



Department of Justice

STATEMENT OF

**SIGAL P. MANDELKER
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON COURTS, THE INTERNET, AND
INTELLECTUAL PROPERTY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**H.R. 4279, THE PRIORITIZING RESOURCES AND ORGANIZATION FOR
INTELLECTUAL PROPERTY ACT OF 2007**

PRESENTED

DECEMBER 13, 2007

Introduction

Chairman Berman, Ranking Member Coble, and Members of the Committee, thank you for the opportunity to discuss the Department of Justice's efforts to protect intellectual property rights through criminal enforcement. This Committee has been an important partner in this effort and I look forward to discussing additional ways in which we can enhance our efforts to improve intellectual property protection.

As America continues its transformation into an information- and innovation-based economy, the Department has made the protection of America's creative assets one of its top priorities. With the advent of new technologies, a global supply chain economy, and the increased involvement of transnational criminal organizations, criminal enforcement is now more important than ever in protecting intellectual property rights.

Today, the Department is dedicating more energy and resources than ever before to the protection of U.S. intellectual property rights from the increasing theft and exploitation of these rights by criminals. As an integral part of President Bush's Strategy Targeting Organized Piracy, or "STOP", initiative, we work closely with our partners in other Departments, local and national law enforcement, rights holders, and our international partners in a coordinated and aggressive strategy to fight global intellectual property crime.

Under the umbrella of the STOP initiative and the Department of Justice's Task Force on Intellectual Property, we have significantly increased our domestic enforcement efforts, with a special emphasis on organized criminal operations and counterfeiting crimes that threaten the health and safety of Americans. Additionally, recognizing that an increasing number of IP crimes are global in nature, we have stepped up our international outreach efforts to strengthen enforcement capacity in foreign nations and increase cooperation in joint operations. And finally, in the legislative package that the Attorney General transmitted to Congress on May 14, 2007, the Department is seeking additional tools to help prosecute and deter intellectual property thieves.

My remarks today will describe in more detail the Department's contributions to the coordinated U.S. Government effort to protect intellectual property rights. In addition, although we are still reviewing the Prioritizing Resources and Organization for Intellectual Property Act, I will provide some preliminary comments with the hope that we can work together in the coming weeks to achieve our common goal: increasing the protection of intellectual property rights through strong and coordinated enforcement efforts by the federal government.

The Department's Domestic Criminal Enforcement Efforts

In 2004, the Department created a Task Force on Intellectual Property ("IP Task Force") to conduct a comprehensive assessment of its IP enforcement program and to

coordinate efforts across the Department and strengthen its enforcement resources. The Task Force analyzed existing resources and proposed significant improvements in the following areas: Criminal Enforcement; International Cooperation; Civil Enforcement; Antitrust Enforcement; Legislation; and prevention. Following the review, the IP Task Force made 31 specific recommendations, including a directive that the Department hire, train and retain more intellectual property prosecutors in order to keep pace with the growing number and complexity of criminal piracy and counterfeiting operations. The Department implemented all 31 recommendations of the Task Force, and today has more prosecutors focusing on intellectual property crime than at any time in its history.

i. The CHIP Network and CCIPS

Over the last few years, the Department has significantly increased our enforcement efforts, including the number of prosecutors focused on intellectual property crimes nationwide. The Department currently has a national network of approximately 230 specially-trained Computer Hacking and Intellectual Property (CHIP) prosecutors in U.S. Attorneys Offices across the country. In June of 2006, the Department designated seven new Computer Hacking and Intellectual Property (CHIP) units in U.S. Attorneys Offices nationwide, bringing the total number of such specialized units to 25. We are already seeing significant increases in CHIP Unit prosecutions: in FY 2007, CHIP Units successfully obtained sentences against 199 defendants for IP offenses, representing an 80% increase over the 110 defendants sentenced by CHIP Units in FY 2006.

This national network of CHIP prosecutors is trained and supported by the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS), in conjunction with the Executive Office of U.S. Attorneys (EOUSA). To improve its support and coordination of the CHIP Network, CCIPS created a dedicated position devoted exclusively to these responsibilities – the National CHIP Coordinator – and filled the position with a highly experienced CHIP prosecutor on a two-year detail from the Northern District of California.

In addition to its responsibilities to the CHIP Network of Assistant U.S. Attorneys, CCIPS has fourteen prosecutors dedicated exclusively to prosecuting intellectual property crime. These attorneys prosecute single- and multi-district cases across the country. From 2002 – 2006, CCIPS' criminal caseload increased more than 800%, and in FY 2007, CCIPS attorneys charged 82 defendants with IP crimes, a 35% increase over the 64 new cases opened in FY 2006. CCIPS also conducts extensive training of foreign law enforcement on intellectual property crime and enforcement. In fact, in 2006 alone, CCIPS provided training and technical assistance to more than 3,300 foreign prosecutors, judges, and investigators from 107 countries.

ii. *Criminal Prosecutions*

At the core of the Department of Justice's IP enforcement program are criminal prosecutions, and the Department has worked hard to increase both the quality and the number of intellectual property prosecutions nationwide. Through the dedicated efforts of U.S. Attorney's Offices, our Criminal Division, and law enforcement across the country, the Department filed 217 intellectual property cases in FY 2007, representing a 7% increase over cases reported in FY2006 (204), and a 33% increase over cases reported in FY2005 (169). Also in FY2007, 287 defendants were sentenced on intellectual property charges, representing a 35% increase over FY2006 (213) and a 92% increase over FY 2005 (149).

The increase in prosecutions in FY 2007 is not an aberration, but rather reflects a continuing trend. For example, in FY 2006, federal prosecutors convicted 187 defendants of criminal copyright and trademark offenses alone – an increase of 57% over the previous year. Thirty-nine (39) of those defendants received terms of imprisonment of 25 months or more, a 130% increase from the 17 sentenced to such terms in 2005. Indeed, in the previous year (FY 2005), the Department prosecuted twice the number of defendants for intellectual property violations than it had in FY 2004.

As these statistics highlight, the Department's prioritization of the most serious intellectual property crimes is paying off in terms of more convictions and higher sentences. That, in turn, leads to increased deterrence for both the individual defendant and the general public. Deterrence is a key component of any effective enforcement strategy, and it is one reason that we publicize IP prosecutions through the print media as well as through online distribution channels, such as CCIPS' website, www.cybercrime.gov. Among other things, the website seeks to publicize the federal IP prosecutions of the CHIP Network, Assistant U.S. Attorneys, and CCIPS prosecutors, which in the past year alone have included:

Justice Department Announces Conviction in P2P Crackdown

On November 14, 2007, in the Eastern District of Pennsylvania, Duc Do, 25, of Orlando, Florida, pleaded guilty to a two-count felony information charging him with conspiracy to commit criminal copyright infringement and copyright infringement in violation of the Family Entertainment Copyright Act. Duc Do's conviction is the seventh in a series of convictions arising from Operation D-Elite, a nationwide federal enforcement operation against the illegal distribution of copyrighted movies, music, software and games over Peer-to-Peer ("P2P") networks employing the BitTorrent file-sharing technology.

Counterfeit Trafficker Gets 57 Month Prison Term, \$7 Million Forfeited

On October 12, 2007, in the Eastern District of Virginia, Abbas Chouman, 43, of Astoria, N.Y., was sentenced to serve 57 months in prison on one count of conspiracy to commit criminal copyright infringement by U.S. District Judge Henry E. Hudson of the

Eastern District of Virginia. Chouman was also ordered to forfeit \$7 million. Chouman pleaded guilty to conspiracy on July 3, 2007, for operating a store that sold more than \$7 million worth of counterfeit clothing. He was the fifth of seven defendants to be sentenced as a result of Operation Throwback, a multi-agency, multi-state federal enforcement operation targeting traffickers in counterfeit and pirated goods that resulted in arrests in four states during March of this year.

Two Bay Area Men Indicted on Charges of Economic Espionage

On September 26, 2007, in the Northern District of California, two Bay Area men were indicted on charges of economic espionage and theft of trade secrets, and a related conspiracy charge. Defendants Lan Lee and Yuefi Ge allegedly conspired to steal trade secrets involving computer chip design and development from their employer and another company, and sought to obtain venture capital funding from the government of China, in particular the 863 Program and the General Armaments Department. The 863 Program is a funding plan created and operated by the government of the People's Republic of China, also known as the national High Technology Research and Development Program.

Remaining Two Defendants Sentenced In Largest CD & DVD Manufacturing Piracy and Counterfeiting Scheme Prosecuted in the United States to Date

On August 6, 2007, in the Northern District of California, two co-defendants were each sentenced to 37 months in prison for conspiracy to commit copyright infringement and trafficking in counterfeit goods and labels. The defendants led piracy and counterfeiting schemes by using sophisticated replication machinery for the mass reproduction of copyrighted works. The sentences were the result of Operation Remaster, an extensive undercover investigation by the FBI in which agents seized approximately 494,000 pirated music, software, and movie CDs, and DVDs, and more than 6,135 stampers (devices used to produce high-quality counterfeit copies on optical disks), from 13 different locations. This case is believed to be the largest ever manufacturing case involving commercially duplicated, high-quality counterfeits that closely resemble authentic CDs in US history.

Former Chinese National Convicted for Committing Economic Espionage To Benefit China Navy Research Center in Beijing and For Violating the Arms Export Control Act

On August 2, 2007, in the Central District of California, defendant Xiaodong Sheldon Meng was convicted of violating the Economic Espionage Act, the Arms Export Control Act, and the International Traffic in Arms Regulations. Meng willingly violated the Economic Espionage Act by possessing a trade secret belonging to Quantum3D. Meng, knowing it would benefit the China Navy Research Center, exported source code for a visual simulation software program used for training military fighter pilots. This is the first conviction for the illegal export of military source code in US history.

Eighteen Charged with Racketeering in Internet Drug Distribution Network

On August 2, 2007, in the Southern District of California, a 313-count indictment charged 18 individuals with operating an online pharmaceutical distribution network known as Affpower. The Affpower organization received over 1 million Internet orders for controlled and non-controlled prescription pharmaceuticals from customers in all 50 states, and it generated more than \$126 million in gross revenue. Affpower allegedly paid licensed doctors to issue prescriptions based only on answers to health questionnaires filled out over the Internet and requiring no mental or physical exams. The defendants have been charged with various crimes, including racketeering and conspiracy to commit racketeering, distribution and dispensing of controlled substances, mail and wire fraud, and conspiracy to dispense and dispensing of misbranded drugs with the intent to defraud and mislead. Twelve individuals have already pleaded guilty in connection with the Affpower conspiracy.

29 Defendants in Three States Charged with Conspiracy to Smuggle Counterfeits

On June 6, 2007, in Brooklyn, New York, 29 defendants were charged in three separate complaints with conspiracy to smuggle over 950 shipments of merchandise into the United States through ports of entry at Newark, N.J., Houston Texas, Long Beach, California, New York Container Terminal in Staten Island, N.Y., and John F. Kennedy International Airport. The counterfeit merchandise was principally from China. Four of the defendants were also charged with money laundering. The charges resulted from a 19- month coordinated initiative by ICE and Customs and Border Protection.

Nine Convictions for Selling \$30 Million of Counterfeit Software on eBay

On June 22, 2007, in the District of Wisconsin, Department prosecutors obtained the eighth and ninth felony convictions involving the eBay auction sales of counterfeit Rockwell Automation software. All nine defendants pled guilty in separate proceedings to felony copyright infringement for selling counterfeit Rockwell Automation software on eBay. The software had a combined retail value of approximately \$30 million. These convictions are part of a larger Department initiative combating online auction piracy nationwide.

Extradited Australian Ringleader Gets 51 Months for Software Piracy

On June 22, 2007, in the Eastern District of Virginia, Hew Raymond Griffiths was sentenced to 51 months in prison for crimes committed as leader of one of the oldest and most renowned Internet software piracy groups worldwide. From his home in Australia, Griffiths violated the criminal copyright laws of the United States as the leader of an organized criminal group known as DrinkOrDie, which caused the illegal reproduction

and distribution of more than \$50 million worth of software, movies, games and music. This was one of the first ever extraditions for an intellectual property offense.

Ex-Employee of Coca Cola and Co-defendant Sentenced for Stealing Trade Secrets

On May 23, 2007, in the District of Georgia, two defendants were sentenced after being charged with conspiring to steal and sell trade secrets of the Coca Cola Company. Joya Williams, a former employee of Coca-Cola, was sentenced to 8 years in prison and Ibrahim Dimson was sentenced to 5 years in prison. The convictions resulted from an FBI investigation, which was initiated after PepsiCo provided the FBI with a copy of a letter from someone claiming to be a Coca-Cola employee and offering PepsiCo classified information about the Coca-Cola Company.

Eleven Indicted for Scheme to Import Adulterated Counterfeit Drugs for Sale on Internet

09/20/06 (Atlanta, GA): Eleven individuals and an Atlanta-based company were indicted on charges related to a scheme to sell counterfeit drugs over the internet. According to the indictment, the defendants marketed approximately 24 different drugs, including versions of Ambien, Valium, Lipitor, and Vioxx, through spam advertisements. Instead of buying safe and authentic generic versions of these vital drugs from Canada, customers were unwittingly buying adulterated fakes manufactured in an unsanitary house in Belize.

Texas Pharmacist Sentenced to Two Years in Prison for Selling Counterfeit Drugs

On September 25, 2006, in Houston, Texas, a licensed pharmacist was sentenced to two years imprisonment for selling counterfeit and misbranded Cialis and Viagra from China. He was convicted by a jury's verdict in May 2006 after a two-day trial during which the United States proved he had ordered counterfeit and misbranded pharmaceuticals from China via the internet and arranged for the drugs to be shipped to him at his home in Sugarland, Texas.

Internet Distributor of Pirated Software Sentenced to 6 Years' Imprisonment and Ordered to Pay \$4.1 Million in Restitution

On August 25, 2006, in the Eastern District of Virginia, a Florida man was sentenced to six years in prison and ordered to pay \$4.1 million in restitution for operating a for-profit piracy website known as BUYSUSA.com. The ordered forfeiture included a wide array of assets, including two Cessna airplanes, a helicopter, a Lamborghini, a 2005 Hummer, a 28 foot boat, and an ambulance.

Florida Men Sentenced to Terms of 7 and 8 Years' Imprisonment, respectively, for Massive Conspiracy to Sell Counterfeit Goods, Including Electrical Cords and Batteries

On August 25, 2006, in the Southern District of Florida, two men were sentenced to 97- and 87-month prison terms, respectively, for a massive conspiracy to sell counterfeit goods, including but not limited to electrical cords, batteries, and handbags bearing the counterfeit marks of Underwriters Laboratories, Duracell, and Louis Vuitton and Gucci, respectively.

Operations FastLink and SiteDown: Continued Convictions in Largest International Online Piracy Enforcement Actions

In addition to the above cases, the Department has continued to prosecute defendants from the two largest international enforcement actions ever undertaken against online piracy, known as Operations FastLink and SiteDown. The takedowns of these international FBI undercover operations in 2004 and 2005, respectively, resulted in a total of more than 200 search warrants executed in 15 countries; the confiscation of hundreds of computers and illegal online distribution hubs; and the removal of more than 100 million dollars worth of illegally-copied copyrighted software, games, movies, and music from illicit distribution channels. Countries participating in these U.S.-led operations included: France, Canada, Sweden, Denmark, the Netherlands, the United Kingdom, Portugal, Hungary, Israel, Spain, Australia, Singapore, Belgium, and Germany. Together, these operations have resulted in over 100 felony convictions to date. On October 3, 2007, in the Eastern District of Virginia, Department prosecutors obtained the 53rd conviction in Operation FastLink.

The Department's International Programs

As Operations FastLink and SiteDown show, prosecuting criminal organizations engaged in large-scale piracy and counterfeiting operations requires the ability to reach beyond America's borders. The growth in global trade and communications networks makes America's intellectual property assets increasingly susceptible to exploitation by criminal organizations that operate overseas. The Department has found in several investigations that criminals are using industrial-scale overseas manufacturing facilities to produce counterfeit products and pirated optical discs on a commercial scale. Criminals are also using servers located overseas to host massive repositories of pirated software, movies, and music – some of which have not yet been released on commercial markets – with the belief that they will be beyond the reach of U.S. law enforcement and outside the interest of foreign law enforcement.

The Department is attacking this significant problem with a multi-faceted strategy that includes increased dedication of personnel to foreign enforcement coordination; broader international outreach and education efforts; more joint investigations and enforcement operations with foreign law enforcement; and new and stronger mechanisms

for cooperation with counterfeit source countries such as China. For instance, in 2006, the Department established the first ever IP Law Enforcement Coordinator for Asia in Bangkok, Thailand; and this past November, the first IPLEC Coordinator for Eastern Europe began work in Sofia, Bulgaria. Both IPLEC positions are dedicated to advancing the Department's regional IP goals through training, outreach, and the coordination of investigations and operations against IP crime throughout the region.

On October 23-26, 2007, the U.S. Department of Justice hosted a regional conference of approximately 60 key law enforcement officials from over a dozen nations in Asia, with the aim of launching the IP Crimes Enforcement Network (IPCEN), an international network targeting large-scale intellectual property crimes. This week-long gathering in Bangkok, Thailand, was organized by CCIPS and our IPLEC for Asia, with the assistance of the Association of Southeast Asian Nations (ASEAN), the U.S. Patent and Trademark Office, and the U.S. Department of State.

High-level police and customs officials and prosecutors from the United States, China, Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Philippines, Singapore, South Korea, Thailand and Vietnam took part in the conference. The IPCEN will serve two primary functions in the future. First, it will operate as a forum to exchange successful investigation and prosecution strategies in combating piracy and counterfeiting crimes. Second, the IPCEN will strengthen communication channels to promote coordinated, multinational prosecutions of the most serious offenders. Additionally, in recognition that effective prosecution of intellectual property crime depends heavily on cooperation between victims and law enforcement authorities, industry representatives also addressed the IPCEN conference regarding the scope and severity of counterfeiting crimes in Asia, and discussed ways to collectively enhance enforcement efforts.

The Department's outreach is not limited by regions or countries. For instance, in 2006 alone, Criminal Division prosecutors provided training and technical assistance on IP enforcement to over 3,300 foreign prosecutors, investigators, and judges from 107 nations. However, some countries pose greater problems than others for U.S. intellectual property protection efforts. Pirated and counterfeit goods coming from China, for example, have been of particular concern to U.S. intellectual property rights holders and law enforcement. The Department is confronting this issue, in part, by building stronger international mechanisms to foster cooperation and joint investigations with China.

Any solution to this massive enforcement problem must begin with greater cooperation and coordination on joint criminal investigations and prosecutions. To that end, in March 2007, the Criminal Division hosted and chaired the inaugural meeting of the Intellectual Property Criminal Enforcement Working Group ("IPCEWG") of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation ("JLG"), which included 15 Chinese law enforcement officials and the Ministry of Public Security's Vice Director General of the Economic Crimes Investigation Department, as well as officials from the FBI and Department of Homeland Security. The IPCEWG met again alongside the annual JLG Plenary meeting in Beijing, China in June 2007. The working group's principal focus is on the development of more U.S.-China joint operations to combat

transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety.

The IPCEWG has already yielded unprecedented results. On July 23, 2007, 25 Chinese nationals were arrested and more than half a billion dollars worth of counterfeit software was seized as a result of the largest ever joint investigation conducted by the FBI and the People's Republic of China. This operation, code-named "Operation Summer Solstice," was one of the cases nominated to the IPCEWG for joint investigation and prosecution. China's Ministry of Public Security ("MPS") searched multiple businesses and residential locations and seized more than a half billion dollars in counterfeit and pirated software, \$7 million in assets, and confiscated over 290,000 counterfeit software CDs and Certificates of Authenticity. The criminal syndicate dismantled by the FBI and MPS is believed to be the largest of its kind in the world, responsible for distributing an estimated \$2 billion in counterfeit Microsoft software.

The Department also led an initiative with members of the G8 industrialized nations to develop a framework for cooperation on intellectual property crime investigations. In November 2006, all members of the G8's Lyon-Roma anti-crime group approved the "Principles and Recommendations for Cooperative Investigation and Prosecution of Serious and Organized Intellectual Property Rights Crime," which set forth a foundation for future cooperation on criminal IP enforcement among the G8 members. In June 2007, the G8 Leaders endorsed the Principles and Recommendations at their annual Summit in Munich, Germany.

The Department's Civil Enforcement Efforts

The Civil Division has supported the enforcement of IP rights by owners of those rights principally through participation in private law suits as *amicus*. Most recently, on December 3, 2007, the Department moved to intervene to defend the constitutionality of the Copyright Act's statutory damages provision in post-trial briefing in *Capitol Records Inc. v. Thomas*, where a jury convicted a peer-to-peer user of willful copyright infringement and imposed statutory damages. In addition, since October 2004, the Department has filed 18 *amicus* briefs in 14 Supreme Court cases, and numerous other cases in the lower courts. Recently, in three important patent cases -- *Microsoft v. AT&T Corp.*, *KSR International v. Teleflex*, and *MedImmune v. Genentech* -- the Supreme Court adopted the arguments of the Department recognizing the important balance between intellectual property rights and the overarching aim of spurring innovation.

In addition, the Civil Division's Office of Consumer Litigation ("OCL") handles criminal and civil cases involving intellectual property laws that protect public health and safety, particularly in the regulation of drugs and medical devices by the Food and Drug Administration. To maintain the high quality of drugs and medical devices sold in the United States, allegations regarding counterfeit or adulterated drugs or medical devices are taken very seriously, as problems associated with these drugs or devices can threaten

human health. In one recent case that is indicative, *United States v. Albers*, OCL attorneys have assisted in the prosecution and conviction of top officials in companies charged with distributing counterfeit Lipitor, among other drugs. To date, twenty-four individuals have been charged, and sixteen convicted in connection with that investigation. More than \$5.2 million in assets have been ordered forfeited and terms of imprisonment totaling 34 years have been imposed.

Since the 2006 Progress Report of the Department of Justice's Task Force on Intellectual Property, the Antitrust Division has continued to promote respect for intellectual property rights in the administration of antitrust law through numerous competition advocacy presentations to international and United States audiences. In April 2007, the Division, together with the Federal Trade Commission, issued a report entitled ANTITRUST ENFORCEMENT & INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION, which set forth key areas of debate and consensus regarding the antitrust analysis of six categories of intellectual property licensing practices. The Division also issued two favorable business review letters analyzing the competitive impact of patent licensing policies proposed by technology standard-setting organizations, and it assisted the Solicitor General in drafting briefs on IP-related cases including *Quanta Computer, Inc. v. LG Electronics, Inc.*, for which the Supreme Court has granted *certiorari*.

Interagency Coordination

The Department plays an active role in the President's STOP initiative, working with other federal agencies to ensure an effective government-wide approach to protecting intellectual property rights. The Department also works closely with industry and victim rights holders to strengthen the public-private partnership so essential to strong IP protection. For instance, as part of a focused outreach to the private sector, the Department hosted a series of training conferences for IP rights holders on topics including, 1) the investigation and prosecution of federal IP cases, 2) the parameters for permissible cooperation and assistance in federal investigations by private rights holders, and 3) procedures and tips for how best to report criminal violations of the copyright, trademark, and trade secret laws. The latest such victims' rights conference was sponsored jointly with the U.S. Chamber of Commerce on November 28, 2007, in Miami, Florida. Approximately 100 members of industry and the law enforcement community attended the one-day training conference that covered, among other things, criminal case studies and a detailed presentation on the permissible and appropriate parameters for industry's assistance to federal law enforcement.

Thanks in no small part to the efforts of Chris Israel, the Coordinator for International IP Enforcement, the Department has been able to work effectively with other STOP agencies to support important Department initiatives. For example, the Department supports the IP enforcement missions of other Departments and agencies, including the Special 301 process and Free Trade Agreement negotiations run by the U.S. Trade Representative; the State Department's IP Training Coordination Group; and

public outreach events for small businesses developed by the Department of Commerce. Despite the widely divergent roles played by many of the agencies involved in the STOP initiative, coordination and support amongst agencies has never been greater in the effort to enforce IP rights.

The Need for New Criminal Enforcement Tools

The Department shares the Committee's goal to improve enforcement efforts by improving tools for Federal investigators and prosecutors to pursue counterfeiting and piracy cases. We applaud the Committee's leadership in this area and we are particularly appreciative that H.R. 4279, the *Prioritizing Resources and Organization for Intellectual Property Act* ("PRO IP Act"), introduced on December 5, 2007, contains many important provisions to enhance our tools. We are still in the process of reviewing this legislation, and we hope to be able to provide more comprehensive comments at a later time. At this time, however, we would like to offer some preliminary comments and also flag a few areas of major concern.

i. Shared Proposals

First, we greatly appreciate that the *PRO IP Act* incorporates (in Titles I and II) a large number of proposals that the Department previously recommended in the *Intellectual Property Protection Act of 2007* ("IPPA"), which the Attorney General transmitted to Congress on May 14, 2007. These provisions will help ensure that U.S. law enforcement is equipped to better protect intellectual property rights and provide real deterrence against criminals seeking unjust enrichment by exploiting the creativity, innovation, and reputation of American artists, inventors, and businesses.

Specifically, the PRO IP Act includes the following important provisions:

- Increases the maximum penalty for counterfeiting offenses from 10 years to 20 years imprisonment where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury, and increases the maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death;
- Provides stronger penalties for repeat-offenders of the copyright laws;
- Implements forfeiture reforms to ensure the ability to forfeit property derived from or used in the commission of criminal intellectual property offenses;
- Strengthens restitution provisions for certain intellectual property crimes;
- Clarifies that registration of copyright is not a prerequisite to criminal prosecution;

- Ensures that the exportation and transshipment of pirated goods through the United States is subject to criminal penalties, just as the exportation of counterfeit goods is now subject to criminal penalties.

At the same time, I note that the *PRO IP Act* does not include certain provisions recommended by the Department in the *IPPA* that would assist prosecutors in combating IP crime, such as criminalizing attempts to commit criminal copyright infringement, harmonizing the forfeiture and restitution provisions for Digital Millennium Copyright and Economic Espionage Act offenses with those of other IP crimes, and amending 18 U.S.C. § 2516 to include criminal copyright infringement and trafficking in counterfeit goods or services as predicate offenses for which a wire or oral intercept may be obtained. We hope to further discuss these with this Committee in the coming weeks and months.

ii. *Restructuring Proposal: Title V*

Title V of the *PRO IP Act* would effect fundamental and substantial changes to how the Department conducts intellectual property enforcement. For example, it mandates that the Department’s criminal IP enforcement function be taken out of the Criminal Division and placed into a newly-created Division dedicated solely to IP. This Division would be headed by an “Intellectual Property Enforcement Officer” reporting directly to the Deputy Attorney General. Title V also calls for the rapid deployment of 10 new CHIP Units, 5 new IP Law Enforcement Coordinators overseas, and a large number of IP-dedicated FBI personnel to field offices and FBI Headquarters.

These restructuring proposals raise a number of serious concerns for the Department. For example, we believe that it would be ill-advised to create a new IP Division within the Department of Justice, headed by an IP Enforcement Officer. There are a number of factors that we believe the Committee should weigh carefully before it takes such sweeping action, including the following:

- 1 The Department of Justice fights against the theft of intellectual property most visibly through its enforcement of the Nation’s criminal laws, and these efforts benefit greatly from close collaboration with other components of the Criminal Division, including but not limited to the Office of International Affairs (“OIA”), the Organized Crime and Racketeering Section, the Asset Forfeiture and Money Laundering Section, and the Narcotics and Dangerous Drug Section. For example, OIA was instrumental in CCIPS’ successful extradition from Australia of Hew Raymond Griffiths earlier this year, to face criminal copyright charges. On June 22, 2007, Griffiths was sentenced to 51 months’ imprisonment for his leadership of one of the most renowned piracy groups operating on the Internet. CCIPS also works very closely with OIA and the Criminal Divisions Overseas Prosecutorial Development and

Training (OPDAT) section in a number of important international efforts, including the aforementioned JLG, the G8, international training, and capacity building, and the IPLEC program. Among other sections, CCIPS works with the Narcotics and Dangerous Drug Section on prosecutions of illegal online pharmacies, with the Organized Crime and Racketeering Section on violent organized criminal syndicates that are branching out into the lucrative market for pirated and counterfeit goods, and with the Asset Forfeiture and Money Laundering Section (AFMLS) on forfeiture matters. Moving the Department's IP enforcement efforts out of the Criminal Division will disrupt important relationships within the Criminal Division and will make intradepartmental IP coordination more difficult.

- 2 CCIPS supports and trains the national CHIP Network, in conjunction with EOUSA. The CHIP Network of AUSAs consists -- like CCIPS itself -- of prosecutors specially-trained to combat both computer crime and IP offenses. This network of approximately 230 AUSAs nationwide is a cornerstone of the Department's IP enforcement program. To divide the IP and computer crime functions of CCIPS between separate Divisions would undermine its ability to continue to provide effective operational support and training to the CHIP Network, which in turn would undermine the cohesion and integration of the CHIP network itself.
- 3 A growing portion of IP crime involves the Internet, and virtually all the large, multi-district IP cases led by CCIPS have involved computerized evidence. Accordingly, the IP enforcement mission requires expertise and core competencies in both IP and computer crime, and the Department benefits greatly from the synergies between the two. For example, CCIPS's recently-established Cybercrime Laboratory provides critical forensic support to both IP and computer crime investigations. This close collaboration within CCIPS, as well as within and among the national CHIP Network, could be jeopardized if the IP enforcement component were split off from computer crime and placed into a separate Division. Moreover, it may lead to duplicative administration and training programs.
- 4 The Department currently has 14 attorneys within CCIPS dedicated exclusively to IP enforcement. Even with additional IPLECS mandated in Title 5, the "IPE Division" would be significantly smaller than any other Division in the Department, but would still carry significant administrative overhead.
- 5 To the extent that Title V is intended to make the IP enforcement program directly accountable to the Office of the Deputy Attorney General, that is already being done under the current structure. Both the Criminal Division and EOUSA report directly to ODAG. The IP Task Force reports to the Attorney General through ODAG. Thus, the current structure is not only working and achieving substantial results, but it also

is ensuring that its components are accountable to the highest levels of the Department.

The Department has demonstrated its willingness to reexamine, reassess, and restructure its IP enforcement programs as necessary to maximize its effectiveness, as evidenced by the establishment of the IP Task Force and the rapid implementation of its 31 recommendations. Notably, at no time during the IP Task Force's exhaustive internal review of the Department's IP program, its many consultations with prosecutors in the field, or its frequent discussions with investigators and representatives of the IP industry, did anyone suggest the need to create an entirely new Division for IP. The Department's IP enforcement efforts have significantly increased under the current effective structure.

Restructuring Proposal: Title III

Finally, with respect to Title III and its creation of a U.S. Intellectual Property Enforcement Representative in the Executive Office of the President having various responsibilities and exclusive cross-agency powers, while I am not in a position to provide the Administration's views at this time, I note that the Department historically has been concerned with government re-structuring proposals in which non-law enforcement officials are empowered to develop policies and objectives directly impacting criminal investigations and prosecutions. Given the need for criminal enforcement policies and priorities to be set by the Department of Justice in an impartial manner based on law enforcement needs and the interests of justice, such proposals require careful scrutiny to avoid such encroachments. Moreover, Title III is objectionable because the function of the Office of the U.S. Intellectual Property Enforcement Representative is more appropriately handled in a federal enforcement agency, and it is not an office designed to provide policy support to the President

In addition, the Department has stated on past occasions that we should be careful not to divert finite resources away from our core prosecution mission merely to fuel the creation, maintenance, and servicing of additional bureaucracy, however well-intended that new bureaucracy may be. Past re-structuring proposals have been premised on the assumption that federal IP enforcement is hampered by a lack of information sharing and coordination within the United States government, with state and local officials, with industry, and with law enforcement officials overseas. In the Department's experience, however, information flow and coordination among government agencies has never been better. Government agencies having a stake in IP enforcement regularly coordinate and exchange information through informal channels as well as formal groups, such as the National Intellectual Property Coordination Council (NIPLECC), which coordinates ongoing work under STOP. The STOP initiative has helped to coordinate and improve the U.S. government's overall response to protecting intellectual property rights.

One of the reasons the STOP initiative has been effective is that it sought to work through existing interagency coordinating mechanisms and statutory regimes, rather than creating additional bureaucratic structures and reporting responsibilities. In 2005, Congress created the Office of the International IP Enforcement Coordinator, and made

the head of that office also the Director of the National IP Law Enforcement Coordination Council (NIPLECC). Because the STOP initiative provides a government-wide strategy for protecting American intellectual property, the Office of the International IP Enforcement Coordinator, working through NIPLECC and other agencies, has been well situated to coordinate implementation of the STOP initiative.

To the extent that there is a desire to create more permanence than the statutory regime already in place, we think it especially important that due care be taken not to create additional bureaucracy and rigidity at the expense of actual enforcement efforts. The STOP Initiative, as coordinated by the International IP Enforcement Coordinator, has been successful in large part because it has allowed agencies the necessary flexibility to maximize the effective use of their resources to best fulfill their individual statutory missions.

Conclusion

In conclusion, I would like to thank you, Chairman Berman, and other Members of the Committee, for your leadership on this critically important enforcement issue. The Department shares your commitment to strengthening the U.S. government's enforcement of intellectual property rights, and we are working aggressively to fulfill our criminal enforcement mission. The Department looks forward to continuing to work with this Committee on the PRO-IP Act, and to sharing law enforcement experience and our ideas on how best to achieve our common goals.