

Questions for the Record on
United States Intellectual Property Enforcement Coordination
Before the Senate Committee on the Judiciary
November 7, 2007

Chairman Leahy - Panel Question #2

As the testimony each of you has provided makes clear, there are numerous agencies necessarily involved in protecting U.S. intellectual property.

**How should resources and assets be distributed to provide the greatest level of protection?
In which agencies are more assets needed?**

Our strategy has focused on maximizing the already significant assets that the Federal Government has to address the problem of international and domestic intellectual property theft. We have also found that our efforts coordinated under the National Intellectual Property Law Enforcement Coordinating Council (NIPLECC) and focused through the Administration's Strategy Targeting Organized Piracy (STOP!) have allowed us to more fully leverage our resources.

Through better coordination we also have a clearer sense of where our intellectual property (IP) enforcement resources are targeted and what benefits are accruing as a result. For instance, in FY 2006 we began tracking more precisely U.S Government IP training and capacity building programs to better understand how much we spend, where it is targeted, the topics we focus on and how we can strategically target these valuable programs in the future.

Several factors contribute to decisions made regarding the distribution of IP enforcement resources. Through the recent work of NIPLECC there is a much higher degree of information sharing among agencies and this does impact the process of developing annual budget proposals and the requests that are ultimately made to Congress.

It is our view that the current budget process has very effectively included a variety of important IP-related priorities and achieved an important balance among the work done by very diverse NIPLECC agencies. Our interagency process and the STOP! initiative have increased the overall focus on IP protection. For example, we have seen increased budget requests for law enforcement activities, and greatly expanded business outreach programs from the Departments of Homeland Security and Commerce. Additional resources are not needed at this time to administer the Trade Policy Staff Committee (TPSC) and the Trade Policy Review Group (TPRG), the two groups in the U.S. Government that are responsible for the formulation of trade policy, including efforts to promote strong intellectual property laws and effective enforcement worldwide. For example, these interagency groups oversee decisions relating to the highly successful Special 301 process that examines in detail the adequacy and effectiveness of intellectual property rights and enforcement in more than 75 countries.

Chairman Leahy - Chris Israel Question

Mr. Israel, there is a thicket of acronyms that appear to make up our intellectual property enforcement efforts, but it would be helpful for the Committee to have a better sense of what role you play as the coordinator. For instance, the USTR recently announced its Anti-Counterfeiting Trade Agreement.

What role does your office play in developing that and other initiatives and how do you coordinate it with the other agencies to ensure a comprehensive approach?

Since its establishment in July 2005, the Office of the IP Enforcement Coordinator has sought to pursue the mission of leveraging the capabilities and resources of the United States to promote effective, global enforcement of intellectual property rights. Working directly within the Office of the Secretary of Commerce and in collaboration with the White House, our office has helped direct interagency initiatives such as STOP!, led efforts to promote strong IP protection and respect for innovation globally, developed strong relationships with U.S. industry, increased the flow of information to Congress and improved overall accountability.

The Coordinator's office has been active in the development of the vision for an Anti-Counterfeiting Trade Agreement (ACTA) and nearly every other major Administration IP enforcement initiative since July 2005. As Ambassador Schwab observed in her October 23, 2007, ACTA announcement, the initiative to join with our trading partners in seeking to negotiate the ACTA builds on cooperation that the Administration has already established bilaterally and regionally since the Administration launched STOP! in October 2004. The Coordinator's office has led or been deeply involved in efforts such as the US-EU IP Working Group, the Security and Prosperity Partnership IP Working Group and the IP enforcement initiatives at the G8, all of which provided a foundation for the innovative approach represented by the ACTA initiative. Our office worked closely with USTR as they led the development of the concept for ACTA, approached our partners, and laid out a strategic direction for the negotiation of the Agreement. Going forward, our key role will be to continue working with USTR and other agencies to continue the seamless integration of the ACTA initiative into the broader spectrum of interagency efforts to fight piracy and counterfeiting.

Senator Hatch - Panel Question #1

Do you think that the current interagency process for the enforcement of intellectual property rights is working effectively?

As you are aware, there are at least three cooperative groups devoted to help coordinate enforcement of intellectual property rights:

- 1) the Strategy Targeting Organized Piracy, or “STOP!,” initiative;**
- 2) the National Intellectual Property Law Enforcement Coordination Council (NIPLECC); and,**
- 3) the Trade Policy Review Group (TPRG).**

Despite all of these important programs, it seems that we are in an upward trajectory in intellectual property theft. In other words, it does not seem that we have slowed down the rate of intellectual property rights violations.

Do you think it is time to rethink the fundamental approach to protecting our IPR both here and abroad?

It is our view that the current interagency process for the enforcement of intellectual property rights (IPR) is working effectively. We continue to focus on the key actions and processes that the U.S. Federal Government must perform well in order to have an impact on the global problem of piracy and counterfeiting. We are working extensively with U.S. industry to continue to strengthen all of our law enforcement and customs efforts, and we are making IP protection and enforcement a major priority with our trading partners. All of these efforts are done through a coordinated and collaborative process that includes a range of government agencies.

- We believe our efforts have led to significant progress. For example, U.S. seizures of counterfeit goods doubled from 2005 to 2006 and total over 50,000 since 2002.
- Efforts by the Department of Justice resulted in an 80% increase in the number of defendants convicted of IP offenses from FY 2006 to FY 2007.
- We are reaching thousands of U.S. rights-holders and businesses every year with practical information and assistance as they seek to develop and protect their IP.

We have raised the level of engagement with our trading partners through efforts such as the recently announced initiative to negotiate an Anti-Counterfeiting Trade Agreement, initiatives such as the US-EU IP Working Group, G8 IP Enforcement Initiative, Security and Prosperity Partnership IP Working Group with Canada and Mexico, the Strategic Economic Dialogue and Joint Commission on Commerce and Trade with China, as well as cooperation with trading partners to address IPR issues in a variety of other international settings. It is clear to us,

however, that it will take a strenuous and long-term commitment to see a permanent reduction in global IP theft. There are a number of key factors that are essential and, in our estimation, do not require fundamental change. First, the United States must maintain and enforce a strong set of domestic laws to promote and protect IP. Leadership of this Committee over the years has contributed greatly to this effort through efforts such as the Digital Millennium Copyright Act, the No Electronic Theft Act, the Stop Counterfeiting in Manufactured Goods Act and the Family Entertainment and Copyright Act. Second, the United States must sustain a strong message internationally that strong IP protection and enforcement are essential for innovation, economic growth and the protection of citizens and consumers. Finally, we must maintain a well-coordinated U.S. Government IP enforcement strategy. It is our experience that this strategy will necessarily evolve over time and must remain flexible enough to contribute to, and build upon, the success of the diverse missions and priorities of the diverse set of Federal agencies involved. We have used the NIPLECC framework to provide a consistent and accountable coordination structure and established a strong strategy through the Administration's STOP initiative. Going forward the tenets of strong coordination, clear strategic goals and accountability will continue to be the fundamental elements for success.

Senator Hatch -Chris Israel Question #1

I much appreciated your comments about existing federal services and programs to help American innovators secure and enforce their intellectual property rights abroad.

No doubt, the government has many talented and experienced individuals who are committed to helping U.S. businesses navigate through the intricacies of foreign IP laws. I believe so much can be mitigated if companies will seek out experts in these areas to create an individualized IP protection plan.

Do you have a sense of how much these services and programs are being used by U.S. innovators?

As I testified to during the recent hearing, the U.S. Government has a number of programs and services designed to help U.S. entrepreneurs, artists, and corporations defend their intellectual property rights (IPR) overseas in markets in which they conduct business. The emphasis of these services is to help educate and advise the private sector, especially U.S. small and medium-sized enterprises (SMEs).

First and foremost, my office manages the Administration's official website, www.STOPfakes.gov, to help businesses combat counterfeiting and piracy by gathering and disseminating information from all involved federal agencies on events, initiatives, and results.

Stopfakes.gov has seen a steady increase in its online activity within the last year: in FY 2007, the site had more than 75,000 visitors, up from 44,000 in FY 2006. Through this site, businesses are also able to file complaints about IP-related trade problems. If Department of Commerce staff identifies a trade agreement compliance issue, we work directly with the complainant and relevant NIPLECC agencies to help U.S. businesses secure and enforce their IPR through international treaties.

Additionally, the U.S. Patent and Trademark Office (USPTO) manages a STOP! hotline (1-866-999-HALT) that helps SMEs leverage U.S. Government resources to protect their IPR in the United States – and abroad. A staff of over three-dozen IP attorneys at the USPTO – with expertise on how to secure patents, trademarks, and copyrights, and enforcement of these rights throughout the world – are readily available to answer questions.

Use of the STOP! hotline has grown remarkably each year since its inception in 2005. In its first year of operation, the hotline received 955 calls, but in 2006, 1460 calls were received, and in 2007, 1730 calls were answered.

The USPTO also reaches out to U.S. businesses through a series of programs entitled “*A Conference on Intellectual Property and the Global Marketplace*” or, more familiarly, “Road Shows”. In partnership with the U.S. Chamber of Commerce, the USPTO conducts these programs across the country to provide a primer on intellectual property for a target audience of small businesses – and give in-depth information on protecting and enforcing IP both domestically and abroad. This year, USPTO and the Chamber reached record numbers of SMEs: over 1,300 participants. In 2007 alone, programs were held in Raleigh, North Carolina; Detroit,

Michigan; Burlington, Vermont; Los Angeles, California; Seattle, Washington; San Antonio, Texas; and Portland, Oregon.

Furthermore, Commerce provided additional educational support for SMEs through live presentations and web-based seminars. In 2006, Commerce staff traveled to 12 cities and presented 6 “webinars,” speaking before a total of 22 audiences, representing over 1,000 attendees.

The Department of Commerce, in cooperation with the American Bar Association (ABA) and the Coalition Against Counterfeiting and Piracy (CACCP), re-launched the “IPR Legal Advisory Program” in 2007. This program allows SMEs to request a free, one-hour individualized consultation with a volunteer attorney with expertise in both IP issues and foreign law. Through such a consultation, SMEs can get an overview of how to protect and enforce their patents, trademarks, and copyrights, in a particular country. Expertise is now available for Brazil, Russia, India, China, Egypt, and Thailand.

In addition to the one-hour Legal Advisory Program, Commerce has been working with the State Department to create more detailed IPR toolkits to guide businesses in protecting and enforcing their intellectual property in key foreign markets. Received with favorable feedback, these toolkits are now available for China, Brazil, Korea, Malaysia, Mexico, Russia, and Taiwan. Available on *stopfakes.gov*, the toolkits provide in-depth information about local IP laws and resources, as well as local contact information.

Finally, I wanted to take a moment to specifically mention government services and programs geared toward helping U.S. right holders seeking to enforce their intellectual property in China, since over 80% of all counterfeit and pirated goods seized at our borders originate in China.

The Commerce Department regularly sponsors seminars and one-on-one counseling sessions with U.S. companies to discuss the prevention of piracy and counterfeiting, with particular focus on best practices for protecting IPR in China. In 2007, Commerce conducted eight programs across the country, including New York, Boston, Los Angeles, Philadelphia, and Washington, D.C. Commerce also hosted monthly web-based seminars, known as the “China Webinar Series,” on IP issues in China. Latest statistics indicate that these seminars have reached over 900 participants and the archived programs have been downloaded on over 7,000 occasions. Also, with the encouragement of the U.S. Government, China posted an IPR Ombudsman at the Chinese Embassy in Washington, D.C. to serve as a point of contact for U.S. businesses seeking to secure and enforce their IPR in China or experiencing IPR problems there.

Senator Hatch – Chris Israel Question #2

Mr. Israel, first and foremost, I applaud you for your commitment to the protection of intellectual property rights. You have at times been a lone voice within the government on the importance of interagency coordination in the enforcement of intellectual property rights. Unfortunately, your coordinating role is not statutorily mandated.

Do you agree that Congress needs to explicitly provide a framework for individuals, like yourself, who are able to contribute so greatly in the protection of intellectual property rights around the world?

Senator Hatch, thank you for that kind complement and vote of confidence. With regards to your question, I must first note that the Administration considers my current role in intellectual property enforcement to be created by Congress and, in fact, based on a statutory mandate.

In December 2004, via Public Law 108-447, Congress amended the original statute of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) to create my Presidentially appointed position, the U.S. Coordinator for International Intellectual Property Enforcement (Coordinator).

The original interagency NIPLECC statute, enacted in 1999 (via Public Law No. 106-58, section 633), included Council co-chairs: the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (USPTO) and the Assistant Attorney General of Justice of the Criminal Division. NIPLECC continues to serve as an interagency council responsible for coordinating the U.S. domestic and international IP enforcement activities through its structured framework consisting of the Departments of Justice, Commerce, State, Homeland Security and the Office of the U.S. Trade Representative. Its mission is "to leverage the capabilities and resources of the Federal Government to provide a secure and predictable global environment for American intellectual property."

In 2004, Congress created my position to serve as the head of NIPLECC with duties to include, (1) the establishment of policies, objectives, and priorities concerning international intellectual property protection and enforcement; (2) the development of a strategy for protecting intellectual property overseas; and (3) the coordination and oversight of agency activities relating to the implementation of such policies and strategies to protect and enforce intellectual property rights. In line with the NIPLECC statute, these functions are not intended to derogate from agencies' responsibilities.

Using the effective statutory framework provided by NIPLECC – and the President's Strategy Targeting Organized Piracy (STOP!) – collectively my office has been able to coordinate and interagency effort that has achieved encouraging progress in the ongoing effort to globally enforce IP rights and to combat the scourge of counterfeiting and piracy through building strong internal government coordination, establishing effective industry partnerships, and aggressively engaging our trading partners to join in this fight.

Our overarching goal remains the preservation of the U.S. economy and our global leadership in technology and competitiveness, as well as to ensure the health, safety and security of American citizens.

Senator Hatch - Panel Question #3

Do you agree that there needs to be more cooperation among the agencies that deal with intellectual property rights issues within our government beyond the current interagency clearance process?

In particular, what framework should there be?

Who should spearhead the coordination process?

What about people on the ground in foreign countries, is that necessary? If so, who?

Over the last few years, the level of cooperation and coordination among the Federal agencies entrusted with the monumental task of protecting and enforcing American intellectual property rights has increased significantly, based on the current statutory framework and the effectiveness of the President's Strategy Targeting Organized Piracy (STOP!) initiative.

Going into its fourth year, the STOP! Initiative has provided the guiding principles for the Administration to accomplish numerous goals on behalf of American intellectual property owners. Guided by STOP!, the agencies of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) are achieving results, maintaining the commitment of senior Administration officials, and institutionalizing an unprecedented level of coordination within the U.S. Government.

Since its enactment in 1999, NIPLECC has provided a favorable statutory framework for the interagency council to coordinate closely and leverage the capabilities and resources of the Federal Government to provide a secure and predictable global environment for American intellectual property. NIPLECC consists of the Departments of Justice, Commerce, State, Homeland Security and the Office of the U.S. Trade Representative, with the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office (USPTO) and the Assistant Attorney General of the DOJ Criminal Division serving as Council co-chairs.

In 2004, Congress created the Presidentially appointed Coordinator for International Intellectual Property Enforcement (Coordinator) to serve as the head of NIPLECC. The duties of this office include: (1) the establishment of policies, objectives, and priorities concerning international intellectual property protection and enforcement; (2) the development of a strategy for protecting intellectual property overseas; and (3) the coordination and oversight of agency activities relating to the implementation of such policies and strategies to protect and enforce intellectual property rights. In line with the NIPLECC statute, these functions are not intended to derogate from agencies' responsibilities.

The Coordinator has spearheaded the coordination of U.S. Government resources to help maximize effective communication among federal agencies, with private industry, and between our trading partners. In driving toward these goals, the Coordinator has held monthly meetings of the NIPLECC agencies plus other agencies, including the Food and Drug Administration, which are charged with enforcement of IP rights and the assurance of health and safety for U.S.

citizens. The Coordinator's Office also publicly releases a Quarterly Report, featuring policy and program updates, law enforcement developments, statistics, and schedules for upcoming training events.

With regard to having an in-person presence in foreign countries, this is an absolutely necessary resource and the Administration has made great strides to satisfy this need.

The Federal Government has made a strong commitment toward international deployment of personnel – stationed at embassies in key countries around the globe – who are specially trained officials in the area of intellectual property protection and enforcement. For example, the State Department has made a priority of training their respective diplomats to be “first responders” on IP issues.

Additionally, the Commerce Department's Foreign Commercial Service's (FCS) Commercial Officers serve a primary function as advocates for American industry to foreign governments on a daily basis. FCS officers work with American businesses to address their concerns on an individual, case-by-case basis, helping them take their problems to the respective foreign agency.

The Department of Justice (DOJ) and the Department of Homeland Security (DHS) also have officials posted in embassies worldwide. These officials are primarily tasked with liaising with their foreign counterparts, but they are also actively working with American industry on law enforcement cases, particularly when it comes to intelligence when investigating a case of IP crime.

In 2006, the DOJ established the first ever Intellectual Property Law Enforcement Coordinator (IPLEC) for Asia in Bangkok, Thailand. Building on this success, in November 2007 DOJ has established another IPLEC office in Sophia, Bulgaria, to cover the Eastern Europe region. Both IPLEC positions are dedicated to advancing the Department's regional IP goals through, training, outreach, and coordinating investigations.

For DHS, Immigration and Customs Enforcement (ICE) has 50 Attaché Offices overseas in approximately 39 countries around the world which coordinate investigative efforts with the host government's law enforcement agencies. Since the majority of counterfeit goods in the United States are produced abroad, domestic ICE agents work closely with the ICE attachés to coordinate international investigations.

Finally, the Administration has developed a new attaché program to lead embassies' efforts on IP enforcement. Deployed by the Commerce Department and dedicated solely to IP enforcement issues, these IP attachés are key players in assisting American rightsholders. Eight attachés – stationed in American embassies in Sao Paulo, Brazil; New Delhi, India; Beijing, China; Guangzhou, China; Cairo, Egypt; Bangkok, Thailand; and Moscow, Russia – have been deployed to serve as representatives from the U.S. Government to the respective foreign government, as well as liaisons to industry. This program has led to the development of strong relationships with government officials and expert assistance of many American companies in navigating local laws and customs in the protection and enforcement of their intellectual property rights.