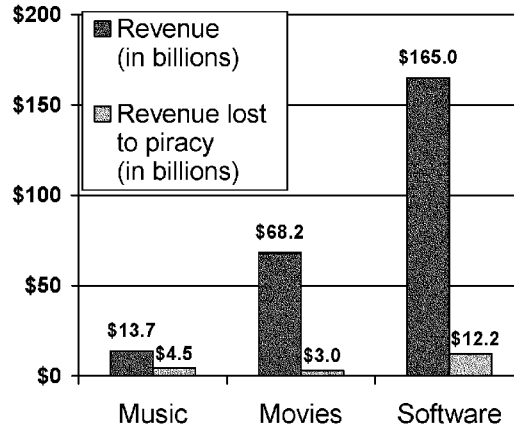
*"I'm troubled by the growing signs that (intellectual property) piracy is now being undertaken by organized crime groups," Janet Reno said at a luncheon organized by the U.S. Patent and Trademark Office. She compared the phenomenon to illegal drug trafficking, money laundering, and gun-running in terms of its severity and need for police attention. Reno said that intellectual property crimes such as piracy ". . . should be regarded as an extraditable offense," and nations should follow the lead of the United States in approving more criminal copyright laws. "We are going to have to match wits with some of the most sophisticated criminals ever," Reno said. "We are going to have to know the technology and know the laws that go along with that technology."*¹⁹

Mom and pop piracy shops have been muscled out of business by criminal syndicates who are hi-jacking intellectual property at alarming rates. Criminal syndicates who would traditionally have engaged in other forms of criminal activity have evolved and embraced the digital opportunities since digital products can be reproduced rapidly, where the 10,000th copy is as good as the first and, with mini-

¹⁹December 2000, Janet Reno, Former United States Attorney General, The Threat of Digital Theft: Intellectual Property Theft is Faster, Costlier and More Dangerous Than Ever

mal start-up costs. As a result, organized pirate syndicates conducting business in this area are reaping huge illegal financial gains. The movie industry is not the only losers, the software and music industries are also attractive targets and are losing billions of US\$ each year.

Worldwide Industry



Sources: RIAA, MPAA and SIIA (2001)

The MPA alone estimates its loss in 2002 to be more than US\$3 billion in annual revenues due to piracy (this does not include losses by piracy through the Internet).

Criminals know all too well that following the money trail is harder when more countries are involved. With complete disregard for sovereignty, they use borders to their advantage. Throw into the mix differences in language, legal systems, customs, and tax havens, combined with the creation of shell corporations with nominees as directors and the foundation of a sound money laundering system in place. Criminals involved in copyright theft have learned to operate internationally to compound the difficulty of tracing the proceeds of crime.

When the transformation shifts from small-scale criminal ventures to more organized criminal enterprises, the very nature of the law enforcement problems shifts as well. From the standpoint of investigation and prosecution, the long-standing problem has been insulation of the major figure-heads in criminal ventures. In many cases, the subordinates are most likely committing the actual crime. Where convictions are obtained, it is these "foot soldiers" that suffer the consequences; the "generals" are far from the scene. The generals, however, tend to be closer to the money.

The theft of intellectual property rights currently carries limited enforcement risk and is immensely profitable. Success in apprehending the leaders of such criminal enterprises will require the skillful use of intrusive investigative techniques.

Criminals are often most vulnerable to detection when they must handle the large amounts of cash generated by their illegal activities. At this placement stage, bulk cash is combined with legitimate income, smuggled out of the country, or converted into deposits in financial institutions.

It is therefore imperative that legislation is enacted to ensure that cash reporting, and money laundering legislation is designed to allow governments to get at the financiers and the finances; and that such legislation clearly states that copyright theft is defined as an organized crime covered under the legislation.

The nature and extent of organized crime, and particularly international organized crime, requires an unprecedented response from nation states and the international community. The need for renewed leadership by governments requires that a strong sense of outrage against organized crime be translated into dramatic improvements in the anti-organized crime battle. This will ensure that the theft of billions of US dollars of MPA member companies' legitimate revenue can be appropriately addressed.

The requirement of comprehensive legislation for organized crime and money laundering linked to piracy has never been more needed.

The MPA is committed to work with governments in a partnership relationship to address these new issues:

“If you cannot protect what you own, you don’t own anything.” Jack Valenti, President and Chief Executive Officer, Motion Picture Association of America.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE ASA HUTCHINSON BY MEMBERS OF THE COMMITTEE ON INTERNATIONAL RELATIONS, AND MR. HUTCHINSON’S RESPONSES

Question:

Since the realignment of priorities and the creation of the Department of Homeland Security, industry is concerned about policies being discussed that would dilute the ability of law enforcement to interdict counterfeit and pirated goods. What are the policies, guidelines and regulations concerning the seizure of any goods that violate intellectual property laws? Are there monetary thresholds for any action? Are there distinctions in the action to be taken based upon whether or not terrorism is involved? Please discuss Directive 3550-082A, dated June 6, 2003.

Response:

BCBP policies and guidelines for enforcing Intellectual Property Rights (IPR) statutes and regulations are contained in the Intellectual Property Rights Border Enforcement Handbook (CIS HB 2300-01), and several BCBP directives: **CD 2310-011A, Personal Use Exemption: Unauthorized Trademarks; CD 2310-010A, Detention and Seizure Authority for Copyright and Trademark Violations; CD 2310-008A, Trademark and Tradename Protection, CD 2310-006A; Exclusion Orders, CD 2310-005B, Copyright Protection.** (The Customs Directives are provided in this package. Other documents will be provided upon request.) Treasury Decision, T.D. 99-76 explains BCBP policy for assessing personal penalties related to imports of counterfeit trademark infringing goods. Finally, IPR enforcement regulations are found in 19 CFR Part 133.

Currently, there are no monetary thresholds for seizures or penalties relative to IPR violations.

In contrast, when customs officers suspect the importation of IPR infringing merchandise is linked to terrorism, the officers will immediately refer the case to the Bureau of Immigration and Customs Enforcement (BICE). BICE will then investigate the merchandise and determine what additional enforcement action is appropriate. If BICE seizes any IPR infringing merchandise related to terrorism, it will initiate proceedings for forfeit of the merchandise.

Directive 3550-082A, entitled **National Impact Levels for Trade Enforcement Issues**, helps to determine enforcement priorities by categorizing various customs violations on the basis of their risk. ALL issues involving terrorism are given the highest priority (Level 1). Intellectual Property Rights (IPR) violations that lack a terrorism, health, or safety nexus, are lower priorities. This is due, in part, to the method used to calculate the value of merchandise that violates IPR rules. The value of IPR merchandise is determined by the manufacturer’s suggested retail price (MSRP) of the genuine article, instead of the imported items’ domestic value, as is the case for most other merchandise. The significance of this difference is difficult to determine because it is impossible to establish the difference between the domestic value of the imported (fake) item, and the genuine article. Reasonable estimates vary from less than 10% of the value of the genuine article to a high of as much as 33%. Thus, an MSRP of \$75,000 (the minimum for a Level 2 violation) might mean that the imported fake shipment was valued somewhere between \$7,500 and \$25,000. Those are comparatively small values for commercial imports.

[NOTE—The directives referred to follow:]

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OR&R

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 2310-011A

DATE: JANUARY 24, 2000

SUPERSEDES: 2310-11 July 30, 1991

REVIEW DATE: JANUARY 2002

SUBJECT: PERSONAL USE EXEMPTION: UNAUTHORIZED TRADEMARKS

1. PURPOSE. To clarify Customs policy with respect to the proper application of the personal use exemption.

2. AUTHORITY. Generally, Section 526 of the Tariff Act of 1930, as amended (19 U.S.C. § 1526) and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. § 1124) (the Lanham Act) proscribe the importation of goods bearing counterfeits of trademarks which have been registered with the U.S. Patent & Trademark Office and recorded with U.S. Customs.

3. BACKGROUND. According to the statute (19 U.S.C. § 1526(d)(1)), such restrictions do not apply to the importation of articles accompanying any person arriving in the United States, when such articles are for his personal use and not for sale, provided such articles have been approved and enumerated by Customs, and that such person has not been granted a 1526(d) exemption within 30 days immediately preceding his arrival. However, 19 U.S.C. § 1526(d)(4) also authorizes the Secretary of the Treasury to prescribe such rules and regulations as may be necessary to carry out that law.

3.1 At 19 CFR § 148.55, Customs has promulgated regulations which provide for the importation of one article of a type bearing an unauthorized protected trademark. Importations of quantities greater than one article of a type bearing an unauthorized trademark are subject to the provisions of 19 CFR § 133.24.

4. ACTION. Customs officers shall permit any person arriving in the United States, to import one article, which must accompany the person, bearing a counterfeit, confusingly similar, or restricted gray market trademark, provided that the article is for personal use and not for sale.

4.1 Customs officers shall permit the arriving person to retain one article of each type accompanying the person. For example, an arriving person who has three purses, whether each bears a different unauthorized trademark or whether all three bear the same unauthorized trademark, is permitted one purse.

4.2 Imported items over and above one article are subject to disposition under either 19 CFR § 133.21 (counterfeit) or 19 CFR § 133.24 (gray market and confusingly similar). Under 19 CFR § 133.21, counterfeit items, in the absence of permission from the trademark owner, must be seized and forfeited. Gray market or confusingly similar goods are subject to detention under 19 CFR § 133.24(a). Upon such a detention, Customs officers should orally advise the person(s) arriving that the articles are subject to detention and that in accordance with 19 CFR § 133.24(c)(2), such articles may be:

4.2.1 Exported or destroyed under Customs supervision; or

4.2.2 Imported if the mark is removed or obliterated to Customs satisfaction; or

4.2.3 Released if permission to import the goods is obtained from the trademark holder.

4.3 Where the trademark holder consents to the importation of goods bearing unauthorized trademarks in quantities above the regulatory exemption, Customs officers shall allow the greater quantity to be imported.

4.4 Where the importer has failed to obtain release of such detained goods after 30 days from the date of presentation to Customs, said goods shall be seized and forfeiture proceedings instituted.

4.5 In the past, there has been confusion over whether the personal use exemption contained in 19 CFR § 148.55 applies equally to crew members. 19 CFR § 148.55, and its governing statute, 19 U.S.C. § 1526(d), state that the personal use exemption is available to "any person." This includes crew members.

5. RESPONSIBILITIES. Customs field officers are responsible for following these guidelines. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

COMMISSIONER OF CUSTOMS

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OR&R

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 2310-006A

DATE: DECEMBER 16, 1999

SUPERSEDES: 2310-006, 11/21/89

REVIEW DATE: DECEMBER 2001

SUBJECT: EXCLUSION ORDERS

1. PURPOSE. To present information on Customs policies and procedures concerning Exclusion Orders issued by the International Trade Commission.

2. AUTHORITY. Title 19, United States Code, Section 1337; 19 CFR § 12.39.

3. BACKGROUND. Under Section 337 of the Tariff Act of 1930 (19 USC § 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated U.S. industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. Additionally, Section 337 declares unlawful the importation into the United States of articles which infringe a U.S. patent, registered trademark, copyright, or mask work. Subsequent to an investigation of an alleged violation under Section 337, where the U.S. International Trade Commission (ITC) determines that Section 337 has been violated, the Commission may issue orders directing the Secretary of the Treasury to exclude the subject goods from entry into the United States.

3.1 Under Section 337 of the Tariff Act of 1930, as amended, unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated U.S. industry, or to restrain or monopolize trade and commerce in the United States, are unlawful.

3.2 Exclusion Orders issued by the ITC are sent to the President for review. During the 60 day review period, if the order is not disapproved by the President or if the President affirmatively approves the order during this period, the order becomes final. Customs enforces Exclusion Orders both prior and subsequent to their becoming final. In cases involving importations which occur within the 60 day Presidential review period, the otherwise excludable articles may be entered under a single entry bond on Customs Form 301, containing the bond conditions set forth in 19 CFR § 113.62 in an amount determined by the ITC. After the Presidential review period, where the Exclusion Order becomes final, the bond conditions no longer apply and the goods are subject to exclusion.

3.3 Exclusion Orders may be either "General" (meaning all goods of a certain description must be denied entry, with specified exceptions) or "Limited" (meaning all goods of a certain description imported by a certain company or companies must be denied entry). Limited exclusion orders are sometimes directed against goods manufactured by or exported by a certain company or companies. The nature of the Exclusion Order itself, and the parameters of enforcement, will be detailed in the Exclusion Order Notice.

3.4 Seizure and Forfeiture Orders. In addition to issuing Exclusion Orders, the ITC may also issue Seizure and Forfeiture Orders where the importer attempts, after previously having had the same goods denied entry pursuant to an Exclusion Order, and having been notified by Customs that seizure and forfeiture could result from future attempted entries, a subsequent importation of similar goods which are the subject of the Exclusion Order. Importations of articles in contravention of Seizure and Forfeiture Orders should be seized and forfeited under 19 U.S.C. § 1337(i), as implemented by 19 CFR § 12.39(c).

4. ENFORCEMENT. In general, Exclusion Orders issued by the ITC are administered by the Office of Regulations & Rulings, IPR Branch, but are processed by the Office of Field Operations. Upon receipt of orders from the ITC, an "Exclusion Order Notice" is released to the field through the Office of Field Operations. Notices regarding the enforcement of exclusion orders are to be transmitted to the field via the U.S. Customs Bulletin Board (Trade Enforcement, OT01). Exclusion Order Notices will provide details relative to the enforcement of a particular order. Exclusion Orders are catalogued within the ACS/IPR module in the same manner as trademarks and copyrights.

4.1 Procedures. The strategic operational analysis staff (SOAS) will update cargo and/or summary selectivity criteria to include exclusion order information.

4.1.1 Given the highly technical nature of articles which are the subject of most Exclusion Orders, Customs officers should seek the advice of Customs laboratories, which provide technical assistance in determining whether goods meet the parameters of the subject patent. Field officers may contact the designated field laboratory servicing their geographic area or the Laboratories and Scientific Services at Customs Headquarters for advice.

4.1.2 Where goods determined to be subject to an Exclusion Order are presented to Customs, field officers must exclude the goods from entry into the United States and permit export. Note that "in bond" movements of restricted merchandise subject to an Exclusion Order, although transported through the United States, do not enter the United States and are thereby considered excluded from the United States.

4.1.3 Written notification of such exclusion must be provided to the importer. A sample letter to be issued to the importer in such a case is attached to this Directive.

4.1.4 Copies of denial of entry letters sent pursuant to Exclusion Orders are to be sent by the Port to:

4.1.4.1 U.S. Customs Service, Office of Regulations & Rulings, IPR Branch, Room 3.4A, 1300 Pennsylvania Ave., NW., Washington, D.C. 20229

4.1.4.2 U.S. International Trade Commission, Office of General Counsel, 500 E Street, SW., Washington, D.C. 20436

5. RESPONSIBILITIES. Customs field officers are responsible for following this Directive. Area/Port Directors, Assistant Port Directors (Trade Operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

COMMISSIONER OF CUSTOMS

Attachment

APPENDIX

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

(IMPORTER)

Sir/Madam:

This is to advise you that the following shipment is deemed excludable from entry into the United States by Order of the U.S. International Trade Commission for violation of 337-TA-_____, an Exclusion Order:

Patent/Trademark/Copyright Registration Number:
U.S. International Trade Commission Case No: 337-TA-
Article Denied Entry:
Quantity:
Vessel/Airline:
Bill of Lading:
Date of Denial of Entry:

You have 30 days from the date of this letter to export the subject merchandise from the United States. If the merchandise is not exported within 30 days, it will be disposed of under Customs supervision pursuant to 19 CFR § 12.39(b)(3) and (c)(5).

A copy of this notice is being furnished to the U.S. International Trade Commission. You are hereby notified that any future attempt to import such articles may result in the articles being seized and forfeited.

Sincerely,

AREA/PORT DIRECTOR

cc: U.S. International Trade Commission
U.S. Customs, Office of Regulations & Rulings

CUSTOMS DIRECTIVES

ORIGINATING OFFICE: OR&R

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 2310-008A

DATE: APRIL 7, 2000

SUPERSEDES: 2310-008, 1/16/90

REVIEW DATE: APRIL 2002

SUBJECT: TRADEMARK AND TRADENAME PROTECTION

1. PURPOSE. To provide relevant information and guidelines on Customs policies and procedures with respect to trademark and trade name protection.

2. POLICY

2.1 In order to fulfill its statutory, regulatory, and treaty-based obligations of preventing the importation of merchandise which violates certain trademark and trade name rights which have been registered with the U.S. Patent and Trademark Office, U.S. Customs is vested with the authority to: (1) exclude from entry, (2) detain, and/or (3) seize, violative trademarked goods. In order to most effectively provide protection against such violative imports, Customs has established an intellectual property rights (IPR) enforcement regime which offers rights holders a two-tiered enforcement option, while providing Customs officers with up-to-date, detailed information about the rights being protected.

2.2 The first tier of this two-tiered approach is Customs protection afforded pursuant to the "recordation process." Under this system, trademark holders, once having duly registered their trademark rights with the U.S. Patent & Trademark Office, and tradename holders, may request that Customs collect and retain information relative to those rights for a specified time, during which Customs shall, either of its own initiative, or with the assistance of the trademark holder, actively monitor imports in order to prevent the importation of violative articles.

2.3 The second tier is Customs "application process." Under this system, trademark holders, once having duly registered their trademark rights with the U.S. Patent & Trademark Office and recorded same with U.S. Customs, and tradename holders, may provide Customs with information relative to the importation of violative imports so that Customs can prevent such importation.

3. AUTHORITIES/REFERENCES. Relevant statutory and regulatory citations associated with Customs enforcement of trademarks and trade names are listed below. The narratives listed below are synopses of the statutory/regulatory mandates; care should be used to cite actual language of statutory/regulatory provisions in the course of enforcement actions. Officers should undertake to review the descriptions of laws and regulations contained within this Directive in order to gain a comprehensive understanding of their intent and purpose.

3.1 UNITED STATES CODE

3.1.1 Title 19 U.S.C. §§ 1526(a) and (b)—Prohibits the importation, with certain exceptions noted in section 133.23(d) of the Customs Regulations, of foreign-made merchandise, if the merchandise, or its packaging or labeling, bears a registered trademark or trade name owned by a U.S. citizen or corporation, which is recorded with U.S. Customs. Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to detention pursuant to 19 CFR § 133.25. Failure to meet conditions set forth in 19 CFR § 133.23(d) shall lead to seizure and forfeiture pursuant to 19 CFR § 133.23(f).

3.1.2 Title 19 U.S.C. § 1526(e)—Subjects to seizure and forfeiture any merchandise bearing a counterfeit mark. (Title 15 U.S.C. Section 1127 defines "counterfeit" as a spurious mark, which is identical with, or substantially indistinguishable from, a registered mark).

3.1.3 Title 19 U.S.C. § 1526(f)—Provides for imposition of civil fines in cases when goods are seized and forfeited under § 1526(e).

3.1.4 Title 15 U.S.C. § 1124—Provides that no [article] of imported merchandise which shall copy or simulate a trade name or a trademark registered in accordance with provisions of this chapter, shall be admitted to entry at any customhouse (this covers both domestic and foreign-made articles).

3.1.5 Title 15 U.S.C. § 1125—Proscribes importations or entry at any custom-house of the United States, goods or containers which use words, terms, or descriptions which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation or sponsorship.

3.1.6 Title 19 U.S.C. § 1595a(a)—Provides for seizures and forfeiture of conveyances if used in, to aid in, or to facilitate, the importation of any article contrary to law.

3.1.7 Title 19 U.S.C. § 1595a(b)—Provides Customs with the authority to issue civil penalties equal to the value of the merchandise attempted to be introduced contrary to law.

3.1.8 Title 19 U.S.C. § 1595a(c)(2)(C)—Provides seizure and forfeiture authority for articles introduced or attempted to be introduced which violate trademarks, trade names, or copyrights.

3.1.9 Title 18 U.S.C. § 2320—Prohibits the intentional trafficking or attempts at trafficking in goods bearing counterfeit trademarks and provides criminal sanctions.

3.2 CODE OF FEDERAL REGULATIONS

3.2.1 Customs Regulations 19 CFR §§ 133.1–133.7—Recordation of trademarks with Customs.

3.2.2 Customs Regulations 19 CFR §§ 133.11–133.15—Recordation of trade names with Customs.

3.2.3 Customs Regulations 19 CFR § 133.21—Seizure of articles bearing counterfeit trademarks and related disclosure information.

3.2.4 Customs Regulations 19 CFR § 133.22—Detention of articles bearing “confusingly similar” marks subject to restrictions and related disclosure information.

3.2.5 Customs Regulations 19 CFR § 133.23—Restrictions on importations of gray market articles.

3.2.6 Customs Regulations 19 CFR § 133.24—Restrictions on articles accompanying importers and mail importations.

3.2.7 Customs Regulations 19 CFR § 133.25—Procedures on detention of articles subject to restriction.

3.2.8 Customs Regulations 19 CFR § 133.26—Demand for Redelivery of released merchandise.

3.2.9 Customs Regulations 19 CFR § 133.27—Civil fines for those involved in the importation of counterfeit trademark goods.

4. ENFORCEMENT

4.1 In General. Agency policy dictates that U.S. Customs focus its enforcement efforts on trademarks and trade names that are “recorded” with Customs. Unrecorded trademarks which have been registered with the U.S. Patent and Trademark Office on the Principal Register, while not a priority, may be enforced, if and when possible, and in such a manner as the sound administration of the Customs laws shall not be compromised. Customs policy mandates that the majority of resources and emphasis should be placed upon the enforcement of recorded trademarks.

4.1.2 Prior to the initiation of any IPR action, the IPR Module should be consulted to ascertain whether the trademark in question is in fact recorded with Customs, and if so, the extent of protection the trademark is entitled to. The “IPR Module” is a function located within the Automated Commercial System (ACS), which contains individual records and information relative to all IPRs recorded with Customs.

4.1.3 When undertaking a trademark enforcement action, officers should accurately note the trademark recordation number(s) involved and accurately record same in records of the case. Similarly, officers seeking IPR Branch assistance in arriving at infringement determinations are expected to have consulted the IPR Module prior to seeking assistance and should be prepared to accurately cite specific information from the relevant IPR recordation.

4.2 Processing an IPR Case: When to Take Action

4.2.1 Customs policy mandates that suspect trademark-violative goods can only be detained upon a “reasonable suspicion” that said goods bear marks which violate a federally registered trademark.

4.2.2 If a Customs officer can articulate a basis for having such “reasonable suspicion” at the time of presentation to Customs, he may formally detain the goods at that time. Where a Customs officer is unsure whether to formally detain the goods at the time of presentation to Customs, he may detain the goods for a 5-day period pursuant to 19 U.S.C. § 1499 to determine whether such “reasonable suspicion” exists.

4.2.3 If Customs determines that such “reasonable suspicion” exists, Customs shall issue a formal letter of detention to the importer before the expiration of the 5-day period. A sample “Notification of Detention” letter, to be sent to the importer, is attached to this Directive at Appendix 1.

4.2.4 In accordance with 19 U.S.C. § 1499, the goods must be disposed of in accordance with relevant statute and regulation. The nature of the violation, if any, will determine the manner of disposition.

4.3 Characterizing the Violation and Taking Action Against the Goods. As a general matter, Customs presently recognizes two standards of trademark infringement in its enforcement of U.S. trademark law: “Counterfeit” and “Confusingly Similar.” Gray market violations are treated separately.

4.3.1 “Counterfeit”—Legal Definition: A spurious (false, non-genuine) trademark which is identical to, or substantially indistinguishable from, a federally registered U.S. trademark (15 U.S.C. § 1127).

4.3.2 “Confusingly Similar”—Legal Definition: A mark which is similar to the genuine trademark such that it is likely to cause confusion as to source or sponsorship (15 U.S.C. §§ 1114, 1127).

4.3.3 Upon presentation, or at the time of detention or seizure of suspect violative goods, it is incumbent upon the acting officer to characterize the nature of the alleged violation. Violative goods should be ascribed to one of the following four characterizations:

4.3.3.1 Counterfeit trademark violation; protected trademark not recorded with Customs;

4.3.3.2 Confusingly similar trademark violation; protected trademark recorded with Customs;

4.3.3.3 Confusingly similar trademark violation; protected trademark not recorded with Customs.

4.3.4 Counterfeit marks:

4.3.4.1 Articles bearing “counterfeit” marks of trademarks recorded with Customs shall be seized and forfeiture proceedings instituted under 19 U.S.C. § 1526(e), as implemented by 19 CFR § 133.21. Civil penalties shall routinely be imposed pursuant to 19 U.S.C. § 1526(f).

4.3.4.2 Counterfeit trademark violation; protected trademark not recorded with Customs. Where administratively feasible and appropriate, such goods may be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 18 U.S.C. § 2320, as implemented by 19 CFR § 133.21(a).

4.3.4.3 Cases involving suspected criminal counterfeiting should be referred to the Office of Investigations (OI). Information relative to forwarding cases to OI is detailed in the IPR handbook.

4.3.4.4 A sample “Notification of Seizure” letter to be sent to the trademark holder, is attached to this Directive at Appendix 2. A sample “Notification of Seizure” letter to be sent to the importer, is attached to this Directive at Appendix 3.

4.3.5 Civil Fines. In accordance with 19 CFR § 133.27, Customs, as authorized by 19 U.S.C. § 1526(f), may impose a civil fine relative to seizures effected in **counterfeit cases only** pursuant to 19 U.S.C. § 1526(e). For the first seizure of such merchandise, the fine shall be not more than the domestic value of the merchandise as if it had been genuine based upon the manufacturer’s suggested retail price (MSRP) at time of seizure. For second and subsequent violations, the fine shall not be more than twice such value. A chart outlining the parameters for levying such fines is contained in the IPR handbook.

4.3.6 Confusingly Similar Marks:

4.3.6.1 Confusingly similar trademark; protected trademark recorded with Customs.

4.3.6.1.2 Under 19 CFR § 133.22, such goods shall be detained for 30 days during which time the importer shall be afforded the opportunity, before expiration of the 30-day period, to establish that any of the circumstances described in 19 CFR § 133.22(c) are applicable.

4.3.6.1.3 A sample “Notification of Detention” letter, to be sent to the importer, is attached to this Directive at Appendix 1. A sample “Notification of Detention” letter, to be sent to the trademark holder, is attached to this Directive at Appendix 4.

4.3.6.1.4 Failure to establish an exception under 19 CFR § 133.22(c) subjects the goods to seizure in accordance with 19 U.S.C. § 1595a(c)(2)(C) for a violation of 15 U.S.C. § 1124, as implemented by 19 CFR § 133.22(f). A sample “Notification of Seizure” letter, to be sent to the importer, is attached to this Directive at Appendix 5.

4.3.6.2 Confusingly similar trademark; protected trademark not recorded with Customs. Customs policy is to neither detain nor seize goods bearing such marks.

5. DISCLOSURE OF INFORMATION AND PROVIDING SAMPLES TO TRADEMARK HOLDERS. Customs Regulations 19 CFR §§ 133.21 and 133.22 provide for disclosure of certain information in cases where goods are detained and/or seized for violations of the trademark laws.

5.1 Disclosure of Counterfeit Cases. When counterfeit articles are seized in accordance with 19 CFR § 133.21, Customs officers SHALL disclose to the trademark holder in writing the following information within 30 business days of the date of the seizure as required in 19 CFR § 133.21(c). See Appendix 1 for sample letter.

Date of Importation:
 Port of Entry:
 Description of Merchandise:
 Quantity:
 Name and address of Manufacturer:
 Name and address of Exporter:
 Name and address of Importer: (Note: If importer of record is broker or nominal consignee, provide the ultimate consignee if known)
 Country of Origin:

5.1.1 Any time after seizure of the merchandise for examination, Customs MAY provide a sample to the trademark holder for exam, testing, etc. If a request for sample is made, the trademark holder MUST provide Customs with a bond as required in 19 CFR § 133.21(d).

5.1.2 Amount of the bond is to be specified by the area/port director. The bond is normally set at 120 percent of the CIF value of the sample, plus duty and other applicable fees (but not lower than \$100). In cases where the value of the sample is less than \$100, a cash deposit may be accepted by Customs. Customs may demand return of the sample at any time. The holder must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its return, the holder must certify to Customs that “the sample described as (full description) and provided pursuant to 19 CFR § 133.21(d) was damaged, destroyed or lost during examination, testing or other use.” If the sample is not returned, Customs officers should proceed to forfeit the bond.

5.2 Disclosure: Confusingly Similar cases (copying or simulating Trademarks or trade names). When articles are subject to the restrictions under 19 CFR § 133.22, Customs officers MAY disclose to the trademark holder the following information prior to the time that a detention notice is issued under 19 CFR § 133.25. Once a notice of detention is issued, Customs SHALL disclose to the holder of the trademark or tradename the following information within 30 days, excluding weekends and holidays, of the date of the detention. See Appendix 4 for sample letter.

Date of Importation:
 Port of Entry:
 Description of Merchandise:

Quantity:
Country of Origin:

5.2.1 Any time after presentation of the merchandise for examination, Customs MAY provide a sample to the trademark holder for exam, testing, etc. If a request for sample is made, the trademark holder MUST provide Customs with a bond as required in 19 CFR § 133.25.

5.2.2 Amount of the bond is to be specified by the area/port director. The bond is normally set at 120 percent of the CIF value of the sample, plus duty and other applicable fees (but not lower than \$100). In cases where the value of the sample is less than \$100, a cash deposit may be accepted by Customs. Customs may demand return of the sample at any time. The holder must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its return, the holder must certify to Customs that “the sample described as (full description) and provided pursuant to 19 CFR § 133.25(c) was damaged, destroyed or lost during examination, testing, or other use.” If the sample is not returned, Customs officers should proceed to forfeit the bond.

5.2.3 Prior to release of the sample, Customs officers should remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or other identifying marks.

6. RESTRICTED “GRAY MARKET” ARTICLES/GOODS, (AKA “PARALLEL IMPORTS” OR “DIVERTED GOODS”)

6.1 In General. Restricted “Gray Market” articles (a.k.a. “Parallel Imports” or “Diverted Goods”) are foreign-made articles bearing a genuine trademark or trade name identical with, or substantially indistinguishable from, one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States which are imported without the authorization of the U.S. holder.

6.1.1 It is important to understand the difference between Gray Market goods and goods bearing Counterfeit marks. First, by definition, gray market goods will always be genuine. They bear a trademark which has been applied with the approval of the trademark holder, but the approval to use the mark is intended to apply to sale in a country other than the United States. Goods bearing counterfeit marks, on the other hand, are never genuine; the marks, which are usually identical versions of the genuine trademark, have been applied without the authority of the trademark holder.

6.1.2 Only trademarks which are recorded with U.S. Customs are entitled to gray market protection. The IPR Branch determines gray market status at the time of recordation. Claims or questions regarding the validity of gray market protection afforded to particular trademarks are to be forwarded to the OR&R IPR Branch.

6.2 Processing a Typical Gray Market Case

6.2.1 The first step in processing a gray market case is to determine whether the trademark in question is entitled to gray market protection by U.S. Customs. To do this, Customs field officers must consult the ACS IPR Module. Within each ACS IPR Module trademark recordation file screen, there exists a section entitled “GENUINE TRADEMARKED ARTICLES RESTRICTED”. If the box associated with that section is marked with a “Y”, this indicates that no one except the trademark holder or his designee may import genuine articles bearing that trademark. If the box is marked with an “N”, this indicates that gray market goods bearing that trademark may be imported by anyone without restriction. If the box is marked with an “L”, this indicates that *Lever-rule* protection has been granted. Please refer to the next section for a detailed explanation.

6.2.2 The next task for Customs officers in the disposition of a gray market case is to determine whether the goods are genuine; if not, the goods should be treated as a counterfeit trademark violation, as appropriate. If the goods are genuine, and a “Y” appears in the trademark recordation screen, the goods may not be imported without the U.S. trademark owner’s consent. If the goods are genuine and an “N” appears in the trademark screen, the goods may be imported by anyone regardless of whether the trademark holder consents. Customs officers should consult the IPR handbook for advice relative to distinguishing genuine from non-genuine goods. Advice is also available from the OR&R, IPR Branch.

6.2.3 Imported goods subject to gray market protection should be detained pursuant to 19 CFR § 133.23 and potentially seized and forfeited under 19 U.S.C. § 1526(b), as implemented by 19 CFR § 133.23(f). Sample “Notification of Detention” letters are attached to this Directive at Appendix 1 and Appendix 4 (for the importer and trademark holder, respectively) and a sample “Notification of Seizure” letter for the importer is attached at Appendix 5.

6.3 “Lever-rule” Cases in General. Pursuant to a court decision on March 26, 1999 (*Lever Brothers Co. v. U.S.* 981 F.2d 1330 (1993)), Customs amended its regulations to prevent the importation of gray market goods which are “physically and materially different” from similar goods authorized for importation into the United States absent clear notice to the consumer. Customs will determine whether physical or material differences exist.

6.3.1 This determination may include, but is not limited to: composition of both the authorized and gray market products (including chemical composition), formulation, product construction, structure or composite product components, of both the authorized and gray market product; performance and/or operational characteristics of both the authorized and gray market product; differences resulting from legal or regulatory requirements; certification etc., and other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

6.3.2 19 CFR § 133.2(f) provides that Customs will publish in the Customs Bulletin a notice listing any trademarks for which *Lever-rule* protection has been requested and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the requests before issuing a determination on whether *Lever-rule* protection is granted.

6.3.3 For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the Customs Bulletin a notice that a trademark will receive *Lever-rule* protection with regard to a specific product.

6.3.4 The new regulation, 19 CFR § 133.23(b), provides that the restriction to importation will not apply where a label is placed on the product informing the ultimate purchaser in the United States that the “product is not the product authorized by the U.S. trademark holder for importation, and is physically and materially different.” Under the new regulation, where this label is placed on goods which would be excluded under *Lever-rule* protection, the goods could then be entered into the United States. The label is to be placed in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information may be added to dispel consumer confusion. The label is to remain on the product until the first point of sale to a retail consumer in the United States.

7. MISCELLANEOUS

7.1 Merchandise; Product vs. Packaging. The term “merchandise” encompasses any goods, articles, etc., which: (1) themselves bear violative marks, or (2) whether themselves bearing violative marks or not, are contained within packaging which bears violative marks. That is, goods which themselves do not bear violative marks, but are contained within packaging which does bear violative marks, are not segregable and both product and packaging are considered an entirety under the trademark laws and should, without exception, be seized and subjected to forfeiture under the applicable statutory authority.

7.2 Forfeited Goods vs. Goods which are Subject to Forfeiture. Please note that, in accordance with 19 CFR § 133.21(b) and 19 U.S.C. § 1526(e), goods bearing counterfeit trademarks, whether recorded or not, which have been seized, in the absence of the written consent of the trademark holder, shall be *subject to forfeiture*, not “forfeited” at that moment. Thus, only after goods have been *forfeited* (i.e., the forfeiture has been “perfected”), are the goods subject to the methods of disposition contained in 19 CFR § 133.52.

7.3 Merchandise Not in Customs Custody; Demand for Redelivery. Where Customs, after goods have been released, determines that a violation was likely to have existed, it may order the redelivery of the goods by sending a Notice to Redeliver (CF 4647) to the importer within 30 days of release of the goods. In cases where a laboratory analysis conducted subsequent to release in-

dicates infringement, the notice to redeliver may properly be issued within 30 days of the date of such report. The importer has 30 days in which to redeliver the merchandise into Customs custody. If the importer does not redeliver the merchandise, a claim for liquidated damages shall be initiated. The local OI will be notified immediately of all shipments of counterfeit merchandise which have been released from Customs custody.

7.4 Personal Use Exemption from Trademark Restrictions. Under Public Law 95-410 effective October 3, 1978 (19 U.S.C. § 1526(d)), a traveler arriving in the United States with a protected trademark article may be granted an exemption to the import restrictions. Under this exemption, a traveler may import one article of the type bearing a protected trademark. These exemptions would apply to an article bearing a counterfeit or confusingly similar trademark, as well as an otherwise restricted gray market article (19 CFR § 148.55). This exemption applies if the article:

7.4.1 Accompanies a traveler to the United States,

7.4.2 If it is for personal use and not for sale, and

7.4.3 If the traveler has not been granted an exemption for the same type of article within 30 days preceding his or her arrival.

7.4.4 Further information concerning the personal use exemption is contained in Customs Directive 2310-011A.

7.5 OTO-1 Bulletin Board. Periodically, special alerts pertaining to specific trademarks or commodities may be posted to the Office of Field Operations (OFO) OTO-1 Bulletin Board. Officers should routinely monitor the OTO-1 Bulletin Board to keep abreast of important developments in IPR enforcement.

8. RESPONSIBILITIES. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

9. ENFORCEMENT ADVICE. Release of merchandise to premises designated by the importer shall be used sparingly and only upon the filing of a single entry bond for three times the entered value of the merchandise and a written agreement not to dispose of the merchandise without Customs permission. No other "constructive custody" release shall be allowed. Advice may be obtained from the Office of Regulations & Rulings, Intellectual Property Rights Branch, at 202-927-2330; fax 202-927-1875.

COMMISSIONER OF CUSTOMS

Attachments

APPENDIX 1

Letter to be sent to importer where goods have been detained for bearing confusingly similar marks or constituting restricted gray market goods.

Dear Sir/Madam:

In accordance with 19 CFR §§ 133.23 and 133.25 (Title 19, Code of Federal Regulations, sections 133.22 and 133.25), implementing section 526 of the Tariff Act of 1930, as amended Title 19, United States Code, section 526 (19 U.S.C. § 1595a(c)(2)(C)), and section 42 of the Lanham Trademark Act (15 U.S.C. § 1124), articles bearing unauthorized uses of an American trademark, or confusingly similar copies or simulations of U.S. trademarks recorded with Customs are prohibited importation or denied entry into the United States.

You are hereby notified that under 19 CFR §§ 133.23 and 133.25, your importation of _____, entry number _____, is being detained by U.S. Customs for the following violation of U.S. trademark law:

() A confusingly similar copy or simulation, in violation of 15 U.S.C. § 1124, subject to forfeiture under 19 U.S.C. § 1595a(c)(2)(C).

() An unauthorized "gray market" importation, in violation of 19 U.S.C. § 1526(a), subject to forfeiture under 19 U.S.C. § 1526(b).

U.S. Customs Recordation Number:

Description of Trademark:
U.S. Patent & Trademark Office Registration Number:

The imported articles shall be detained for a period of 30 days from the date presented to Customs. You may obtain release of the detained articles within the 30-day detention period if you can establish that an exemption under 19 CFR § 133.22(c) is applicable. If release of the merchandise is not affected within this 30-day period, the goods shall be seized and subjected to forfeiture under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 15 U.S.C. § 1124, as implemented by 19 CFR § 133.22.

Sincerely,

AREA/PORT DIRECTOR OF CUSTOMS

APPENDIX 2

Letter to be sent to trademark holder in cases where goods bearing counterfeit marks have been seized.

Dear Sir/Madam:

In accordance with 19 CFR § 133.21, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 526 of the Tariff Act of 1930, as amended, Title 19, United States Code, Section 526 (19 U.S.C. § 1526(e)), articles bearing counterfeit trademarks are subject to seizure and forfeiture.

Customs has seized goods which bear marks which constitute counterfeit copies of the following trademark and is notifying you, the trademark holder, of the action:

Description of Trademark:
U.S. Customs Recordation Number:
U.S. Patent & Trademark Office Registration Number:

In accordance with 19 CFR § 133.21, you are hereby notified of the following seizure information:

Date of Importation:
Port of Entry:
Description of Merchandise:
Quantity:
Name/address of Manufacturer:
Name/address of Exporter:
Name/address of Importer:
Country of Origin:

In accordance with 19 CFR § 133.21, you may obtain a sample of the seized goods upon request, provided you meet certain conditions.

Sincerely,

AREA/PORT DIRECTOR OF CUSTOMS

APPENDIX 3

Letter to be sent to importer informing him that goods have been seized for bearing counterfeit marks.

Dear Sir/Madam:

In accordance with 19 CFR § 133.21, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 526 of the Tariff Act of 1930, as amended, Title 19, United States Code, Section 526 (19 U.S.C. § 1526(e)), articles bearing counterfeit trademarks are subject to seizure and forfeiture.

You are hereby notified that under 19 CFR § 133.21, your importation of _____, entry number _____, has been seized by U.S. Customs as bearing counterfeits of the following registered U.S. trademark:

Description of Trademark:
U.S. Customs Recordation Number:
U.S. Patent & Trademark Office Registration Number:

You may exercise your right to petition this seizure pursuant to Part 171, Title 19, Code of Federal Regulations.

Sincerely,

AREA/PORT DIRECTOR OF CUSTOMS

APPENDIX 4

Letter to be sent to trademark holder in cases where gray market goods or goods bearing confusingly similar marks have been detained.

Dear Sir/Madam:

In accordance with 19 CFR § 133.25, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 526 of the Tariff Act of 1930, as amended, Title 19, United States Code, Section 526 (19 U.S.C. § 1526), trademark holders are entitled to receive certain information from Customs relative to the detention of goods bearing violative trademarks.

Customs has detained goods which bear the following trademark which constitute unauthorized uses of an American trademark, or confusingly similar copies or simulations of U.S. trademarks recorded with Customs, and is notifying you, the trademark holder, of the action:

- Description of Trademark:
- U.S. Customs Recordation Number:
- U.S. Patent & Trademark Office Registration Number:

In accordance with 19 CFR § 133.25 you are hereby notified of the following detention information:

- Date of Importation:
- Port of Entry:
- Description of Merchandise:
- Quantity:
- Country of Origin:

In accordance with 19 CFR § 133.25, you may obtain a sample of the detained goods upon request, provided you meet certain conditions.

Sincerely,

AREA/PORT DIRECTOR OF CUSTOMS

APPENDIX 5

Letter to be sent to importer where goods have been seized after detention.

Dear Sir/Madam:

In accordance with 19 CFR § 133.25, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 526 of the Tariff Act of 1930, as amended, Title 19, United States Code, Section 526 (19 U.S.C. § 1526(e)), goods bearing marks which violate registered trademarks are subject to seizure and forfeiture.

You are hereby notified that under 19 CFR §§ 133.22 or 19 CFR § 133.23, your importation of _____, entry number _____, has been seized after being detained by U.S. Customs for the following violation of U.S. trademark law:

- () A confusingly similar copy or simulation, in violation of 15 U.S.C. § 1124, subject to forfeiture under 19 U.S.C. § 1595a(c)(2)(C).
- () An unauthorized "Gray Market" importation, in violation of 19 U.S.C. § 1526(a), subject to forfeiture under 19 U.S.C. § 1526(b).

- U.S. Customs Recordation Number:
- Description of Trademark:
- U.S. Patent & Trademark Office Registration Number:

You may exercise your right to petition this seizure pursuant to Part 171, Title 19, Code of Federal Regulations.

Sincerely,

AREA/PORT DIRECTOR OF CUSTOMS

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OR&R

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 2310-010A

DATE: DECEMBER 11, 2000

SUPERSEDES: 2310-010 Feb 27, 1991

REVIEW DATE: DECEMBER 2002

SUBJECT: DETENTION AND SEIZURE AUTHORITY FOR COPYRIGHT AND TRADEMARK VIOLATIONS

1. PURPOSE. To outline the detention and seizure authorities to be cited when processing cases involving copyright and trademark violations. The attached outline provides an up-to-date, comprehensive list of authorities for the most common copyright and trademark infringements. It does not address patent matters, which are covered by Customs Directive No. 2310-009A dated December 9, 1999.

2. BACKGROUND. The attached outline provides a useful reference guide for identifying the appropriate seizure authority in most copyright and trademark situations. Generally, when detaining or seizing goods for copyright or trademark violations, selecting the most appropriate seizure authority to cite will depend upon:

2.1 The type of intellectual property right infringed;

2.2 Whether the right is federally registered;

2.3 Whether the right is recorded with Customs; and

2.4 The type of infringement that is alleged.

2.5 Customs has produced separate Directives covering "Trademark and Tradename Protection" and "Copyright Protection." When using the attached chart, Customs officers should refer to said Directives for additional guidance. In cases where the Directives do not appear to provide adequate guidance in a particular area, Customs officers may contact the Office of Regulations & Rulings (OR&R) IPR Branch, at (202) 927-2330, fax (202) 927-1875. Customs officers should carefully cite all applicable regulatory authority, in addition to all applicable statutory authority, in work documents associated with a given case. In addition, please note that some statutes, such as 19 U.S.C. §1595a(c) (importations contrary to law), require citation to a companion statute establishing an underlying violation.

3. REFERENCES. Customs Directive No. 2310-008A dated April 7, 2000; "Trademark and Tradename Protection," and Customs Directive No. 2310-005A dated April 7, 2000; "Copyright Protection."

4. ACTION. Retain the attached outline as a reference for citation of seizure authority in copyright and trademark cases.

5. RESPONSIBILITIES. Area/Port directors are responsible for ensuring that their managers and supervisors disseminate this information to personnel who draft seizure notices and other seizure related documents.

6. The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

COMMISSIONER OF CUSTOMS

Attachment

ATTACHMENT

SEIZURE AUTHORITIES FOR COPYRIGHT & TRADEMARK VIOLATIONS
Office of Regulations & Rulings, Intellectual Property Rights Branch, (202) 927-2330

<u>TYPE OF IPR TYPE OF VIOLATION</u>	<u>REGULATORY CITATION</u>	<u>STATUTORY CITATION</u>
Copyright (Substantial similarity between protected work and imported work required)		
Recorded with Customs:		
Clearly Piratical	19 CFR §133.42	Seize under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602
Possibly Piratical	Detain under 19 CFR §133.43	Release (if ruled non-infringing) or seize under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602 (if ruled infringing)
Not Recorded with Customs:		
Clearly Piratical	No regulation	Seize under 19 U.S.C. § 1595a(c)(2)(C) for violation of 17 U.S.C. § 501 in civil cases (17 U.S.C. §§ 506 & 509 in criminal cases)
Possibly Piratical	No regulation	Do not seize (Customs Policy)
Trademark (Likelihood of confusion as to source or sponsorship required in all instances)		
Recorded with Customs:		
Counterfeit (<i>identical or substantially indistinguishable mark</i>)	19 CFR § 133.21	Seize under 19 U.S.C. § 1526(e)
Confusingly similar (not identical or substantially indistinguishable, but still likely to confuse) and special cases (certain replicas, models, toy cars, and other limited cases)	Detain under 19 CFR §133.25; if no release obtained in 30-day detention period, seize pursuant to statutory citation (as directed by 19 CFR § 133.22(f)).	Seize under 19 U.S.C. § 1595a(c)(2)(C) for violation of 15 U.S.C. § 1124
Protected Gray Market	Detain under 19 CFR §133.25; if no release obtained in 30-day detention period, seize pursuant to statutory citation (as directed by 19 CFR § 133.22(f)).	Seize under 19 U.S.C. § 1526(b)
Not Recorded with Customs:		
Counterfeit (<i>identical or substantially indistinguishable mark</i>)	No regulation	Seize under 19 U.S.C. § 1595a(c)(2)(C) for violation of 18 U.S.C. § 2320 (requires intent)
Confusingly similar (not identical or substantially indistinguishable but still likely to confuse) and special cases (certain replicas, models, toy cars, and other limited cases)	No regulation	Do not seize (Customs policy)
Protected Gray Market	No regulation	No seizure authority

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OR&R**DISTRIBUTION:** S-01**CUSTOMS DIRECTIVE NO.** 2310-005B**DATE:** DECEMBER 12, 2001**SUPERSEDES:** 2310-005A, April 7, 2000**REVIEW DATE:** DECEMBER 2003**SUBJECT:** COPYRIGHT PROTECTION

1. PURPOSE. To provide relevant information and guidelines on Customs policies and procedures with respect to copyright protection.

2. POLICY. In order to fulfill its statutory, regulatory, and treaty-based obligations of preventing the importation of merchandise which violates certain claims to copyright [hereinafter, copyrights] which have been registered with the U.S. Copy-

right Office, U.S. Customs is vested with the authority to detain and/or seize, piratical copies of protected copyrighted works. For Customs purposes, “piratical copies” are actual or substantially similar copies of a registered copyrighted work, produced and imported in contravention of the rights of the copyright owner.

2.1 In general, a copyright protects original works of authorship, including written music, computer programs, video games, toy designs and other intellectual creations against unauthorized reproductions, derivations, distribution or display. This protection is available to both published and unpublished works. It is the actual, tangible expression, not the concept, which is copyrighted. The Copyright Office is merely the office which records the claim; it does not create or bestow copyright. Some products are protected under both copyright and trademark laws.

2.2 In order to most effectively provide protection against such violative imports, Customs has established an intellectual property rights (IPR) enforcement regime, which offers rights holders a two-tiered enforcement option, while providing Customs officers with up-to-date, detailed information about the rights being protected.

2.3 The first tier of this two-tiered approach involves Customs “recording” process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office, may request that Customs collect and retain information relative to those rights for a specified time, during which Customs shall, either of its own initiative, or with the assistance of the copyright holder, actively monitor imports in order to prevent the importation of violative articles.

2.4 The second tier is Customs “application” process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office and recorded same with U.S. Customs, may provide Customs with information relative to specific importations of violative imports so that Customs can prevent such importation.

3. AUTHORITY. Relevant statutory and regulatory citations associated with Customs enforcement of copyrights are listed below. The narratives listed below are synopses of the statutory/regulatory mandates; care should be used to cite actual language of statutory/regulatory provisions in the course of enforcement actions. Prior to initiating enforcement actions, officers should undertake to review the descriptions of laws and regulations contained within this Directive in order to gain a comprehensive understanding of their intent and purpose.

4. RESPONSIBILITIES. The Assistant Commissioner, Office of Regulations and Rulings (OR&R), is responsible for formulating policy and procedures pertaining to Customs enforcement of copyrights. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

5. DEFINITIONS

5.1 United States Code

5.1.1 Title 17 U.S.C. § 501—Infringement of copyright.

5.1.2 Title 17 U.S.C. § 506—Provides for criminal copyright offenses.

5.1.3 Title 17 U.S.C. § 509—Provides for seizure and forfeiture of copyright violative goods under 17 U.S.C. § 506.

5.1.4 Title 17 U.S.C. § 602—Provides right of action regarding importation of infringing copies of phonorecords. Prohibits gray market enforcement of copyright. Authorizes Customs to prescribe regulations and procedures relative to recording of copyrights and notification of apparent violations.

5.1.5 Title 17 U.S.C. § 1201—Prohibits the importation of devices which circumvent access control technologies.

5.1.6 Title 18 U.S.C. § 2318—Provides criminal sanctions for trafficking in counterfeit labels for phonorecords, copies of computer programs, motion pictures or other audio-visual works.

5.1.7 Title 18 U.S.C. § 2319—Provides criminal fines and prison terms for criminal infringement of copyright.

5.1.8 Title 18 U.S.C. § 2319A—Provides criminal fines and prison terms, as well as seizure, forfeiture, and destruction authority for the unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances, also known as “Bootleg” works.

5.1.9 Title 19 U.S.C. § 1595a(a)—Provides for seizure and forfeiture of conveyances or other thing used “in, or aid in, or to facilitate, the importation of any article contrary to law.”

5.1.10 Title 19 U.S.C. § 1595a(b)—Provides Customs with the authority to issue civil penalties equal to the value of the merchandise attempted to be introduced contrary to law.

5.1.11 Title 19 U.S.C. § 1595a(c)(2)(C)—Provides seizure and forfeiture authority for articles introduced or attempted to be introduced which violate trademarks or copyrights.

5.2 Code of Federal Regulations

5.2.1 Customs Regulations 19 CFR §§ 133.31–133.37—Recordation of copyrights with Customs.

5.2.2 Customs Regulations 19 CFR § 133.42—Seizure of articles constituting clearly piratical copyright violations.

5.2.3 Customs Regulations 19 CFR § 133.43—Procedures for cases involving possibly piratical copyright violations.

5.2.4 Customs Regulations 19 CFR § 133.44—Decisions rendered in disputed claims of infringement.

5.2.5 Customs Regulations 19 CFR § 133.46—Demand for redelivery of released merchandise.

6. PROCEDURES. In general, Customs policy dictates that U.S. Customs focuses its enforcement efforts on copyrights that are “recorded” with Customs. Unrecorded copyrights, while not a priority, may be enforced when possible so long as the sound administration of Customs laws is not compromised. While Customs may pursue such cases, Customs policy dictates that the majority of resources and emphasis should be placed upon the enforcement of recorded copyrights.

6.1 Prior to the initiation of any intellectual property right action, the IPR Module should be consulted to ascertain whether the copyright in question is in fact recorded with Customs, and if so, the extent to which the copyright should be protected.

The “IPR Module” is a computer function located within the Automated Commercial System which contains individual records and information relative to all IPRs recorded with U.S. Customs.

6.2 When undertaking a copyright enforcement action, Customs officers should accurately note the copyright recordation number(s) involved and accurately record same in records of the case.

Similarly, Customs officers seeking OR&R, IPR Branch assistance in arriving at infringement determinations are expected to have consulted the IPR Module prior to seeking assistance and should be prepared to accurately cite specific information from the relevant IPR recordation.

6.3 Characterizing Copyright Violations. Generally, the test of whether a copyrighted work has been infringed is, “Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same.” Another way of stating the substantial similarity test is, “Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.” The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of making deliberate, but trivial, variations of specific features of the copyright protected work.

6.3.1 Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas, but the expression of those ideas as well. Access to the copyrighted work may be presumed even without direct evidence in cases where it is apparent that the importer has ample opportunity to view the copyrighted work, and the substantial similarities between the works are so striking as to preclude the possibility

that they were arrived at independently. Since, in most cases, access will be presumed, substantial similarity of expression will be the critical factor of analysis.

6.3.2 As a general matter, Customs recognizes two standards of copyright infringement in its enforcement of registered copyrights: “Clearly Piratical” and “Possibly Piratical.” The first of these, “**Clearly Piratical**” is defined as overwhelming and substantial similarity between the copyrighted elements of the protected work and the imported item so as to clearly indicate that one work was based upon the other. The second, “**Possibly Piratical**” encompasses those situations in which articles are suspected of constituting piratical copies, but are not clearly deemed to be such at the time of presentment.

6.3.3 Upon presentation, or at the time of detention or seizure of suspect violative goods, it is incumbent upon the acting Customs officer to characterize the nature of the alleged violation, and should be ascribed to one of the following four characterizations:

6.3.3.1 Clearly Piratical copyright violation; protected copyright recorded with Customs;

6.3.3.2 Clearly Piratical copyright violation; protected copyright not recorded with Customs;

6.3.3.3 Possibly Piratical copyright violation; protected copyright recorded with Customs; and

6.3.3.4 Possibly Piratical copyright violation; protected copyright not recorded with Customs.

6.3.4 Each of these is discussed in detail below:

6.4 Processing the Case: Clearly Piratical

6.4.1 “Clearly Piratical” (protected copyright recorded with Customs). Articles constituting “clearly piratical” copies of copyrights recorded with Customs shall be seized, and forfeiture proceedings instituted under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602, as implemented by 19 CFR § 133.42. Clear-cut copies, controlling decisions issued by the OR&R, IPR Branch, or (in specifically authorized instances only) decisions or orders issued by a court of law may form the basis for this determination. A sample “Notice of Seizure to Importer, Clearly Piratical Copyrights Recorded with Customs” to be sent to the importer is attached to this Directive at Appendix 1.

6.4.2 “Clearly Piratical” (protected copyright not recorded with Customs). Where administratively feasible and appropriate, such goods may be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 501, 17 U.S.C. §§ 506, and, 509 in criminal cases. No corresponding Customs regulations exist. Cases involving suspected criminal copyright actions should be referred to the Office of Investigations. A sample “Notice of Seizure to Importer, Clearly Piratical Copyrights Not Recorded with Customs” is attached to this Directive at Appendix 1A.

6.4.3 Disclosure: Clearly Piratical Cases. When articles are subject to restrictions set forth in 19 CFR § 133.42, Customs officers SHALL disclose to the copyright owner in writing the following information within 30 business days of the date of the seizure as required in 19 CFR § 133.42(c). A sample “Notice to the Copyright Owner, Clearly Piratical Copyrights” is attached to this Directive at Appendix 2.

Date of Importation:

Port of Entry:

Description of Merchandise:

Quantity:

Name and address of Manufacturer:

Name and address of Exporter:

Name and address of Importer (Note: If importer of record is broker or nominal consignee, provide the ultimate consignee if known):

Country of Origin:

6.4.4 Any time after seizure of the merchandise for examination, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for a sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.42(e).

6.4.5 The amount of bond is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the cost, insurance and freight (CIF) value of the sample, plus duty, taxes, and charges. Bonds should not be accepted in amounts lower than \$100. In cases where the value of the bond would be less than \$100, a cash deposit will be required. For amounts in excess of \$100, cash in lieu of surety bond may be accepted. Customs may demand return of the sample at any time.

6.4.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its return the owner must certify to Customs that “the sample described as (full description) and provided pursuant to 19 CFR § 133.21(d) was damaged, destroyed or lost during examination, testing or other use.” If the sample is not returned, Customs officers should proceed to collect the full bond amount or deposit any cash submitted in lieu of surety bond.

6.5 Processing the Case: Possibly Piratical. Customs policy mandates that suspect possibly piratical copyright violative goods can only be detained upon a “reasonable suspicion” that said goods constitute possibly piratical copies of protected works.

6.5.1 “Possibly Piratical” (protected copyright recorded with Customs). Under 19 CFR § 133.43, possibly piratical copies shall be detained and the process outlined in that Section is to be followed. Please refer to 19 CFR § 133.43 for specific instructions. If determined to be piratical, the goods are to be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602.

6.5.2 “Possibly Piratical” (protected copyright not recorded with Customs). Customs policy is to neither detain nor seize goods bearing such works.

6.5.3 Possibly Piratical, Detention. In general: In accordance with Customs policy, if a Customs officer can articulate a basis for having such “reasonable suspicion” with respect to copies of copyrighted works recorded with Customs at the time of presentation to Customs, he may detain the goods at that time. Although 19 CFR § 133.43 is silent as to when a detention notice is to be issued with respect to possibly piratical merchandise, Customs policy provides that a decision whether to release or detain the merchandise should be made within 5 days from the date the goods are presented to Customs for examination.

6.5.4 Customs policy further provides that “merchandise which is not released within such 5-day period shall be considered detained.” Thus, where a Customs officer is unsure whether such “reasonable suspicion” exists at the time presentation to Customs, he may detain the goods for a 5-day period to determine whether such “reasonable suspicion” exists. If Customs determines that such “reasonable suspicion” exists, Customs shall issue a formal letter of detention to the importer.

6.5.5 The issuance of the formal detention letter may take place before the expiration of the initial 5-day period, or between the 5th day and the 10th day after presentation, but in no case after the 10th day.

6.5.6 *For internal use only.* However, at any time *prior to the issuance of a formal detention notice*, OR&R can provide assistance to the field in determining whether the merchandise is possibly piratical. Thus, during the 5-day period within which merchandise must be released or detained, the OR&R, IPR Branch is available to provide assistance to Customs personnel in determining whether merchandise is possibly piratical.

Once this period expires, however, and assuming that the goods are still being detained, the administrative procedures of section 133.43 must be followed, and it will no longer be possible for OR&R to furnish advice relative to whether the suspect goods are “possibly piratical.” For this reason, we would urge Customs personnel to contact the OR&R, IPR Branch as soon as possible following examination, should they harbor any doubts as to whether the merchandise is possibly piratical. Samples or digital photographs should also be obtained and forwarded to OR&R at that time.

6.5.7 Notice to Importer. If a Customs officer has reason to believe that an imported article may be a piratical copy of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact a

piratical copy. In the absence of receipt within 30 business days of such a denial by the importer, the article in question shall be considered to be such a copy and shall be subject to seizure and forfeiture under 19 CFR § 133.42. A sample "Notice of Detention of Possibly Piratical Goods, Recorded Copyright" initial letter, to be sent to the importer is attached to this Directive at Appendix 3.

6.5.8 Notice to Copyright Holder, Disclosure: Possibly Piratical Cases. If the importer files a denial of piratical copying, the area/port director shall furnish the copyright owner with the following information, if available, within 30 business days of receipt of importer's denial of infringement:

Date of Importation:
 Port of Entry:
 Description of Merchandise:
 Quantity:
 Country of Origin:

6.5.8.1 The notice states that the imported article will be released to the importer unless within 30 days the copyright owner files with the area/port director;

6.5.8.1.1 A written demand for the exclusion from entry of the detained imported articles; and

6.5.8.1.2 A bond in an amount specified by the area/port director, conditioned to hold Customs and the importer or owner of such imported articles harmless from any material depreciation of those articles, loss, or damage resulting from Customs detention in the event that the Commissioner of Customs or his designee determines that the articles are not piratical copies prohibited from entry under Section 602 of the Copyright Act (17 U.S.C. § 602). The amount of the bond is generally set at 120 percent (120%) of the value of the detained articles, plus taxes and charges. However, factors including but not limited to the value of the merchandise or relevant market factors may be considered by the area/port director in setting the amount of the bond.

6.5.8.2 Upon detaining and/or seizing suspected piratical or possibly piratical copies, contact the local Office of Investigations **before** initiating the requisite disclosure procedures.

6.5.8.3 A sample "Notice of Detention of Possibly Piratical Goods, Recorded with Customs" initial letter, to be sent to the copyright holder is attached to this Directive at Appendix 4.

6.5.8.4 Any time after presentation of the merchandise for examination, but prior to seizure, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.43(c). Prior to release of the sample, Customs officers should remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or otherwise identifying marks.

6.5.8.5 The amount of bond required to obtain release of the sample is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the CIF value of the sample, plus duty, taxes, and charges. Bonds should not be accepted in amounts lower than \$100. In cases where the value of the bond is less than \$100, a cash deposit will be required. For amounts in excess of \$100, cash in lieu of surety bond may be accepted. Customs may demand return of the sample at any time.

6.5.8.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its return, the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.23a(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to collect the full amount of the bond or deposit any cash submitted in lieu of surety bond.

6.5.9 Exclusion Demand by Copyright Owner. As stipulated in 19 CFR 133.43(d)(1), if the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the area/port director shall promptly notify the importer and the copyright owner that during a specified time limit of not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of

piratical copying. Parties shall thereafter be provided with an additional time period (“rebuttal period”), not to exceed 30 days during which an exchange of briefs is to take place in order to allow each party an opportunity to respond to the other party’s allegations. The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the area/port director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments to the Chief, IPR Branch, Office of Regulations & Rulings, 1300 Pennsylvania Ave., NW., Washington, D.C. 20229. Sample letters to be sent to both the copyright holder and the importer, are attached to this Directive at Appendices 5 and 6.

6.5.10 Exclusion Contention Disclaimed by Copyright Owner. As stipulated in 19 CFR 133.43(d)(2), if the copyright owner disclaims his contention or concedes that he possesses insufficient evidence or proof to substantiate a claim of piracy, the area/port director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whom ever imported, without further notice to the copyright owner.

6.5.11 Failure to File Exclusion Demand. As stipulated in 19 CFR § 133.43(d)(3), if the copyright owner fails to file a written demand for exclusion and an accompanying bond, the area/port director shall release the detained articles to the importer, and notify the copyright owner of the release. The area/port director shall not withhold delivery of all further importations of the same article by the same importer unless the copyright owner has provided a satisfactory explanation as to why he failed to file a written demand for exclusion, and a bond.

6.5.12 Withdrawal of Bond. Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

6.5.13 Claim of Infringement Sustained. As stipulated in 19 CFR § 133.44(a), if the Commissioner of Customs determines that the articles in question are piratical copies, the area/port director shall seize and forfeit them under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602, and shall return the bond to the copyright holder. A petition for relief may still be filed under the provisions of 19 CFR §§ 133.51–133.53.

6.5.14 Denial of Infringement Sustained. As stipulated in 19 CFR § 133.44(b), if the Commissioner of Customs determines that the articles are not piratical copies, the area/port director shall release all such detained merchandise and transmit the copyright holder’s bond to the importer.

7. DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA). *For internal use only.* The DMCA amended U.S. copyright law to provide additional enforcement for certain digitized copyrighted works. Among other things, the DMCA prohibits gaining unauthorized access to a work by circumventing a technological protection measure put in place by the copyright owner where such protection measure otherwise effectively controls access to a copyrighted work. Typically, such devices are marketed as “Game Enhancers” or “Mod Chips.” Customs officers who encounter goods which are suspected of violating relevant provisions of the DMCA should consult the OTO–1 or TECS Daily News bulletin boards for the “Monthly DMCA Alert Notice” which will provide specific information and instructions relating to such goods.

8. MISCELLANEOUS

8.1 Merchandise Not in Customs Custody: Demand for Redelivery. If after goods have been released Customs determines that a violation was likely to have existed, it may order the redelivery of the goods by sending a Notice to Redeliver (CF 4647) or letter to the importer within 30 days of release of the goods, or within 30 days from the end of any conditional release period. The importer has 30 days in which to redeliver the merchandise into Customs custody. If the importer does not redeliver the merchandise, a claim for liquidated damages shall be initiated under the procedures set out in 19 CFR § 141.113. The merchandise will be considered restricted. As such, the claim for liquidated damages should be assessed for three times the value of the merchandise (not to exceed the bond amount).

8.1.1 The local Office of Investigations will be notified immediately of all shipments of piratical merchandise which have been released from Customs custody.

8.2 Competing Copyright Registrations. Goods initially believed to be, or suspected of, infringing recorded copyrights have sometimes been released upon the importer's presentation of a certificate of registration of a claim to copyright issued by the United States Copyright Office after their seizure, 19 CFR § 133.42, or detention, 19 CFR § 133.43. This action has sometimes been referred to as the "Ten Dollar Defense" because that was the fee to register a claim to copyright with the Copyright Office.

8.2.1 When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall still detain the merchandise under the procedures set out in 19 CFR § 133.43; Customs Service Decision (C.S.D.) 86-23, and proceed as outlined above.

8.3 Office of Trade Operations (OTO)-1 Bulletin Board. Periodically, special alerts pertaining to specific copyrights or commodities may be posted to the Office of Field Operations (OFO) OTO-1 Bulletin Board. Officers should routinely monitor the bulletin board to keep abreast of important developments in IPR enforcement.

8.4 Computer Program Guidelines. *For internal use only.* In the absence of special factors, if the Offices of Laboratories and Scientific Services finds less than thirty percent (30%) similarity in the copyrighted computer codes, piracy is not considered to exist and the suspect shipments may be released. If there is more than eighty percent (80%) similarity in the codes, piracy is presumed and the entire shipment should be seized under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602, as implemented by 19 CFR § 133.42; (Computer Guidelines Issuance No. 86-161, dated August 11, 1986). If the suspect program contains between thirty percent (30%) and eighty percent (80%) similarity to a protected program, piracy is suspected and the procedures set out in 19 CFR § 133.43 should be followed.

8.4.1 Reports issued by the Office of Laboratories and Scientific Services should always reference the specific copyright recordation involved. Where more than one protected work is involved, all relevant recordations should be noted.

9. The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

COMMISSIONER OF CUSTOMS

Attachments

APPENDIX 1

Notice of Seizure to Importer, Clearly Piratical Copyrights Recorded with Customs.

Dear (name of importer):

You are hereby notified that under section 133.42 of the Customs Regulations, your importation of _____, entry number _____, has been seized by the U.S. Customs Port of _____ on (date of seizure), as constituting clearly piratical copies of the following registered and recorded copyright:

Title:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number:

In accordance with Customs Regulations 19 CFR 133.42, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 602 of the Copyright Act of 1976 (17 U.S.C. § 602), articles constituting clearly piratical copies of registered copyrights are subject to seizure and forfeiture, for violation of 19 U.S.C. § 1595a(c)(2)(C). The aforementioned goods were introduced or attempted to be introduced into the United States contrary law.

Please be advised that under the provisions of 19 U.S.C. § 1618, and 19 CFR 171.2(b), you may file a petition with this office for relief from the above liability within 30 days from the date of mailing of this letter. The petition should include all facts which you believe warrant relief from forfeiture, and filed with this office in duplicate.

If you have any questions regarding this matter, please contact _____ at (tel.no.).

Sincerely,

(APPROPRIATE OFFICIAL)

APPENDIX 1A

Notice of Seizure to Importer, Clearly Piratical Copyrights Not Recorded with Customs.

Dear (name of importer):

You are hereby notified that under the provisions of 19 CFR 133.42, your importation of _____, entry number _____, has been seized by the U.S. Customs Port of _____ on (date of seizure), as constituting clearly piratical copies of the following registered copyright:

Title:
U.S. Copyright Office Registration Number:

In accordance with 19 U.S.C. § 1595a(c)(2)(C), the imported goods listed above have been seized as clearly piratical copies of protected works in violation of 17 U.S.C. § 501, incorporating 17 U.S.C. § 106(3) and/or 17 U.S.C. § 602, or (17 U.S.C. § 506 and § 509 in criminal cases), and are subject to immediate forfeiture. The aforementioned goods were introduced or attempted to be introduced into the United States contrary law.

Please be advised that under the provisions of 19 U.S.C. § 1618, and 19 CFR 171.2(b), you may petition for relief from the above liability within 30 days from the date of mailing of this letter. The petition should include all facts which you believe warrant relief from forfeiture, and filed with this office in duplicate.

If you have any questions regarding this matter, please contact _____ at (tel.no.).

Sincerely,

(APPROPRIATE OFFICIAL)

APPENDIX 2

Notice to Copyright Owner, Clearly Piratical

Dear (name of copyright owner):

This is to inform you that the Customs Port of _____ has seized goods which have been found to constitute clearly piratical copies of the following copyright(s) and is notifying you, the copyright holder, of the action:

Title:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number:

Pursuant to 19 CFR 133.42, (Title 19, Code of Federal Regulations), implementing section 602 of the Copyright Act of 1976 (17 U.S.C. § 602), articles constituting clearly piratical copies of registered copyrights are subject to seizure and forfeiture under the provisions of 19 U.S.C. § 1595a(c)(2)(C).

In accordance with 19 CFR 133.42, you are hereby notified of the following seizure information:

Date of Importation:
Port of Entry:
Description of Merchandise:
Quantity
Name/address of manufacturer

Name/address of exporter
 Name/address of importer
 Country of Origin:

Please be advised that you may obtain a sample of the seized goods upon request, provided you meet certain conditions set forth under the provisions of 19 CFR 133.42.

Direct any questions regarding this matter to _____ at (tel.no.).

Sincerely,

(APPROPRIATE OFFICIAL)

APPENDIX 3

Notice of Detention to the Importer, Possibly Piratical Recorded Copyright

Dear (name of importer):

In accordance with Customs Regulations 19 CFR 133.43 and 17 USC § 602, the importation (including "in-transit" shipments) of piratical copies of a recorded copyrighted work is prohibited. You are hereby advised that there is reason to believe that your importation of _____ may constitute a piratical copy of the following registered and recorded copyrighted work:

Title:
 U.S. Copyright Office Registration Number:
 U.S. Customs Recordation Number:

In the absence of receipt within 30 days of a denial by you that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture under the provisions of 19 U.S.C. § 1595a(c)(2)(C), as goods introduced or attempted to be introduced into the United States contrary law. If this merchandise is already in your possession, you may satisfy the requirement of this notice by giving Customs "constructive" custody until such time as the issue of piratical copying is resolved. This may be accomplished by a letter granting us constructive custody and affirming that the subject merchandise will be held intact by you pending further instructions from this office, and the posting of a single entry bond for three times the value of the merchandise. The merchandise may not be sold, used, assigned, leased or disposed of without U.S. Customs permission.

If you believe the facts warrant, you may file a statement denying that the article is in fact a piratical copy and stating that the detention or redelivery of the article will result in a material depreciation of its value or a loss or damage to you. Upon receipt of your denial, a sample of the merchandise in question will be sent to the copyright holder. If he claims that there is a violation of his copyright, both you and he will have up to 30 business days to submit additional evidence and legal briefs in support of your respective positions, before we forward the matter to the Commissioner of Customs for decision. However, if you agree that these items are, in fact piratical, or if you wish to waive your right to contest piracy, you may abandon such items to Customs at the time of redelivery and assent to their forfeiture. Under the provisions of 19 U.S.C. § 1618, and 19 CFR 171.2(b), you may petition for relief from the above liability within 30 days from the date of mailing of this letter. The petition should include all facts which you believe warrant relief from forfeiture, and filed with this office in duplicate.

Please direct any questions regarding this matter to _____ at (tel.no.).

Sincerely,

(APPROPRIATE OFFICIAL)

APPENDIX 4

Letter to Copyright Holder, Possibly Piratical Recorded with Customs.

Dear (name of copyright holder or representative):

This is to inform you that the Customs Port of _____ has detained a shipment of _____ which may constitute a violation of the following copyrighted work:

Title:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number:

Pursuant to Customs Regulations 19 CFR 133.43, a sample is hereby submitted for your review. The importer denies that the articles are piratical copies, and alleges that their continued detention will result in a material loss or damage to him. Please be advised that these imported articles will be released to the importer unless, within 30 days from the date of this letter, you file:

1. A written demand for the exclusion of these items; and
2. A bond on Customs Form 301 (copy enclosed) in the amount of _____ conditioned to hold U.S. Customs, and the importer or owner, harmless from the material depreciation, loss or damage resulting from Customs detention in the event that these items are determined not to be piratical. 19 CFR 113.70.

If you file the demand and bond, you and the importer will be notified of a time period for filing further evidence, briefs, or material. You, the copyright holder, have the burden of proving infringement.

At the conclusion of the regulatory and statutory time periods, the entire file will be forwarded to the Commissioner of Customs for review and decision.

Please direct any questions regarding this matter to _____ at (tel.no.).

Sincerely,

AREA/PORT DIRECTOR

APPENDIX 5

Notice to Copyright Owner and Importer (Exclusion Demand)

Dear (name of copyright owner or representative and the importer):

In relation to the exclusion of the suspected piratical copies of: _____, entry number _____ for suspected violation of the following protected works:

Title of Copyright:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number.

Issue is joined as to the claim. Pursuant to 19 CFR 133.43(c)(1)(I), within 30 days from the date of this letter, both parties, or their duly-authorized agents, may submit to Customs any additional information or documentation substantiating their claims. The copyright holder has the burden of proof in this matter. Within this 30-day period, both parties should submit to each other and to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted, whether part of the initial claim or subsequent discovery.
2. A written statement, signed by the importer, confirming that copies of the above were in fact provided to the importer within the 30 day time period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office after this 30-day period expires.

Direct any questions regarding this matter to _____ at (tel.no.)

Sincerely,

(APPROPRIATE OFFICIAL)

APPENDIX 6

Notice to Copyright Owner and Importer, Rebuttal Period

Dear (name of copyright owner or representative and importer):

In relation to the exclusion of the suspected piratical copies of
 _____, entry number _____
 _____ for suspected violation of the following protected
 works:

Title of Copyright:
 U.S. Copyright Office Registration Number:
 U.S. Customs Recordation Number:

Pursuant to 19 CFR 133.43(c)(1)(I), the parties have submitted to Customs, and exchanged copies of any and all arguments, legal briefs, evidence, or other pertinent material, whether part of the initial claim or subsequently discovered, and a written statement signed by the parties or duly authorized agent confirming that copies of the above were in fact provided to the importer within the initial 30-day time period.

The parties will be afforded an additional 30 days "rebuttal period" (beginning as of the date of this letter) in which to exchange and submit to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted in rebuttal to arguments submitted, and
2. A written statement to the opposing party, confirming that copies of the above were in fact provided to the other party within the 30-day rebuttal period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office once this 30-day rebuttal period expires.

Direct any questions regarding this matter to _____
 at (tel.no.) _____

Sincerely,

(APPROPRIATE OFFICIAL)

CUSTOMS AND BORDER PROTECTION DIRECTIVE

ORIGINATING OFFICE: FO:TCF

DISTRIBUTION: S-01

CBP DIRECTIVE NO. 3550-082A

DATE: JUNE 6, 2003

SUPERSEDES: 3550-082, 6/21/01

REVIEW DATE: JUNE 2006

SUBJECT: NATIONAL IMPACT LEVELS FOR TRADE ENFORCEMENT ISSUES

1. PURPOSE. This Directive establishes National Impact Levels, which determine the significance of discrepant findings, allegations, and other concerns related to commercial violations for trade enforcement issues.

2. POLICY.

2.1 Customs and Border Protection (CBP) policy is to use the National Impact Levels as an agency-wide implementation of risk management principles for trade issues. They are the mechanism for determining the significance of issues within the framework of the agency's mission and priorities.

2.2 National Impact Levels are established by the Customs Modernization Board and will be used by all CBP officers to determine the enforcement priorities. The CBP will use this prioritization to ensure that issues are allocated with proper resources, resolved, and are treated uniformly within the agency. These National Impact Levels will be reviewed and updated as necessary by the Commercial Enforcement Branch, Trade Compliance and Facilitation, Office of Field Operations. Any changes in National Impact Levels will require approval by the Customs Modernization Board.

2.3 Prior disclosures will be handled through the Commercial Enforcement Analysis and Response (CEAR) process. Issues related to prior disclosure will be addressed in a separate directive.

3. AUTHORITIES/REFERENCES. Trade Strategy; Customs and Border Protection Annual Plan; Customs and Border Protection Strategic Plan.

4. DEFINITIONS.

4.1 National Impact Levels are the primary measurement standard to determine the significance of trade-related issues. Impact Levels are a numerical score given to an issue to signify the importance of the issue to the agency and to guide CBP officers in the course of their decision-making process.

4.2 Level 1—High Impact. Those commercial violations that have the highest level of impact on domestic industry, public health and safety, and/or protection of the revenue and, as a consequence, warrant the highest degree of enforcement response. The CBP will devote the maximum available enforcement efforts and resources, such as, but not limited to, seizures of merchandise, assessments of penalties, or referrals for investigation to remedy such commercial violations.

4.2.1 Commercial violations are Level 1 matters if they meet any one or more of the following criteria:

4.2.1.1 Any commercial violation involving national security, anti-terrorism or money laundering;

4.2.1.2 Non-revenue issues (i.e., the violation does not involve a loss of revenue) involving any of the priority trade issues, identified in the Trade Strategy, for which the entered value of the involved merchandise is \$500,000 or more; or mandated by HQ;

4.2.1.3 Non-revenue issues not involving any of the priority trade issues, identified in the Trade Strategy, for which the entered value of the involved merchandise is \$2,500,000 or more;

4.2.1.4 All issues involving public health and safety;

4.2.1.5 Revenue loss issues where the loss of revenue is \$500,000 or more;

4.2.1.6 Egregious violations by Customs brokers involving intentional misconduct or mishandling of funds warranting license revocation;

4.2.1.7 Any issues involving the seizure of merchandise for trade-related violations where the domestic value of the goods is equal to or greater than \$175,000 or for Intellectual Property Rights (IPR) seizures where the manufacturer's suggested retail price of the genuine article is equal to or greater than \$175,000;

4.2.1.8 Repetitive Level 2 violations not remedied through prior efforts of enforcement/penalties.

4.3 Level 2—Medium Impact. Commercial violations that have an impact on domestic industry and/or protection of the revenue at a level warranting an enforcement response, but are not as severe as violations found in Level 1. The CBP will devote only those enforcement efforts and resources available and necessary to remedy such commercial violations. Examples of those available and necessary enforcement efforts and resources include increased monitoring and/or cargo examinations and local and/or national interventions.

4.3.1 Commercial violations are Level 2 matters if they meet one or more of the following criteria:

4.3.1.1 Non-revenue issues involving any of the priority trade issues, identified in the Trade Strategy, for which the entered value of the involved merchandise is between \$100,000 and \$499,999; or mandated by HQ;

4.3.1.2 Non-revenue issues not involving any of the priority trade issues, identified in the Trade Strategy, for which the entered value of the involved merchandise is between \$1,000,000 and \$2,500,000;

4.3.1.3 Revenue loss issues where the loss of revenue is between \$100,000 and \$499,999;

4.3.1.4 Violations, which on their face value, evidence criminal conduct or civil fraud/gross negligence but do not meet Level 1 criteria;

4.3.1.5 Egregious violations by Customs brokers involving intentional misconduct or mishandling of funds warranting penalty.

4.3.1.6 Any issues involving the seizure of merchandise for trade-related violations where the domestic value of the goods between \$75,000 and \$174,999 or

for IPR seizures where the manufacturer's suggested retail price of the genuine article is between \$75,000 and \$174,999;

4.3.1.7 Repetitive Level 3 commercial violations. Examples of Level 3 are commercial violations not remedied through prior efforts at informed/voluntary compliance, including instances in which an Account (national, port, or broker) fails to participate in remedial action, engages in repeated instances of discrepancies after remedial counseling, or asserts a right to be afforded due process via a penalty action;

4.4 Level 3—Low Impact. Commercial violations that are not at a level warranting a CEAR enforcement response, but which may be better remedied through informed compliance or other non-penalty action with the involved Account. The CBP will not devote additional enforcement efforts or resources to remedying noncompliance at this level but will remedy the situation with the most expedient and effective means available. Level 3 commercial violations will be tracked in the National Enforcement Tracking System (NETS) database to assist in identifying repetitive violations. However, they will not be referred to the participants in the CEAR process unless it is a repetitive violation.

4.4.1 Commercial violations are Level 3 matters if they do not meet Level 1 or 2 criteria. In general, most liquidated damages claims are considered Level 3 commercial violations and do not need referral to the participants in the CEAR process. Aggregation of liquidated damages claims, which indicate a pattern or trend of commercial violations may warrant referral to the participants for consideration.

4.5 NETS is the database used to track all Level 1, 2 or 3 assertions within each service port. The service port Trade Enforcement Coordinator (TEC) ensures timely and accurate data input and updates into the automated systems.

4.6 Assertions are referrals that meet the National Impact Level criteria and have been accepted by the TEC and are tracked in the NETS database. Only Level 1 and 2 assertions shall be presented at a CEAR meeting.

5 RESPONSIBILITIES.

5.1 All CBP officers involved with trade issues are to be aware of the established National Impact Levels. Upon discovery of a commercial violation, and if there is cause to believe a Level 1 or Level 2 commercial violation exists, or the CBP officer is unable to reasonably determine an impact level, she/he should refer the issue to the locally designated service port Trade Enforcement Coordinator.

5.2 Field managers involved with trade issues are responsible for ensuring that all CBP officers under their jurisdiction are aware of and adhere to this policy.

6 PROCEDURES.

6.1 The discovering CBP officers will analyze the commercial violation to determine the magnitude. Any Issues that warrants a National Impact Level designation will be referred to the nearest service port Trade Enforcement Coordinator following the local procedures established in each service port. Level 1 violations are issues that require the full attention of the agency to be fully resolved. All Level 1 and Level 2 assertions must be referred to the participants in the CEAR process. They must also be input and tracked in the NETS database.

6.2 Level 3 commercial violations will be remedied by the local CBP officers and do not need to be presented at a CEAR meeting. Level 3 commercial violations will be referred to the TEC to input and track in the NETS database. Minor infractions, such as those that are normally handled through the liquidated damages process, would generally not be referred to the CEAR process; but they should still be handled appropriately by the impacted offices. However, a pattern of repetitive violations that reach an Impact Level 2, demonstrating a failure of other efforts to raise the compliance of a filer or importer, should be forwarded to the participants in the CEAR for review.

6.3 The Field Analysis Specialists (FAS) at the Field Offices will assist the TEC in the research and analysis of all Level 1 and 2 assertions prior to the CEAR meeting. The FAS will also assist the TEC in the research and analysis of Level 3 assertions on an as needed basis.

7 MEASUREMENT.

7.1 National Impact Levels will be evaluated annually for possible adjustment. Information tracked by CEARs related to issues and assigned impact levels will be reviewed to assist in National Impact Level readjustment decisions.

7.2 Each Field Office will conduct Post Enforcement Analysis in order to establish that the courses of actions taken were appropriate and effective. Guidelines for post enforcement analysis are contained in the CEAR Process Handbook and in the Self-Inspection Directive.

COMMISSIONER OF CUSTOMS AND BORDER PROTECTION

Question:

Please explain the C-TPAT program. Are there circumstances when companies that are participating in the C-TPAT program are exempted from inspection or benefit from expedited import processing? Is this true even if they have violated intellectual property laws or regulations? If a company is a C-TPAT program participant, other than for weapons of mass destruction, are they inspected for other types of violations and, if found, penalized regardless of the quantity involved?

Response:

C-TPAT, the “Customs-Trade Partnerships Against Terrorism” is an anti-terrorism initiative which aims to engage the trade community in a cooperative relationship with DHS.

Under the C-TPAT initiative, BCBP works with importers, carriers, brokers and other industry sectors emphasizing a seamless security conscious environment throughout the entire commercial process. By providing a forum in which the business community and BCBP can exchange anti-terrorism ideas, concepts and information, both the government and business community are increasing the security of the entire commercial process from manufacture through transportation and importation to ultimate distribution. This program underscores the importance of employing best business practices and enhanced security measures to eliminate the trade’s vulnerability to terrorist actions.

While participation in the C-TPAT program is voluntary, C-TPAT participants, upon becoming a certified member in the program, may be eligible for program benefits, including a reduced number of cargo inspections. C-TPAT members are not, however, exempt from BCBP examinations of any kind. Examinations of C-TPAT participant containers/shipments are not limited to inspections for weapons of mass destruction. Certified C-TPAT members are afforded certain benefits under the program—one of which is the potential for reduced BCBP exams, should they meet their C-TPAT commitments.

C-TPAT members found in violation of any laws and/or regulations are subject to all applicable fines, penalties, or other consequences, and may be suspended or removed from the C-TPAT program as well.

Question:

During the hearing, you testified that BICE and BCBP are in unique positions to take the lead on intellectual property crimes and investigations due to their presence on the borders and their enforcement capabilities. In your professional opinion, what U.S. agencies should be the lead overseas concerning intelligence collection and enforcement of intellectual property crimes?

Response:

BCBP International Affairs, Foreign Operations, through its foreign Attaché offices and BICE should be the lead agencies for all IPR crimes, intelligence gathering, and investigations overseas. The Attaché offices currently receive intelligence information and collateral leads from BICE offices which they investigate, and BICE often initiates IPR cases based on information and leads obtained from their established relationships with their foreign law enforcement counterparts. The Attaché offices have, and will continue, to provide support, assistance, and training to all foreign entities, including law enforcement, private industry, and government entities with an interest in IPR enforcement. In addition, Foreign Operations has a Program Manager who coordinates all IPR matters with the BICE Commercial Fraud Investigations Branch and its IPR Center, a joint BICE/FBI endeavor. The Program Manager is also a member of the IPR Strategy Working Group.

Question:

How many inspectors are dedicated to detecting intellectual property violations in ports such as Los Angeles, Newark, Miami, El Paso and New York? Has this amount changed from prior to the organization of the Department of Homeland Security?

Response:

The Bureau of Customs and Border Protection does not specifically “dedicate” Inspectors to Intellectual Property Rights issues. However, Inspectors do focus on trade issues as part of their core duties, and those issues include intellectual property rights. As BCBP Inspectors have been increasing their scrutiny of cargo shipments entering the United States in the wake of 9/11, they have been steadily increasing their detection of IPR violations. In FY 2000, counterfeit goods in the amount of \$45 million were seized, \$57 million in FY 2001 and \$99 million in FY 2002. BCBP data for the full year of FY 2003 is not yet available

