

April 21-22, 2005

Statement

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The U.S.-China Economic and Security Review Commission

High Technology Trade and Investments with China /IPR

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Mr. Chairman and Members of the Commission:

Innovation is America's competitive advantage and intellectual property (IP) rights are the wellspring of that creativity. They underpin our economy and assure our national security.

For more than two centuries, America's unique system of intellectual property incentives and protections has fostered a volcanic outpouring of innovation and enterprise. Now, that creativity, and all that it makes possible, are threatened by other nations' massive and blatant violations of U.S.-owned intellectual property rights, by well-funded efforts to weaken U.S. intellectual property laws and by "reform" legislation enacted in 1999 that forces the U.S. Patent and Trademark Office to reveal the vital details contained in a patent application 18-months after it is filed, long before most patents are granted. This premature disclosure of inventors' most intimate secrets -- while their creations lack the legal protections conferred by a patent -- aids counterfeiters and pirates, penalizes U.S.

inventors and discourages innovation. In effect, Congress unthinkingly legalized a major form of industrial espionage.

My analysis of China's protection of U.S. intellectual properties begins with an examination of the importance of those rights to the United States, the foundation and evolution of those protections, plus a review of the IP obligations that China willingly assumed when it joined the 148-member World Trade Organization (WTO).

In sum, China is not meeting its WTO intellectual property commitments. Indeed, China is pursuing a national development strategy based on the uncompensated, unapproved stealing of other nations' best ideas and technologies. China's failure to fulfill its WTO intellectual property commitments is not just a U.S. problem: It is one of equal significance to Europe, Japan and all other nations that value innovation. Fortunately, as discussed later, powerful remedies exist.

Innovation and Progress -- How important are technological advances to America's development? They are vital. The cotton gin, interchangeable parts, the telegraph, electricity for the home and factory, mass production techniques, the airplane, television, computers, lasers, iPods, among millions of innovations, each profoundly changed the nature of work and life, not only in the United States but throughout the world.

Economists have measured the effects of technology on the American economy. The studies are distinguished by the use of differing techniques, different periods and different parameters. The constant in most of these studies is they examined three basic factors – labor, capital and technology – apportioning to each its relative contribution.

Nobel Economics Prize winner Robert Solow of Harvard University found that technological advancement, coupled with increased human capital improvements in the labor force, accounted for between 80-90 percent of the annual productivity increase in the U.S. economy between 1909 and 1949. Edward Denizen of George Washington

University concluded that in the period 1929-1982 more than two-thirds of the productivity gains were due to advances in science and technology.

Whether the precise numbers of those two studies are correct, the important point made by each is that progress in knowledge and innovations were the primary factors behind the growth of America's economic productivity. And while quarrels exist among economists, historians, lawyers, and politicians as to the details of the American system of innovation – that is, are patent terms too long or short, is copyright coverage too broad or narrow, are trademarks useful or not – the fact remains that the Founding Fathers of this nation and their successors created a system of innovation that has worked better than any other.

The Great Economic Crime of the 21st Century --Intellectual property theft is the great economic crime of the 21st century. The FBI estimates that pirating and counterfeiting costs U.S. companies up to \$250 billion per year. The European Union estimates such theft bleeds its economy of more than \$400 billion annually.

Significantly, such theft is about more than money. Fake goods harm and kill people. Piracy and counterfeiting impede innovation. The result is fewer new medicines, fewer advances in science, fewer new products, fewer new music CDs, fewer new movies, less new software, and higher prices for whatever is created.

Pirates and counterfeiters also frustrate creativity. Their actions deny incentives – whether it is money, recognition, fame, or power – to the creators of new ideas who do the work and take the risks required to challenge the old with something new, different and better. Fakes destroy good jobs and the reputations of legitimate producers and goods.

Each year, the Office of the United States Trade Representative presents a listing of countries where intellectual property theft is blatant. That report (available over the Net

at www.ustr.gov) reveals massive infringements of U.S.-owned intellectual properties by many nations.

A Constitutional Right in the United States – What is the legal foundation of U.S. patent and copyright protections? It is the U.S. Constitution.

The American Revolution almost failed because the fledgling nation lacked the capacity to manufacture the materials of war. Those demands had to be fulfilled by European producers and then smuggled across the Atlantic. By the War's end, the necessity for manufacturing self-sufficiency was so seared into the minds of George Washington and other Revolutionary leaders that when the Constitution was being drafted, they included a special provision to encourage domestic innovation and creativity. Article 1, Section 8 of The Constitution of the United States of America provides:

“The Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”;

This is the only place in the body of the Constitution where the word “right” is mentioned explicitly. The Constitutional amendments that became known as the Bill of Rights were not ratified until almost the end of the third year of George Washington's first presidential term and almost 19 months after passage of the first copyright and patent acts in 1790.

This twenty-seven-word clause is the legal basis for every patent and copyright ever issued in the United States. Congress may vary the terms and duration and thus render the contemporary definition of what is the proper balance between the public and private interests, but the Constitution guarantees every American's right to such protections. The Commerce clause of the Constitution is the basis for trademark protection.

A Golden Covenant -- Ideas are intangible, even ephemeral, things. Yet, they are the fountainhead of all advances in literature, science, technology, agriculture, music, medicine, designs and even better mousetraps. And although ideas cannot be owned, the right to exclude others from producing the creations that flow from them can be – at least for a set time. Intellectual property law is about classifying the form an idea takes, the right to exclude others from its use, the enforcement of that right, the penalties for any infringements of that right, the allocation of responsibility for imposing that punishment, and, equally important, the attendant obligation of the intellectual property owner to society.

Although the protections take many forms, as a body they are called “intellectual property rights.” Fundamentally, such rights, wherever they exist, are a basic social contract between society and someone who creates an idea – a golden covenant -- by which the public grants that creator the right to exclude others from using their creation for a set period in exchange for the disclosure of its details, and ultimately the surrender of that property right, allowing the creation to enter the public domain. The hope is that by giving the author or inventor a property right for a limited time, while also making public their creation’s most intimate details, the general state of knowledge will be advanced.

Four Types of Protection -- Over time, four basic types of intellectual property protections have been created: copyrights, trademarks, patents and trade secrets. Each contains its own bundle of rights, backed by a body of law that is appropriate for specific types of intellectual products. Lawrence J. Siskind, a San Francisco intellectual property lawyer, has created a useful typology for distinguishing these four types of protection.

Imagine, he says, that Thomas Edison wrote a book about the process of incandescence. A copyright would protect Edison’s literary or artistic creation, barring others from either copying or distributing his words or any illustrations in his book. But, a copyright would not forbid others from using the ideas in the book to create their own electric lights.

If Edison held a patent, however, he would possess “the right to exclude others from making, using, offering for sale, or selling” his invention in the United States or importing the invention into the country. Thus, a patent would give Edison the right to exclude others from using his idea for a set period in exchange, of course, for publicly disclosing its details. Edison’s incentive is that he gets a chance to develop his idea and reap the financial reward during a prescribed period. The public’s incentive to make such a grant is that knowledge is advanced by Edison’s disclosure.

If Edison wanted to label his light bulb as the “Edison Bulb,” he would seek a trademark. That could either be a word, a name, symbol or device to distinguish his idea or product from all others. While others could make and sell light bulbs, if they did not violate Edison’s patent, they could not call their product an “Edison Bulb.” That right would belong to him. Edison could also package his bulb in a distinctive way and that too would be protected as “trade dressing.” Thus, when others sold their bulbs, they could not make or package them to appear as the “Edison Bulb.”

If Edison chose to keep secret the details of how he made his light bulb, his customer list, his manufacturing processes, and any special formulas or designs, laws on trade secrets would protect him. But as Siskind points out, if he marketed the product and someone independently took it apart and figured out how his creation was made or worked, Edison would probably lose any legal rights. Coca-Cola, for example, has kept its formula secret, but relying on trade secret protections is risky.

Of course, there is much more to each of these basic protections. For instance, there are several types of patents – utility patents protect useful inventions, methods and processes. Design patents safeguard unique and ornamental shapes and designs. Patents also are given to those who invent or discover and asexually reproduce a distinct and new variety of plant.

Congress sets the length of protection for intellectual property and it varies by type. Utility and plant patents are generally valid twenty years from the date of application. Design patents last fourteen years from the date of grant. Copyrighted works registered after 1978 are authorized for the life of the author plus 70 years. Those registered before 1978 are secured for 95 years from the date the copyright was originally secured. For works made for hire, the copyright endures for 95 years from publication or 120 years from creation, whichever is shorter. Trademark rights can exist indefinitely if the owner continues to use the mark and re-registers it every ten years.

Enforcement--The Founding Fathers created both a right for IP owners and the private legal means for them to defend those rights in the courts. Thus, most U.S. intellectual property owners rely on their own attorneys, not their government, to defend their IP rights in the United States. Foreign infringers fully understand this difference. Former U.S. Patent Commissioner Bruce Lehman notes that foreigners "are particularly freaked by (patent) litigation." The reason is clear: U.S. federal courts are far more difficult to subvert than U.S. politicians.

In the United States, private lawsuits to defend patents, copyrights, trademarks, trade secrets, masks and plant varieties are potent because the decision to act resides with the IP owner and the federal courts are strong judicial bodies that can impose massive penalties. The strength of the courts is the judges, whose qualifications are reviewed and approved by the U.S. Senate. For more than two centuries, America's federal judges have been capable, often brilliant and uncompromisingly honest.

To further ensure fairness, the courts have a strong appellate system, which allows an impartial and competent review of lower court decisions by panels of other judges. To provide a knowledgeable review of complex patent and trademark cases, Congress created the U.S. Court of Appeals for the Federal Circuit, which is located in Washington D.C. Created in 1982, this court hears all appeals on patent and trademark cases.

Before the creation of this new court, the 11 appeals courts (now 12 in number) upheld only 40 percent of U.S. patents in litigation; afterward, the new Federal Circuit Court has upheld roughly 80 percent.

America's strong intellectual property laws and an equally strong judicial system are hazards for counterfeiters, pirates and infringers inside the U.S. The statistics of private patent suits illustrate why. Alexander I. Poltorak and Paul J. Lerner in **Essentials of Intellectual Property** estimate that only 1.1 percent of all patents are ever litigated.

Of that one percent that are litigated, almost 76 percent settle before going to trial, generally after an expenditure of \$1 million or more by each side. Only four percent of all suits filed eventually do go to trial. The other 20 percent are either withdrawn or dismissed. Thus, only about 4/100 of one percent of patents are litigated.

Of cases where a patent's validity is challenged, Poltorak and Lerner report that litigation upholds 67 percent. When infringement is litigated, patent owners win 66 percent of their cases. These are very good odds for patent holders, and very bad ones for pirates, counterfeiters or infringers – at least in the United States.

Such low litigation numbers, and such high success rates for patent owners, are a positive reflection on the U.S. Patent and Trademark Office, signifying that its examinations are thorough and the patents it issues are strong – again, at least inside the United States.

When the first U.S. Congress created the first patent and copyright laws, they considered court-ordered civil sanctions sufficient to deter infringers. In 1909, Congress decided that civil sanctions were insufficient to stop some brazen copyright infringers, so criminal prosecutions were authorized as an additional deterrent. In 1992, Congress broadened the law, making copyright infringement a felony offense under federal law “*if at least ten infringing copies or any type of copyrighted work with a value of \$2,500 or more are made or distributed in a 180-day period.*” The Economic Espionage Act of 1996 made

the theft of trade secrets a federal crime regardless of who benefits. Unlike copyrights, trademarks and trade secrets, no federal law makes patent infringement a criminal act.

In addition to the civil suits and federal criminal prosecutions, U.S. IP holders have another means to keep infringing goods out of the United States. Under Section 337 of the Tariff Act of 1930, the U.S. International Trade Commission is empowered to investigate allegations of patent, copyright, and trademark infringements of imported goods, plus the misappropriation of trade secrets. The commission is an independent, quasi-judicial federal agency that analyzes the effects of imports on the economy and directs actions against unfair trade practices, such as intellectual property infringement.

If an IP holder thinks that its rights are being infringed upon by unauthorized imports, it can file a formal complaint with the commission. If the commission votes to investigate, it appoints an Administrative Law Judge to preside over the proceedings and make an initial decision. Hearings are held and eventually the commission makes a decision or a settlement is reached. Between the mid-1970s and January 2004, the commission heard 505 cases involving alleged violations on items that range from integrated circuit chipsets to rodent bait stations (a better mousetrap). When the commission finds there has been an infringement of a valid and enforceable U.S. patent, copyright, trade secret, or trademark, it orders the Customs Service to exclude that good from entry into the United States.

Other federal enforcement of U.S. intellectual property laws has been reduced to the point of vanishing since the 9/11 attacks, as most of its resources were transferred to the war on terrorism.

Foreign Protections -- A distinctive feature of intellectual property protections is they are of national origin, issued country by country. Consequently, having the protection of a patent, copyright, or trademark in the U.S. does not automatically mean that a creation

is safeguarded elsewhere. Rather, IP owners must generally seek protection country by country.

Most important, many nations do not provide the legal means to enforce their trademarks, patents and copyrights. They have IP laws on the books, promise to enforce those laws, and then allow, even encourage violations. Their laws are niceties, as fake as the goods whose production they facilitate.

The major problem faced by American intellectual property owners is not one of inadequate protection inside the U.S., but the absence of such means in most developing nations. In such instances, U.S. intellectual property owners are forced to depend on the U.S. Government to act on their behalf. Only the Office of the United States Trade Representative can initiate a U.S. intellectual property case against other governments at the World Trade Organization.

Ironically, after leading the long, historic fight to put the WTO's IP protections into place, Washington is now strangely unwilling to use them. Since June 2000, the U.S. has not filed a single intellectual property case at the World Trade Organization, although the Office of the United States Trade Representative documents each year, country-by-country, their IP infringements and how this theft is permitted, even encouraged, by the national governments.

The World Trade Organization and Intellectual Property Rights -- In response to the massive international theft of U.S.-owned intellectual properties, the United States in the 1980s and 1990s championed the creation of a new body of international laws and protections, called the Trade Related Intellectual Property System (TRIPS), which is administered by the World Trade Organization (WTO), and sets minimum IP standards for WTO members.

TRIPS came fully into force on January 1, 2005. The TRIPS agreement is the most significant intellectual property agreement of our time. It covers five broad areas: First, TRIPS defines the basic principles of how international intellectual property agreements will be applied. The main principle is national treatment – that is, governments will deal with foreigners and their own citizens equally. A corollary is called “most-favored nation” – that is, all foreigners will be treated equally. If the U.S. gives a trade concession to Mexico, it must also be willing to give the same concession to Chili, Brazil and all other nations. This mandate prohibits discrimination among nations.

Second, TRIPS ensures that adequate standards of protection are provided by all participating nations. To this end, TRIPS strengthened the provisions of the principal international agreements that existed before it was created, including the Paris Convention for the Protection of Industrial Property, which includes patents and industrial designs – setting new and higher standards. For copyrights, TRIPS included computer programs and databases. It expanded international copyright rules to include rental rights, thus taking pirates on directly. TRIPS also gave performers the right to prevent the unauthorized recording and use of their live performances for 50 years. With that, the WTO took on bootleggers.

TRIPS gives international protection for trademarks, defining what is eligible, plus the minimum rights nations must provide. When place names, such as “Tequila,” “Scotch,” and “Champagne” are used to identify a product, TRIPS provides special protections for those products as well. Industrial designs are protected by TRIPS for a minimum of 10 years and patents for at least 20 years. Nations must provide patents for both products and production processes, though they can exclude diagnostic, therapeutic techniques, surgical methods, plants, animals and biological processes for the production of plants or animals. Plant varieties, however, have TRIPS patent protections. A process patent extends to the product directly created by the process. The TRIPS Agreement allows governments to issue a patent-holder’s competitor a compulsory license for a patented product or process, but only under strict and defined conditions.

Integrated circuit layout designs are protected for a minimum of 10 years under TRIPS. Governments are required to take all necessary steps to protect undisclosed information and trade secrets of commercial value. Finally and most important, Part 2 of TRIPS defines minimal standards. If any party to TRIPS wants higher standards and longer terms of protection for the intellectual properties, they can have it, provided they do not discriminate against or between foreigners.

The third part of TRIPS is enforcement. The agreement requires all signatory governments to enact laws that ensure the enforcement of this agreement and provide penalties that are sufficient to deter future violations. TRIPS enforcement requirements are defined in detail, including rules for getting evidence, provisional measures, injunctions, damages and other penalties. Under TRIPS, governments must provide courts that can review administrative decisions and order the disposal of counterfeit goods. Governments are also required to make willful trademark counterfeiting and copyright piracy criminal offenses, punishable with jail sentences and to prevent the import of counterfeit and pirated goods.

The fourth part of TRIPS is its dispute settlement procedures. If any nation thinks that any other nation is violating the TRIPS provisions, they can take their case to the WTO, where a three-person panel will hear the complaint. The loser in that complaint can file an appeal at the WTO and be heard by a new appeal panel. That decision is final. If a defendant nation loses the case, it must change its laws and practices or pay damages to the plaintiff nation. Those damages can be paid in cash, or the winning plaintiff nation can impose tariffs on a list of the defendants' imports sufficient to pay an amount set by the TRIPS dispute panel. The WTO can impose costly penalties on those nations that fail to uphold their IP agreements.

Fifth, the WTO provided special transitional arrangements while TRIPS was being introduced.

The WTO dispute settlement procedure is a powerful tool. If the U.S. believes, for instance, that China is not fulfilling its TRIPS obligations to provide protections against piracy and counterfeiting of U.S. IP, it can take a case to the WTO. And if the U.S. can prove that this theft is costing U.S. authors, artists, inventors and other IP owners multiple billions of dollars annually, it can ask for annual compensation in that amount for as long as the theft and China's institutional unresponsiveness continues. Moreover, the U.S. does not need China's permission or help to collect the money once a WTO verdict is issued. Under the WTO, the U.S. can impose a small tariff on every good imported from China and then distribute those funds to the U.S. victims. Or, it can impose large tariffs on a few Chinese imports. All that is required is national political will and lawyers who can prove to a WTO panel what the victims allege. Most important, such action is legal and conforms to the TRIPS agreement signed by China.

China's WTO TRIPS Compliance on Intellectual Property Protections -- The Office of the United States Trade Representative's 2004 Report to Congress on China's WTO Compliance reveals that China is putting its framework of laws, regulations and implementing rules into compliance with the TRIPS Agreement. The problem noted in the report is "*Enforcement of these measures, however, remained ineffective in 2004.*" The USTR pointed out that nearly three years after China's accession to the WTO U.S. right-holders uniformly say that intellectual property rights infringement in China is rampant. Witnesses also report that such violations are worsening. Although China has established three mechanisms for intellectual property rights enforcement, none is having a deterrent effect. Specifically, the USTR concludes,

- **Administrative Enforcement**-- "*Although the central government continues to promote periodic anti-counterfeiting and anti-piracy campaigns, and these campaigns result in high numbers of seizures of infringing materials, they are largely ineffective.*"

- **Criminal Enforcement**—*“At present, criminal enforcement has virtually no deterrent effect on infringers. ... Partly because of these weaknesses in China’s laws and regulations, China rarely pursues criminal prosecutions.”*
- **Civil Enforcement**—*“U.S. companies continued to complain in 2004 that there is still a lack of consistent and fair enforcement of China’s IPR laws and regulations in the courts. They have found that most judges lack necessary technical training and that court rules regarding evidence, expert witnesses and protection of confidential information are vague or ineffective. In addition, in the patent area, where enforcement through civil litigation is of particular importance, a single case still takes four to seven years to complete, rendering the new damages provisions adopted to comply with China’s TRIPS Agreement obligations less meaningful.”*

China’s failure to meet its WTO TRIPS obligations is dearly costing foreign IP owners. The Chinese Government estimates that in 2001 the market value of bogus goods sold in China was between \$19 billion and \$24 billion. The technology stolen to produce many of these goods has a far greater value, as does the harm done to the reputations of IP owners, plus the value of bogus sales outside of China. This estimate is a vast understatement of the true costs of the IP theft emanating from within China’s borders.

Despite intense attempts over many years, U.S. diplomacy has not persuaded China’s leaders to fulfill their TRIPS obligations. The result is a Chinese Potemkin village of protections – newly created national bureaucracies putting into place the forms, regulations and institutional mechanisms that real intellectual property protections systems have.

Yet, local officials have great power and often little connection with national authority. Viewed from their perspective, why should a local official take jobs away from neighbors, friends, family and constituents and give them to an unknown foreign

corporation, inventor, author or artist whose operations may be elsewhere, maybe not even in China?

As for private enforcement of intellectual property rights, the very idea of patents, copyrights, trademarks and trade secrets are as novel to China as are ideas of constitutional rights, religious freedom and civil law. China is an old civilization. To graft the U.S. system of intellectual property rights onto China's ancient political culture may be as difficult and odd a task as trying to graft a grape vine unto a mature oak tree.

Professor William P. Alford of Harvard Law School, captures the essence of the problem in *To Steal a Book is an Elegant Offense*. He writes,

“A system of state determination of which ideas may or may not be disseminated is fundamentally incompatible with one of strong intellectual property rights in which individuals have the authority to determine how expressions of their ideas may be used and ready access to private legal remedies to vindicate such rights.”

China's culture, of course, can change, but to expect its political leaders to accept foreign notions of intellectual property laws, individual civil rights and private legal remedies as a central part of its political structure is not likely to happen soon, if ever. To expect the Chinese public to forego voluntarily the production or purchase of pirated and counterfeited products simply because some foreigner owns the exclusive use of an invention, trademark, trade secret or a copyright is too high a hope, at least in the near future.

If China's economy evolves as did Japan's, the Chinese may become interested in intellectual property protection when they develop proprietary technologies that they want to secure in other nations. Until then, foreign intellectual property owners must regard China as the great threat to their creations that it is.

Intellectual Property Rights Under Assault Within the U.S. – The assault on U.S. intellectual property rights and enforcement extends into the U.S. In a protracted legislative patent war during the 1990s, several foreign governments and large corporate interests tried to weaken U.S. patent protections, and continue to do so. Among other proposals, these interests sought to:

- Remove the U.S. Patent and Trademark Office from congressional oversight,
- Vest control of the patent function in a private corporation whose directors would be appointed by the President,
- Eliminate civil service protections for patent examiners,
- Shorten the term for U.S. patent protections,
- Award a patent to the first person to file an application rather than the person first to invent a new creation,
- Allow competitors to challenge the claims in a patent while the application is still under review at the Patent Office.
- Limit the ability of patent holders to defend their rights in the courts.
- Publish the details of a patent application eighteen months after it is filed, even if no patent has yet been issued.

The 18-month provision was enacted into law in 1999. Today, the details of a U.S. patent application are made public, via the Internet, eighteen months after it is filed. Only those applications for a U.S.-only patent are exempt from this rule. Yet, the U.S. Patent Office takes an average of 27 months to issue a patent. Thus, an inventor has a period of 9 months when the secrets of the innovation are made known to the world and no protections exist. An inventor can sue the infringer after being awarded a patent, but often requires filing a case in foreign courts – a costly process. One consequence of this rule is that U.S. creations are being stolen before inventors have the protections of a patent. Equally important, many inventors are keeping their creations as trade secrets, thus diminishing the general knowledge.

The un-enacted proposed changes to U.S. patent protections remain a top U.S. lobbying priority of the Japanese Government, the European Union and several transnational corporations and their business associations.

In the 1990s, advocates of **copyright** change persuaded Congress to lengthen the duration of copyrights, legislation the Supreme Court later ruled constitutional. An unintended consequence of the copyright extension is that much of the knowledge created in the last 75 years of the 20th century is frozen in copyrighted works whose ownership is unknown, that produces few if any royalties, is not digitalized, and thus remains largely unavailable to most potential users. Were the commercially inactive portions of that copyrighted knowledge base released into the public domain, existing computer technology could easily deliver it to the fingertips of anyone connected to the Internet. One option for releasing this vast body of knowledge would be to alter the copyright laws in a manner that returns the term of a copyright to a short period, such as 14 years enacted by the first U.S. Congress, but allow owners to renew indefinitely, as is now done with trademarks. Owners of commercially viable works would likely renew. By not renewing, owners of non-commercial works could speed their creations into the public domain.

Recommendations -- China is unlikely to have an effective system of intellectual property protections any time soon. TRIPS is a legal way for the U.S. to address China's failure to meet its WTO intellectual property obligations.

I recommend that the U.S. initiate a WTO case against China for failing to meet its TRIPS commitments. A WTO finding and the U.S. collection of damages would provide the Chinese Government a substantial incentive to fulfill its TRIPS obligation. I also recommend that the collected damages be divided among the damaged U.S. IP owners, rather than be deposited in the U.S. Treasury. The victims deserve the compensation.

I also recommend that the USCC bring to Congress's attention the unintended damage created by the 18-month patent application disclosure rule and urge it to revert U.S.

policy to that followed for more than two centuries – that is, the U.S. Patent and Trademark Office is obligated to keep the details of a patent application totally secret until a patent has been issued. If no patent is issued, that Office is to vigorously guard the application, allowing the inventor to protect the innovation as a trade secret.

Conclusion – Innovation is America’s competitive advantage. U.S. domestic intellectual property protections must reflect that reality and our government must resist attempts to weaken the IP rights of its creative people.

Globally, the U.S. led other nations in creating a body of IP protections at the WTO. The time has come to test whether those protections are real. An intellectual property case against China is the ideal check as to whether TRIPS can work. If not, the U.S. needs to know and then act accordingly and quickly. Passivity on such a far-reaching threat is the most dangerous policy.

Pat Choate is the author of *Hot Property: The Stealing of Ideas in an Age of Globalization*, from which parts of this statement are drawn. Alfred A. Knopf, Inc. will release this book on April 26, 2005.