

**TESTIMONY
OF
FRANCIS GARY WHITE
UNIT CHIEF
COMMERCIAL FRAUD DIVISION
IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA**

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INTRODUCTION

Good morning, Chairman Voinovich and distinguished Members of the Subcommittee. It is my pleasure and privilege to be here today to testify about the efforts undertaken by the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) in investigating intellectual property rights (IPR) violations. I would like to note the strong interest of DHS's leadership in this area especially the Under Secretary and Assistant Secretary of the Border and Transportation Directorate and thank them for their support of this important ICE mission.

With the creation of the Department of Homeland Security in March 2003, the investigative and intelligence functions of the former U.S. Customs Service and the Immigration and Naturalization Service were merged into ICE, the second largest investigative agency of the Federal government. In part, ICE's mission is to protect the United States and its citizens by deterring, interdicting, and

investigating threats arising from the movement of people and goods into and out of the country, and to detect and shut down vulnerabilities in our nation's borders, aviation system, and economic systems.

BACKGROUND

In today's information age, we are increasingly dependent on the production and distribution of products protected by intellectual property rights. The increasing demand for these products has escalated the production of counterfeit and pirated goods throughout the world. As a result, IPR violations have grown in both magnitude and complexity, undermining the kind of innovation and creativity that America was built upon.

The losses to the U.S. economy in revenue and jobs due to IPR violations are staggering. In 1982, the International Trade Commission estimated losses from counterfeiting and piracy at \$5.5 billion. In 1988, losses were estimated to be \$60 billion. The International Chamber of Commerce estimated that, in 1998, five to seven percent of world trade was comprised of counterfeit goods, a market worth \$350 billion.

Counterfeit software, sporting goods, and trademarked textiles all have a detrimental effect on the U.S. economy. Because the U.S. leads the world in producing intellectual property, a significant part of our economic growth over the

last decade has been largely fueled by these industries. Moreover, intellectual property exports play an important part in our balance of trade.

ICE investigators have noted that the growth in IPR violations has been driven by organized crime groups that smuggle and distribute counterfeit merchandise specifically for consumption in the U.S market. In many cases, the profits these criminal organizations realize from counterfeit merchandise are used to fuel additional criminal enterprises, such as the trafficking of drugs, weapons, or other contraband. Some of these illegal profits are laundered and invested in legitimate business enterprises. More importantly, both the criminals and their organizations involved in these piratical ventures reap large profits with relatively low risks of prosecution.

Both of DHS enforcement agencies, ICE and the Customs and Border Protection (CBP), recognize the lucrative financial benefits to be found in trafficking counterfeit merchandise. Consequently, both ICE and CBP have modified enforcement strategies that were originally aimed at simply seizing counterfeit goods before they entered the U.S. market. Now, ICE and CBP coordinate targeted seizures with follow-up criminal investigations and forfeiture of assets associated with the criminal endeavors. Our ultimate goal is to dismantle the smuggling organizations and halt the flow of counterfeit merchandise into the commerce of the United States.

Between FY 1998 – 2003, the former U.S. Customs Service and its successor agencies --ICE and CBP-- effected over 26,223 IPR seizures, with an estimated domestic value of \$470 million. During this time period, China, Hong Kong, and Taiwan were the source countries for over half of all the counterfeit merchandise seized. From FY 1998 – 2000, the top commodity seized was media, which includes videotapes, CDs, DVDs and computer software. In FY 2001, the top commodity seized was wearing apparel, and in FY 2002- 2003, the top commodity was cigarettes. DHS seizure statistics for FY 2003 show 6,500 seizures with a domestic value in excess of \$94 million.

OPERATION CORNERSTONE

In July 2003, ICE created the financial investigative initiative identified as *Cornerstone*. This program is dedicated to U.S. economic security and highlights the DHS mission to protect the United States by securing its borders, transportation sector, ports, and critical infrastructure.

Cornerstone protects the integrity and security of the U.S. economy by identifying, targeting, and eliminating systematic vulnerabilities in the financial, commercial, trade, manufacturing, and transportation sectors that could be exploited by criminal and terrorist organizations. Each violation within the spectrum of ICE's investigative purview - Financial Investigations, Export and Arms Control, International Trade, Commercial Fraud, Intellectual Property

Rights, Cyber Crimes, Smuggling, and Immigration Violations - has a financial component that impacts U.S. economic integrity and security.

Cornerstone addresses these security vulnerabilities by not only investigating the crimes - targeting how criminal and terrorist organizations earn, move and store their illicit profits - but also by working with the private sector to spot and address financial vulnerabilities before a crime can be committed. In addition, *Cornerstone* is dedicated to fostering partnerships with the private sector and those industries involved in any aspect of financial, trade, and transportation matters.

ENFORCEMENT ACTIVITIES

To attack the counterfeiting problem, and at the direction of the National Security Council, Presidential Decision Directive/NSC-42 tasked the U.S. Customs Service and the Federal Bureau of Investigation (FBI) with developing a plan for coordinating a unified U.S. Government response in the area of intellectual property crime. As a result, a multi-agency National Intellectual Property Rights Coordination Center (IPR Coordination Center) was developed in 2000, comprised of both investigative and intelligence research personnel from ICE, CBP, and the FBI.

In addition to providing an operations budget, Congressional funding has been used to staff Intelligence Analysts and Criminal Investigators for the IPR Coordination Center and field offices in the U.S., as well as positions in various Customs Attaché

offices overseas. In FY 2004, Congress provided additional funding for the IPR Coordination Center that is presently earmarked for additional investigative positions and for a new state-of-the-art office and educational facility to house the Center. The new IPR facility will allow ICE and CBP analysts and attorneys to provide in-house training in the latest IPR trends and investigative techniques for both law enforcement and industry officials. In addition, the facility will foster the IPR Center's multi-disciplinary approach to identifying and dismantling organizations that are perpetrating IPR violations.

The IPR Center works with copyright owners and trade associations on an ongoing basis and has conducted outreach presentations to both trade associations and foreign governments. On April 28, 2004, the IPR Center will host its inaugural industry meeting with trade associations and businesses to better identify and address growing IPR issues and criminal trends. Subsequent meetings will be held quarterly throughout the U.S. In addition, IPR Center personnel have provided IPR training to ICE field offices, focusing on investigative techniques and the legal requirements necessary to successfully prosecute IPR violators.

Also, in FY 2004, the IPR Center will organize and chair an Industry Anti-Counterfeiting Working Group. This working group will serve as a forum to foster a working relationship between ICE and industry, while encouraging industry to share valuable information about IPR violators with ICE.

The IPR Coordination Center also plays a key international role in IPR enforcement by participating in worldwide IPR working groups and committees. For example, the IPR Coordination Center, representing ICE, 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 IPR enforcement around the world. Its goal is to raise the awareness of the economic and social impact of trade in counterfeit products; to create IPR crime investigation training programs; and to improve the enforcement coordination of IPR matters between police, worldwide customs organizations, and the private sector.

Our overseas offices are committed to the ICE mission of ensuring the economic security of the United States by protecting U.S. intellectual property rights overseas. Since the majority of counterfeit goods are produced in foreign countries, ICE Attaché offices around the world work closely with their host country law enforcement counterparts. Their efforts in developing information regarding the manufacture and shipment of counterfeit goods have resulted in numerous seizures of containers of these illegal goods in the U.S. Our Attaché offices have assisted their host country counterparts in combating the trafficking of counterfeit goods such as CDs, DVDs, textiles, and computer software, in particular in the tri-border area of South America (Argentina, Brazil and Paraguay), in the Philippines, and in China. In addition, at the request of the

Attaché offices, ICE IPR personnel have hosted conferences and provided training on IPR issues with the participation of officials from various countries.

Computer parts, toys, video games, wearing apparel, and watches are a few examples of counterfeit merchandise routinely seized by ICE and CBP. But IPR violations can take many forms and may also involve health and safety concerns. Counterfeit pharmaceuticals, tools, electrical cords, and aircraft or automobile parts all have a significant impact on public safety. For example, laboratory testing of imported counterfeit batteries has revealed inferior manufacturing practices that create improper ventilation, causing increased risk of explosions. In addition, some batteries were even found to contain mercury, creating a significant health risk to anyone in contact with these seemingly innocent items.

Recent successes of IPR enforcement involving public safety include seizures in New York and Houston of \$8 million worth of merchandise including batteries, power cords and electrical accessories that bore counterfeit Underwriter Laboratories labels. Due to the significance of this discovery, ICE conducted a press conference in December 2003, warning consumers of the hazards of counterfeit goods. In another ICE case, a California resident was indicted in January 2004 by a Federal Grand Jury for smuggling counterfeit Viagra tablets from China.

IPR criminals are also exploiting technology to advance their criminal enterprises, as demonstrated by the recent increase in web sites offering counterfeit merchandise. In 1998, legacy Customs established the CyberSmuggling Center to more effectively focus resources to combat IPR over the Internet. Due to advances in technology, cyber-pirates are able to operate freely and openly on the Internet with relatively little risk of discovery. ICE's IPR Coordination Center works in conjunction with the CyberSmuggling Center to investigate and prosecute Internet IPR violators.

CASE EXAMPLES

The following are just three examples of ICE IPR enforcement successes.

In June 2003, ICE agents and local Chicago law enforcement arrested seven Italian nationals for selling counterfeit power tools in the Chicago metropolitan area. All seven individuals were subsequently indicted by a federal grand jury in the Northern District of Illinois for trafficking in counterfeit goods.

In December 2003, Pasquale Esposito and the other six co-defendants pled guilty to federal charges of trafficking in counterfeit goods. In February 2004, all defendants received federal custodial sentences, and due to the length of the judicial proceedings, were released with time served. In addition, the ICE investigation resulted in monetary seizures and forfeitures, to include the

contents of three bank accounts used by the defendants, which totaled \$86,726.74.

In January 2004, Khoa Twan Do was indicted by a Federal Grand Jury in Los Angeles, California, for trafficking in counterfeit Viagra tablets. ICE agents discovered that Do had imported at least 40,000 counterfeit Viagra tablets from Beijing into the United States through his business, Health Plus, from which he would resell the fake medication. If convicted, Do is facing potential criminal penalties of 18 years in federal prison, and up to \$2 million in fines.

In September 2000, Lay Eng Teo, a citizen and resident of Singapore, was indicted in the Northern District Court of California on charges of conspiracy, trafficking in counterfeit software, and money laundering. Teo has also been identified as the supplier on hundreds of seizures of counterfeit software valued at more than \$9 million. Furthermore, U.S. Customs and Microsoft Corporation identified Teo as one of the largest suppliers of counterfeit Microsoft products in the United States.

In October 2000, Hong Kong Customs officers arrested Teo on a provisional arrest warrant. In June 2003, Teo was extradited to the U.S. and plead guilty to Conspiracy to Traffic in Counterfeit Goods and Money Laundering in January 2004. In March 2004, Teo was sentenced in the Northern District Court of California to 46 months incarceration.

CLOSING

As much as we have done to protect our intellectual property rights, we must do more in staying ahead of the perpetrators. Greater interaction among ICE, industry, intellectual property right owners, and the public, as well as domestic and international law enforcement organizations, is critical to our efforts in combating the increasing threat posed by IPR violations. I would like to thank Chairman Voinovich and the distinguished members of this Subcommittee for their support and the opportunity to testify before you today. I will be glad to address any questions you may have.