

TESTIMONY OF
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BEFORE THE
US-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION
“PIRACY AND COUNTERFEITING IN CHINA”

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Chairmen D’Amato and Houston, I am pleased to join you today to discuss the challenge of international intellectual property rights enforcement in China.

I want to thank the Commission for its continued support and leadership on issues concerning the protection of intellectual property. I look forward to the opportunity to work together to ensure that the heart of America’s innovation economy, its intellectual property, is effectively protected around the world.

Combating piracy and counterfeiting is a top priority for the Bush Administration. This prioritization is evident in the leadership shown by President Bush. He has consistently raised IP enforcement with foreign leaders, placed the issue on the agenda of the G8 and made it a key part of last year’s U.S./EU summit. He has also discussed our ongoing concerns with leaders of critical markets such as China and Russia. He has directed his Administration to address this issue actively, aggressively and with a results-oriented approach.

We are leveraging the capabilities and resources of the United States to promote effective, global enforcement of intellectual property rights. Working under the leadership of the White House, my office works to coordinate the international IP enforcement efforts of the Office of the U.S. Trade Representative, the Department of Commerce – which includes the U.S. Patent and Trademark Office and the International Trade Administration; the Department of Homeland Security – which includes Customs and Border Protection; the Department of Justice – including the FBI (Federal Bureau of Investigation); and the State Department, among others. Our combined efforts are extensive, and this allows us to bring even greater focus, energy and prioritization to our IPR efforts.

I appreciate the opportunity to discuss this leadership, to address the growing problem of counterfeiting and piracy in China, and the Federal Government’s efforts to help protect American intellectual property and our industries.

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Leadership and Prioritization:

The reasons for the Administration’s leadership on IP enforcement and for its prioritization are clear.

First, few issues are as important to the current and future economic strength of the United States as our ability to create and protect intellectual property. U.S. IP industries account for over half of all U.S. exports. They represent 40% of our economic growth and employ 18 million Americans, who earn 40% more than the average U.S. wage. The 2006 Economic Report to the President states that IP accounts for

over 1/3 of the value of all U.S. corporations, an amount equal to almost half of our GDP. Quite simply, our ability to ensure a secure and reliable environment for intellectual property around the world is critical to the strength and continued expansion of the U.S. economy.

The enforcement of intellectual property rights also carries great consequence for the health and safety of consumers around the world. The World Health Organization estimates that 10% of all pharmaceuticals available worldwide are counterfeit. The U.S. Federal Aviation Administration estimates that 2% of airline parts installed each year are fake – or about 520,000 parts. And we have seen counterfeit circuit breakers that overheat and explode, brake linings made of wood chips and cardboard, and fake power cords. In the world of today's sophisticated criminal IP operations, if a product can be easily counterfeited, has an immediate demand and provides a good profit margin it will be copied. Consumer safety and product quality are concerns obviously not on the minds of global IP thieves.

Finally, the theft of American intellectual property strikes at the heart of one of our greatest comparative advantages – our innovative capacity. Through the applied talents of American inventors, researchers, entrepreneurs, artists and workers, we have developed the most dynamic and sophisticated economy the world has ever seen.

And I truly believe the world is a much better place due to these efforts. We have delivered life-saving drugs and products that make people more productive. We have developed entirely new industries and set loose the imaginative power of entrepreneurs everywhere. And, we set trends and market best-of-class products to nearly every country in the world.

A thriving, diversified and competitive economy must protect its intellectual property rights. In the recent State of the Union, President Bush outlined the American Competitiveness Initiative (ACI). ACI strengthens the President's ongoing commitment to research and development. We are creating a business environment that encourages entrepreneurship and protection of intellectual property. And this Administration is doing everything that we can to open markets and level the playing field.

We value our heritage of innovation and exploration – it is not only part of our history; it is the key to our future.

And this future – a future of innovation, exploration and growth that benefits the entire world -- rests on a basic, inherent respect for intellectual property rights and a system that protects them.

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Counterfeiting and Piracy in China:

The rising tide of counterfeiting and piracy in China has created enormous challenges for U.S. businesses. According to the U.S. Chamber of Commerce, worldwide IP theft costs U.S. industry approximately \$250 billion annually. In a 2005 survey of the US-China Business Council, members listed IPR enforcement as their greatest concern. Our industry reports that infringement levels in China range from 85 to 95 percent for all copyright works, and in 2005 the value of copyrighted works that were pirated exceeded \$2.3 billion. In 2005, U.S. Customs reported that China was the number one source of counterfeit products that were seized at our borders, accounting for 68% of all seizures. And though we recognize that China has expanded their efforts, there are still critical deficiencies in IPR protection and enforcement.

As a result of China's continuing problems with IP theft, we posted our first IP Attaché in Beijing in 2004, and we will be posting additional IP Attachés in China in 2006. In addition, since 2001, the U.S. government has conducted well over 50 training and capacity building programs with Chinese government officials.

U.S. Trade Representative Portman recently stated, “as a mature trading partner, China should be held accountable for its actions and required to live up to its responsibilities, including enforcing intellectual property rights... We will use all options available to meet this challenge.” It can be said that, so far, China has not lived up to its responsibility to effectively enforce intellectual property rights.

In China, effective enforcement efforts are undermined by: a lack of sufficient political will, corruption, local protectionism, misallocated resources and training, and a lack of effective public education regarding the economic and social impact of counterfeiting and piracy.

Though the problems of IP theft are great in China, let me first mention a few positive developments.

President Hu has publicly acknowledged the problem on numerous occasions, most recently when he met with President Bush in April, and also at their meetings last November and September in 2005. Also, the recent statements by Chinese Vice-Premier Wu Yi on improving IPR enforcement in China and encouraging Chinese businesses to take greater steps to protect IP are definitely a step in the right direction. We also appreciate the commitments that the Vice-Premier made at the April 2006 JCCT on ensuring that the Chinese government only uses legal software. The additional announcement, by the Vice-Premier, that the Chinese government is setting up 50 reporting centers for IPR violations throughout China is good news, and we hope that these centers can be effective.

In December 2005, a Beijing court ruled in favor of several luxury trademark brands in a suit to stop sales of knockoff handbags. In that case, the court ordered the owner of the Silk Street Market to pay damages and stop its vendors from selling the fake goods. This is an important ruling because the Chinese courts are finally holding landlords responsible for the illegal activities of their tenants.

In January 2006, Starbucks won a lawsuit against a local company that had adopted its Chinese name and a similar logo. The Shanghai court fined the company and ordered it to stop using the Starbucks name and issue an apology in a local newspaper.

In January 2006, the chocolate company Ferrero Rocher won a lawsuit against a Chinese company that was producing a copycat version of its well known gold-wrapped chocolates. The Chinese court ordered the company to pay compensation and to stop producing the copycat product.

Though these are good examples, the problems in China run deep, and we continue to work extensively with the Chinese government on the issues of counterfeiting and piracy.

U.S. Government China Strategy:

The U.S. government is working on many fronts to engage China on IPR, and under President Bush’s leadership, we have developed an effective China IP strategy. The Bush Administration’s China IP Strategy is built on four pillars: bilateral engagement; effective use of our trade tools; expanding law enforcement cooperation; and working with the private sector. We are utilizing all of our resources to effectively implement our approach:

1. Working through the U.S.-China Joint Commission on Commerce and Trade (JCCT) to secure IPR commitments;
2. Effective use of all of our trade tools:
 - a. The Office of the U.S. Trade Representative’s China Top-to-Bottom Review,
 - b. Special 301 Report,
 - c. The World Trade Organization (WTO) TRIPS Article 63.3 request and consider filing a complaint under the WTO dispute settlement process;
3. Expanding Law Enforcement Cooperation with the Chinese Government;

4. Private Sector Cooperation.

Joint Commission on Commerce and Trade (JCCT):

Established in 1983, the U.S.-China Joint Commission on Commerce and Trade (JCCT) is a government-to-government consultative mechanism that provides a forum to resolve trade concerns and promote bilateral commercial opportunities.

Led on the U.S. side by the U.S. Secretary of Commerce and the U.S. Trade Representative, and on the Chinese side by Vice Premier Wu Yi, the status of the JCCT was elevated following the December 2003 meeting of President Bush and Chinese Premier Wen to focus higher-level attention on outstanding trade disputes. Of particular importance to this Committee is the work of the U.S.-China JCCT Intellectual Property Rights Working Group.

At the April 2005 JCCT session, the United States and China agreed to establish an IPR Working Group so that U.S. and Chinese officials, IP specialists, and law enforcement authorities could consult on specific problems and cooperate on a range of IPR issues. Through the IPR Working Group, we are working with the Chinese, helping them take concrete steps toward significantly improving IPR protection and enforcement.

President Bush has discussed the issue personally with Chinese President Hu Jintao, and President Hu made further commitments during a September 2005 United Nations speech. We need to see delivery on these commitments and achieve measurable results as China looks to take its place among the world's leading economic powers.

The last meeting of the JCCT took place on April 11th, prior to the visit of Chinese President Hu on April 20, 2006. At the JCCT meeting, Commerce Secretary Gutierrez, U.S. Trade Representative Rob Portman and Vice Premier Wu Yi discussed the steps needed to improve intellectual property rights protection and enforcement in China. Further we have reiterated to the Chinese that apart from the April 2006 commitments it is important for there to be follow up on the comprehensive set of commitments from the Chinese government to reduce counterfeiting and piracy that were agreed to in prior meetings of the U.S.-China JCCT.

In support of its commitment to significantly reduce IPR infringement levels, China agreed to the following specific actions, during the April 2006 JCCT:

- Optical Disk Piracy – The Chinese government has taken action against 14 factories producing illegal optical disks and has pledged to step up enforcement in this important area to combat copyright piracy of films, music, and software. The United States and China will continue to explore new ways to strengthen cooperation in this area.
- Requirements to Install Legitimate Software – The Chinese government has issued a notice requiring the pre-loading of legal operating system software on all computers produced or imported into China, as well as a notice requiring government agencies to purchase computers with pre-loaded software. In line with these requirements, several Chinese computer manufacturers have recently signed agreements to purchase U.S. operating system software.
- Ensuring Use of Legal Software in Government and Enterprises – In addition to ongoing efforts to ensure use of legal software at all levels of the government, China has launched a program to ensure that only legal software is used in Chinese enterprises. Further, China has agreed to discuss U.S. proposals regarding government and enterprise software asset management in the JCCT IPR Working Group.
- Rid Consumer Markets of Infringing Goods – The Chinese government has agreed to intensify its efforts to ensure that public markets in China are free of infringing products and has announced enforcement actions in several major cities.

- Individual Cases – The Chinese government agreed to help ensure that individual IPR cases raised by the U.S. government with China will be vigorously pursued.
- Action Plan – China has announced a broad action plan to improve enforcement of IP rights, including steps in the areas of enforcement, legislation and education. Strongly implemented, these steps could lead to significant improvement in the IP situation in China.

But out of the many commitments made in our prior JCCT meetings, only a few have been completed.

The Chinese Ministry of Public Security established an IP unit responsible for overall research, planning and coordination of all IPR criminal enforcement. The unit serves under the auspices of both the Economic Crimes Investigation Division and the Social Order Division.

The Chinese government recently put in place an IP Ombudsman, Yang Guohua, at the Chinese Embassy in Washington. I have met with him, and he has also begun meeting with U.S. rights holders.

The Chinese government confirmed that the criminal thresholds in the 2004 Judicial Interpretation (JI) are applicable to sound recordings and that the JI makes exporters subject to independent criminal liability. But there have not been any reported criminal cases under these circumstances using the new thresholds.

We also have quite a few commitments that are still in progress and others where there has been little if any movement.

China committed to complete its legalization program to ensure that all government offices use only legal software by the end of 2005 and to extend this commitment to large enterprises, including state-owned enterprises, this year. China claims to have completed its government legalization program, but U.S. industry says its sales data does not support this claim, and there is no other evidence to show that China has moved forward to purchase and use only legal software. In a recent interview, Commerce Secretary Gutierrez stated that the use of pirated software by China is “absolutely unacceptable” and that this requires more attention from the world community.

Also, as part of our discussions with the Chinese, we continue to raise the issue of optical disc piracy. China needs to take steps to eliminate all illegal optical disc production. Action especially needs to be taken against those “government licensed” optical disc plants in China that engage in this type of criminal activity. We consider this an important issue for our copyright industry, and apart from the significant economic damages, this type of piracy harms our cultural and creative innovative capacity.

China has also agreed to regularly instruct enforcement authorities throughout the country that copies of select films which are still in censorship, and not yet ready for distribution are deemed pirated and subject to enhanced enforcement. However, industry reports that progress on this initiative has been very uneven.

This memorandum of understanding (MOU) between China and the Motion Picture Association (MPA) protects only the 15 theatrical films actually released in China. Industry reports that little progress has been made on this initiative.

The Chinese legal system follows three routes: administrative, civil and criminal. U.S. rights holders place primary importance on criminal cases being filed against violators of IPR in China. In the 2005 JCCT meeting, China committed to increasing the number of criminal prosecutions for IPR violations relative to the number of administrative cases. This is important because it would send a message to those who violate the law that they can not get away with just paying a fine – IP theft is a crime, and there will be criminal penalties.

China has also agreed to improve IPR enforcement at trade shows and retail and wholesale markets. The United States is working with China to: establish IPR monitoring centers at major trade fairs, set up a training program, and host a trade fair IPR enforcement seminar to educate U.S. and Chinese small and medium-sized enterprises (SMEs) on how to enforce their IPR at an upcoming trade fair. China also agreed to “clean up” Beijing’s Silk Street Market and other well-known consumer markets.

At the major consumer markets, it may appear at first glance that the Chinese have made some progress. In January, the Shanghai government announced its plans to shut down Xiangyang Market, that city's biggest seller of fake goods. According to local reports, the Mayor of Shanghai stated that the market had damaged Shanghai's reputation, because approximately 80% of the city’s counterfeiting and piracy originates in that market. But that market will not close until June 2006, and at that point, most of the vendors will be moving to other markets, including one, southwest of the city, in Longhua. These illegal markets which exist all over China, continue to operate openly and notoriously. They must be shut down or permanently be rid of infringing goods. The Chinese government’s ability to take active steps to stop the sale and production of counterfeit Olympic products demonstrates that they have this ability.

Also, China is working toward accession to the World Intellectual Property Organization Internet Treaties. China recently sent a delegation to the United States to discuss the legislative steps necessary to accede to the WIPO Internet Treaties. We have problems with China’s draft legislative package and will continue to communicate our concerns to China. It is important China get this right, so that China’s protections move forward and meet the needs of the digital age.

The proliferation of fake pharmaceuticals also creates serious issues of health and safety. In China, there are certain factories that are categorized as unregulated “chemical factories” but they primarily manufacture the active ingredients for certain drugs. Our interest is to have these “factories” come under the supervision of China’s Food and Drug Administration (FDA), so that they can be monitored and regulated.

Additional issues include protecting undisclosed test data against unfair commercial use for pharmaceutical products. We also need to see clarification and improved coordination between China’s patent office and the SFDA to prevent generic drug companies from receiving marketing approval from the SFDA for pharmaceutical products that infringe a valid patent.

Effectively using all of our Trade Tools:

We are making use of all the trade tools that we have at our disposal. As China takes its place as a player on the world economic stage, we expect that it will live up to its international obligations and uphold the rule of law.

USTR Top-to-Bottom Review:

The Top-to-Bottom review assesses the benefits and challenges in U.S.-China trade following China’s first four years of membership in the World Trade Organization. The Top-to-Bottom review announced several actions that will be implemented by USTR and other U.S. government agencies; and I will mention a few of them here. First, USTR is expanding their trade enforcement capacity to help ensure that China complies with its trade obligations. USTR is establishing a China Enforcement Task Force to be headed by a Chief Counsel for China Trade Enforcement. Second, USTR is expanding its ability to obtain comprehensive forward-looking information regarding China’s trade regime and U.S. trade policy practices by adding additional USTR personnel and establishing an Advisory Committee for Trade Policy and Negotiation (ACTPN) China Task Force. Third, USTR and the State Department are discussing expanding U.S. trade policy and negotiating capacity in Beijing to augment our current efforts and more effectively pursue top priority issues, such as protecting IPR. Having a trade negotiator on the ground is

key. This individual will be in constant contact with American businesses and Chinese officials, working to help remove trade barriers, improve market access and improve IP enforcement.

Through my office and our inter-agency team, the Administration is improving coordination across the U.S. government. We are regularly reviewing our strategies and assessing the progress that we have made so that we can continue to take the appropriate next steps.

Special 301 Report:

China's placement last year on the Priority Watch List (PWL) reflects the significant level of concern that we have concerning China's problems with IPR protection, enforcement and market access. This ranking sends a global signal to our trading partners and to companies seeking to do business in China. It also sends a strong message to China that these concerns must be addressed.

World Trade Organization Mechanisms:

In the fight against counterfeiting and piracy, we are using every trade tool at our disposal, and we consider all options to be on the table. As announced in its Special 301 Report last year, USTR filed a formal request under Article 63.3 of the TRIPS agreement (Agreement on the Trade-Related Aspects of Intellectual Property Rights), asking China to detail the specific efforts it has taken to enforce IPR, which includes China's application of criminal, administrative, and civil remedies for infringement cases that affect U.S. rights holders. We were joined in our Article 63.3 request by Japan and Switzerland, who also submitted similar requests at the same time. Though China's official response was less than forthcoming, we are working, alongside our trading partners and with the Chinese government, to fulfill this request. China's response will demonstrate whether it is serious about enforcing its IPR laws in a transparent open manner.

The United States is the only country that has brought a case against China in the WTO. And the United States government is again left with no choice but to consider filing another complaint against China this time for inadequate enforcement of IPR. In this regard, USTR is working with industry to evaluate facts and develop the necessary information on this potential case.

Law Enforcement Cooperation:

Another major priority is to expand law enforcement cooperation between the U.S. and China. Progress is being made, and Attorney General Gonzales laid the groundwork for expanded law enforcement cooperation on IP cases during his trip to China in late 2005.

Our law enforcement agencies are already working with their counterparts in China to share information, expertise and investigation techniques.

The Department of Justice is looking to build on these existing efforts and develop even stronger bilateral IPR law enforcement cooperation.

The existing U.S.-China Joint Liaison Group (JLG) works to facilitate criminal justice cooperation and has already discussed criminal IPR enforcement on the plenary level.

The U.S. has requested that the Chinese agree to establish an IP law enforcement experts group through the JLG. Expanding our IPR law enforcement cooperation efforts would enable us to focus on developing joint IPR enforcement operations and improve cooperation on criminal investigations. In addition, our efforts, led by the Department of Justice, would focus on the operational aspects and training linked to China's criminal law enforcement efforts to address online piracy. Though a nationwide crackdown on internet piracy has not begun, as China has committed to do, China has worked out a plan

to focus on copyright violations involving audio-video and software products, including unauthorized using and sharing at Internet cafes and the illegal operation of websites.

Building on the joint U.S.-China law enforcement effort called Operation Spring, the U.S. and Chinese law enforcement authorities recently joined forces in Operation Ocean Crossing, successfully disrupting an organization engaged in the large-scale trafficking of counterfeit pharmaceuticals. The action resulted in numerous arrests in China and the United States and the capture of hundreds of thousands of fake pharmaceuticals.

As I stated earlier, China was the number one source of counterfeit products that were seized at the United States border last year. The Chinese government needs to better equip its Customs Authorities to control the exports of counterfeit and pirated goods from China. An important step that China agreed to take at the 2005 JCCT is to adopt regulations that allow Customs to refer serious cases for criminal prosecution. China should also reinstate provisions in its Customs regulations to allow for fines up to 100% of the value of the seized goods. To take forward China's JCCT commitments on better customs enforcement, U.S. and Chinese Customs officials, subject to confidentiality concerns, will be cooperating on the exchange of infringement data and information on significant seizures. There will also be technical exchanges on risk assessment and regulatory improvements.

Private Sector Cooperation:

Companies need to be aggressive advocates of their own IP. We are working actively with the business community for assistance as we go forward. They are our eyes and ears on the ground and know better than anyone how inadequate IPR enforcement affects their businesses. My office conducts active outreach with industry, and we want to hear their stories and find ways to use the data that they have collected in China. We will continue to work together to find solutions and lead enforcement efforts.

We are working with U.S. and international trade associations such as the American Bar Association, American Chamber of Commerce in China, Business Software Alliance, Entertainment Software Association, International Chamber of Commerce, International Intellectual Property Alliance, International Federation of Phonographic Industries, Motion Picture Association, National Association of Manufacturers, The Pharmaceutical Research and Manufacturers of America, Quality Brands Protection Committee, Recording Industry Association of American, U.S. Chamber of Commerce and the U.S.-China Business Council, to name just a few.

An important tool that we use is the IPR Case Referral Mechanism (CRM) which was created by the U.S. government to facilitate the submission of individual U.S. company IPR cases through MOFCOM (China's Ministry of Commerce) to relevant Chinese agencies. Our inter-agency team reviews cases where the Chinese government fails to provide adequate protection and enforcement of IPR to U.S. businesses, and after an internal vetting process, sends approved cases to the Chinese government to facilitate their resolution. Five cases have already been submitted to the Chinese through the Case Referral Mechanism.

Ambassador Clark Randt at our Embassy in Beijing holds an annual IPR Roundtable which brings together senior Chinese officials and U.S. business representatives. The Roundtable gives U.S. rights holders the opportunity to discuss the problems they are facing and find the solutions that they need.

Also, our Embassy and Consulate officers on the ground are a valuable asset for U.S. companies. They play a critical role as IPR "first responders", helping U.S. businesses resolve cases when their rights are violated.

We know that companies are conducting investigations into IPR theft and collecting data as they do business in China. But American companies should not have to be the sole investigators of IP crime in China. The Chinese government needs to step up to the plate, conduct investigations and stop the crime of IP theft that is occurring in their country.

The Bush Administration's efforts to provide a secure and predictable global environment for intellectual property is driven by a commitment to foster U.S. economic growth, to secure the safety and health of consumers everywhere, and an abiding respect for the great American innovative spirit that has driven our nation since its founding and will determine our future.

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Strategy, Organization and Focus:

As this Commission clearly understands, the problem of global piracy and counterfeiting confronts many industries, exists in many countries, apart from China, and demands continuous attention. With finite resources and seemingly infinite concerns, how we focus our efforts is crucial. I appreciate this opportunity to share with you the key areas which make up the Administration's overall Strategy for Targeting Organized Piracy. Through President Bush's leadership, we created a five-point plan.

1. Empower American innovators to better protect their rights at home and abroad.
2. Increase efforts to seize counterfeit goods at our borders.
3. Pursue criminal enterprises involved in piracy and counterfeiting.
4. Work closely and creatively with U.S. Industry.
5. Aggressively engage our trading partners to join our efforts.

By working more closely with other U.S. government agencies, we implemented that plan, and we have made progress. I'd like to share with you some of the approaches that we are taking and the objectives that we have set to improve global IP enforcement.

In February, under the leadership of my office and the White House, the National Intellectual Property Law Enforcement Coordination Council (the "Council") held its first principals meeting this year. The Council brings together the leaders of the key operational entities within the federal government that are responsible for IP enforcement. At the meeting, we looked at better ways to coordinate our domestic and international IP efforts in order to ensure the effective and efficient enforcement of IP both at home and abroad. By establishing priorities and objectives at a senior level, we are reinforcing our day-to-day activities and ensuring that all of the agencies critical to the federal government's IP enforcement efforts are closely coordinated and committed to a common results-oriented agenda.

The Council is comprised of the Department of Justice (Assistant Attorney General of the Criminal Division), the Commerce Department (Under Secretary for Intellectual Property and Director of the Patent and Trademark Office and Under Secretary for International Trade), the Office of the U.S. Trade Representative (Deputy USTR), the Department of Homeland Security (Commissioner of Customs and Border Protection) and the State Department (Under Secretary for Economic, Business and Agricultural Affairs).

The Council has made a number of valuable contributions since its creation in 1999, including the development of a comprehensive database that includes all recent IP law enforcement training provided by the U.S. government to developing and least developed nations as well as delivering legislative suggestions to improve national IP laws related to enforcement. However, there is unmet potential, and in

my role as the head of the Council, I look forward to working with this Committee to ensure that we are maximizing the capabilities of the Council.

A critical element in our overall coordination is the Strategy Targeting Organized Piracy (STOP) Initiative launched by the Bush Administration in October 2004. STOP has built an expansive interagency process that provides the foundation and focus for all of our efforts. This is the strategy that the Council is implementing. STOP is led by the White House and brings together USTR, the Department of Commerce, the Department of Justice, the Department of Homeland Security and the State Department.

STOP is the most comprehensive initiative ever advanced to fight global piracy where it starts, block bogus goods at America's borders and help American businesses secure and enforce their rights around the world. STOP has made significant progress in the past year, and we are planning to build on this success. STOP is an attempt to play offense in the global fight against piracy and counterfeiting.

Through all of these initiatives, we are achieving results, maintaining the commitment of senior Administration officials, institutionalizing an unprecedented level of coordination within the federal government and receiving attention around the world. The message that we are delivering is – that the United States takes the issue of IP enforcement very seriously, we are leveraging all of our resources to address it and we have high expectations of all of our global trading partners.

To help American innovators secure and enforce their rights across the globe, we have new federal services and assistance:

We created a hotline (1-866-999-HALT), which is staffed by specialized attorneys who counsel businesses on how to protect their intellectual property rights (IPR) and work with callers on how to best resolve problems. In cases where the individual or company has properly registered its rights, its issue can then be referred to a trade compliance team that will monitor their case and work to see what next steps can be taken.

We also developed a website (www.stopfakes.gov) and brochure to provide information and guidance to rights holders on how to register and protect their IPR in markets around the world.

We created downloadable “IP toolkits” to guide businesses through securing and enforcing their rights in key markets across the globe. These toolkits are available at the Stopfakes.gov website, and cover key trading partners such as China, Russia, Mexico, Korea and Taiwan.

In November 2005, Commerce Secretary Gutierrez announced the China Intellectual Property Rights (IPR) Advisory Program. This program is done in conjunction with the American Bar Association, the National Association of Manufacturers and the American Chamber of Commerce in China. It offers small and medium-sized U.S. businesses free IPR consultation with an attorney.

We are continuing to expand our IP attaché program in China and positioning new attachés in Brazil, Russia, India, Thailand and the Middle East. Having IP attachés stationed in these countries will enhance our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR.

Also, we are providing training for U.S. embassy personnel to be effective first responders to IPR issues in order to identify problems abroad and assist rights holders before fakes enter the market and the supply chain.

- The Stopfakes.gov website has received over 1.8 million visits.
- In FY 2005, the STOP! Hotline received over 950 calls and during the first quarter of FY 2006 we have received over 550 calls.
- During our four 2005 IP Road Show events, in Salt Lake City, Phoenix, Austin and Miami we had a total of 740 small business attendees.

Next, we need to increase our efforts to stop fake and counterfeit goods at America's borders:

The Department of Homeland Security (DHS), through the enforcement efforts of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), is a key player in the STOP! Initiative, working to stop counterfeiters and pirates from bringing fake products into the United States. In fiscal year 2005, DHS seized 8,022 shipments of counterfeit and pirated goods valued at more than \$93 million. Since 2001 CBP has made over 31,000 seizures of fake and counterfeit goods.

We have begun implementing a new risk assessment model and technologies to cast a wider, tighter net on counterfeit and pirated goods and to stop these goods at our borders. CBP's new risk assessment model uses several sources of data, including historical seizure information, to target high-risk cargo while facilitating the flow of legitimate goods. With post-entry verification (IPR audits), CBP added a new IPR enforcement tool to complement traditional physical examination of goods at the border. We are issuing penalties on imports of fakes uncovered during IPR audits, and working with businesses to develop internal control systems to prevent imports of counterfeit and pirated goods.

Additionally, we have developed an online recordation tool for rights holders to record their trademarks and copyrights with CBP. Recordation provides a higher level of protection for trademarks and copyrights and makes it easier for CBP to identify fake goods at our borders. CBP's online recordation tool is linked to the U.S. Patent and Trademark Office's website, and will soon be linked to the Copyright Office's website as well. This resource helps businesses protect their rights.

We are working with our trading partners to share information and improve our capabilities to assess and anticipate risks. We are already seeing early results of this effort with the European Union. We have followed up on the U.S./EU Economic Ministerial held last year, where leaders of both governments committed to expand information sharing of customs data and information. The United States and the European Union, as part of a bilateral IP working group, are implementing an action plan to strengthen IPR enforcement, including through greater customs cooperation.

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's Federal Bureau of Investigation (FBI), two of the lead investigative agencies in the fight against both domestic and international IPR crime, jointly run the National IPR Center. The Center identifies and addresses developing IPR issues and trends and advances that information through outreach and training with foreign governments. Additionally, the FBI serves as the co-chair for Interpol's IPR international training sub-committee, and in that role provides regular training to officials overseas on IPR enforcement.

The tools and relationships developed under STOP! have produced real results. For example, ICE special agents working in conjunction with the Chinese government and U.S. industry conducted the first ever joint U.S.-Chinese enforcement action on the Chinese mainland and disrupted a network that distributed counterfeit motion pictures worldwide. More than 210,000 counterfeit DVDs were seized. Chinese authorities also destroyed three warehouses that were being used to store the counterfeit DVDs that would have been distributed worldwide.

Law enforcement must play a leading role in dismantling criminal enterprises that steal intellectual property:

U.S. law enforcement agencies are also working closely with industry to gather information, develop cases and bring convictions against the criminals who steal their IP. We need to be as sophisticated and creative as the criminals. It is important that government and industry work together with coordinated efforts.

The Department of Justice (DoJ) plays a key role in dismantling criminal enterprises that steal intellectual property, improving international enforcement efforts, and ensuring that there is a strong legal regime for the protection of intellectual property throughout the world. To that end, as part of the STOP! Initiative, the Attorney General formed an Intellectual Property Task Force to examine how it could maximize its efforts to protect intellectual property rights. In October of 2004, the first Task Force Report was released and it included a comprehensive set of recommendations on steps that the Department of Justice could take to better protect IPR. U.S. law enforcement agencies, the Justice Department in particular, have achieved significant results as discussed below.

Increasing Criminal Prosecutions

- Increased the number of copyright and trademark cases filed from FY 2004 to FY 2005 by 45%.
- Increased the number of defendants prosecuted for intellectual property offenses by 97% from FY 2004 through the end of FY 2005.
- Created five new Computer Hacking and Intellectual Property (CHIP) Units in the U.S. Attorney's Offices in Nashville, Orlando, Pittsburgh, Sacramento, and Washington D.C., bringing the total number of specialized units to 18.
- Increased the total number of CHIP prosecutors nationwide to 230.
- Continued to dismantle and prosecute multi-district and international criminal organizations that commit intellectual property crimes, including:
 - Leading the international takedown against members of over 22 major online software piracy groups in Operation Site Down in June 2005, involving 12 countries, the simultaneous execution of over 90 searches worldwide, the eradication of at least eight major online distribution sites, and confiscation of an estimated \$50 million in pirated software, games, movies, and music. Prosecutors have indicted 44 defendants and obtained 17 felony convictions in connection with this operation to date;
 - Shutting down a sophisticated international peer-to-peer network known as Elite Torrents, used by over 133,000 members, in the first-ever criminal action against a Bit Torrent file-sharing network;
 - Obtaining felony conspiracy and copyright convictions against 26 software, game, movie, and music pirates as part of the ongoing Operation FastLink, the largest law enforcement action ever taken against online intellectual property offenders;
 - Obtaining convictions against two Los Angeles-area men for conspiracy and trafficking in over 700,000 counterfeit Viagra tablets manufactured in China and worth over \$5.6 million.
 - Indicting the four leaders of one of the largest counterfeit goods operations ever uncovered in New England – breaking up a scheme to sell more than 30,000 luxury goods worth more than \$1.4 million.

Improving International Enforcement

The Justice Department recently deployed an IP law enforcement coordinator for Asia, who is stationed in Bangkok, Thailand. This individual will work closely with prosecutors in the Department's Computer Crime and Intellectual Property Section and Office of International Affairs to oversee IP law enforcement

training and assist U.S.-based enforcement efforts in the region.

In addition, DoJ has executed agreements to implement obligations of the US/EU Mutual Legal Assistance and Extradition Agreements. These agreements ensure cooperation regarding intellectual property crimes with Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom; and we have completed negotiations with the nine remaining E.U. countries – Cyprus, Czech Republic, Estonia, Germany, Greece, Italy, Malta, Poland and Slovakia.

We trained and provided technical assistance to more than 2,000 prosecutors, investigators, judges and IP experts from 94 countries regarding the protection and enforcement of IPR.

We have initiated bilateral discussions with China on criminal IP enforcement and are working toward establishing a bilateral law enforcement experts group to improve operational cooperation and coordination in joint and cross-border investigations. We are also working closely with other member countries in a G8 IP Experts working group, and will soon be proposing and pursuing specific IP enforcement projects in the G8 Lyon-Roma Group on Crime and Terrorism.

Strengthening Laws

The Bush Administration is working with Congress to strengthen laws and penalties related to intellectual property rights enforcement, including the:

- *Stop Counterfeiting in Manufactured Goods Act, H.R. 32 (March 2006)*
 - Prohibits the trafficking of counterfeit labels, emblems, containers or similar labeling components that may be used to facilitate counterfeiting; provides for forfeiture of articles bearing or consisting of a counterfeit mark and proceeds of any property derived from proceeds of, or used in the commission of, a violation; expands the definition of "trafficking" for certain counterfeiting crimes and clarifying that trafficking in counterfeit goods or labels includes possession with intent to traffic in such items.
- *Family Entertainment and Copyright Act, S. 167 (April 2005)*
 - Outlaws camcording in movie theaters and provides a new 3-year felony for the distribution of a pre-release work by making it available on a publicly-accessible computer network. Recognizes the premium value of copyrighted works before they are released to the public.
- *Anti-Counterfeiting Amendments of 2004, H.R. 3632 (December 2005)*
 - Allows law enforcement officials to seize material and equipment used to make counterfeit products and labels.
- *Intellectual Property Protection Act of 2005*
 - The Department of Justice transmitted to Congress the Administration's proposed legislation entitled the "Intellectual Property Protection Act of 2005," a comprehensive reform package that would toughen penalties for intellectual property crimes, expand criminal intellectual property protections, and add investigative tools for criminal and civil intellectual property rights enforcement.

Working closely and creatively with U.S. industry:

We are conducting extensive outreach with U.S. industry and trade associations, and want to hear their stories. Companies need to be aggressive advocates of their own IP. We are working actively with the business community as we go forward. They are our eyes and ears on the ground and know better than anyone how inadequate IPR enforcement affects their businesses. We will continue to work together to find solutions and lead enforcement efforts.

We are working with U.S. and international trade associations such as the American Bar Association, American Chamber of Commerce in China, Business Software Alliance, Entertainment Software Association, International Chamber of Commerce, International Intellectual Property Alliance, International Federation of Phonographic Industries, Motion Picture Association, National Association of Manufacturers, The Pharmaceutical Research and Manufacturers of America, Quality Brands Protection Committee, Recording Industry Association of American, U.S. Chamber of Commerce and the U.S.-China Business Council, to name just a few.

Additionally, we are working with the Coalition Against Counterfeiting and Piracy, a U.S. Chamber of Commerce and National Association of Manufacturers led association on the “No Trade in Fakes” program to develop voluntary guidelines companies can use to ensure their supply and distribution chains are free of counterfeits.

We are also conducting post-entry verifications (IPR audits) on companies vulnerable to IP violations and working with them to correct their faulty business practices. U.S. Customs and Border Protection (CBP) uses post-entry verifications of importing companies to detect discrepancies and systemic weaknesses in the area of IPR protection. We then work with audited companies to devise solutions and remedies for deficient and vulnerable areas.

We have education campaigns that take place across America to teach small and medium-sized enterprises how to secure and protect their rights and where to turn for federal resources and assistance. It is important to note that only 15% of small businesses that do business overseas know that a U.S. patent or trademark provides protection only in the United States. Companies need to make sure that they register for intellectual property protection overseas. We recently had education programs in Northern Virginia, San Diego and Atlanta, and we have upcoming programs in Nashville and Columbus. These events help educate businesses on what intellectual property rights are, why they are important, and how to protect and enforce these rights domestically and internationally.

We are reaching out to our trading partners and building international support. U.S. leadership is critical and we are active on a number of fronts:

When U.S. government officials meet with our global trading partners for bilateral and multilateral discussions, IP protection and enforcement are always top priorities.

This Administration makes IPR a priority when negotiating new free trade agreements as you saw most recently with CAFTA-DR (the United States-Central America-Dominican Republic Free Trade Agreement).

In January, we met with European Union Officials at the White House for a series of meetings to address global piracy. We are breaking new ground and have begun to expand our cooperation with the EU – focused on border enforcement, a strategy to address problems in developing countries and working with the private sector. Particularly with China, the EU announced that they will be posting an IP attaché in Beijing.

At the G8 meeting, President Bush secured an agreement from fellow leaders to focus on IP enforcement, and we plan on working with Russia on IP issues during their presidency of the G8.

At APEC last year, we secured an endorsement of a U.S.-Japan sponsored ‘APEC Anti-Counterfeiting and Piracy Initiative’ to reduce trade in counterfeit goods and to combat online piracy, while increasing cooperation and capacity building. In close cooperation with industry and a number of U.S. Government agencies, USTR led this effort, which culminated last November in agreement by the leaders of APEC’s 21 member economies in a set of model guidelines to reduce trade in counterfeit and pirated goods, and to

protect against unauthorized copies, and to prevent the sale of counterfeit goods over the Internet. We are currently working to implement and expand these model guidelines.

Also, the work of the U.S.-Russia IP Working Group remains a high priority, as the United States, through USTR, and Russia work to address a number of IP-related issues and steps that need to be taken.

Additionally, we have commissioned a study by the OECD (The Organization for Economic Cooperation and Development) to examine the impact of global counterfeiting and piracy. My office and our inter-agency team have held several meetings with OECD officials to follow-up and assist with this study. We are looking for sound, reliable and accurate information to be produced with this study, so that we may have accurate metrics that can be used effectively by our principals and by industry as we continue building international support to stem the flow of fake and counterfeit goods and keep them out of global supply chains.

Next, the U.S. has conducted several hundred IP training and capacity building programs around the world to improve criminal and civil IPR protection. To that end, the Administration has established a Global Intellectual Property Academy to consolidate and expand our training programs for foreign judges, enforcement officials and administrators.

We are continuing to expand our IP attaché program in China and positioning new attachés in Brazil, Russia and India. Having IP attachés stationed in these countries will enhance our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR.

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Members of the Commission, the Bush Administration is committed to stopping intellectual property theft in China and providing businesses the tools they need to flourish in the global economy. As I work to coordinate the U.S. government's intellectual property enforcement, trade and education efforts; and with your continued support and the partnership of this Committee, we will be able to do even more to provide American businesses and innovators with the protection they need. America's intellectual property is important not just for her national security, but it is also a necessary component in ensuring continued U.S. economic growth and technological leadership. We must take advantage of the opportunity to work together to better protect the knowledge industries of today so that we may continue to see the innovations of tomorrow. Thank you very much.