Question#:	1
Topic:	Protect IP
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: As you know, the Judiciary Committee passed the PROTECT IP Act last month in an effort to provide the federal government more tools to address the growing problem of rogue websites that are dedicated to infringing activity. Since you have not testified in the Senate on that legislation, could you please explain your position on the bill, whether it duplicates the existing Operation in Our Sites initiatives you have been performing, why you need additional authority in the bill, and whether you think the legislation will be effective in shutting down these websites.

Response: U.S. Immigration and Customs Enforcement (ICE) defers to Office of Management and Budget (OMB) and the Intellectual Property Enforcement Coordinator (IPEC) for comment on the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property (PROTECT IP) Act.

Question: Under the current Operation in Our Sites, on average, how many (or what percentage of) websites removed during those operations re-appear in another form after being shut down?

Response: ICE does not maintain statistics of the average number of websites that reappear after domain names are seized pursuant to court orders obtained through Operation In Our Sites. However, of the first nine domain names seized—that were engaged in online piracy of movies, music, and software—we are aware of only two that reappeared in another form, and one of those was re-seized later in 2010. Operation In Our Sites v. 2.0 primarily targeted counterfeit goods sold on the internet and was timed with Cyber Monday, billed as the largest online shopping day of the year. That operation resulted in the seizure of 77 domain names of websites, all based in China. We are aware that a portion of those sites reappeared in some other form. The operators of these sites, of course, are part of an organization that has an inventory of counterfeit goods and the internet has become a favored vehicle for distribution. Overall, ICE has become aware of other websites reappearing in some other format after the three subsequent phases of Operation In Our Sites. However, after the first round of Operation In Our Sites, ICE also learned that 81 websites that had previously been engaged in online piracy of copyrighted movies and television shows voluntarily stopped offering such illegal content. Further, even if a website does re-appear with a different domain name, it must build up traffic to the site to become profitable from advertising and other revenue. The targets of Operation In Our Sites are all commercial sites, that is, they exist to earn profit from criminal activity. Therefore, Operation In Our Sites disrupted the criminal activity

Question#:	1
Topic:	Protect IP
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

by denying the profit. Admittedly, what Operation In Our Sites cannot do is target sites for which the domain names are not administered in the United States..

Question: When conducting Operation in Our Sites, on average, how many (or what percentage of) websites are targeted because of their effect on public health and safety?

Response: Operation in Our Sites was created by ICE, and is programmatically managed at ICE's National Intellectual Property Rights (IPR) Coordination Center, to target four major types of counterfeiting and copyright violations carried out on the internet: piracy of movies and music; pharmaceuticals; other IPR violations impacting health and safety; and piracy of electronic devices and games (software). Of the 125 domain names seized, 18 can be directly associated with violations that involved public health and safety. This represents 14 percent of the domain name seizures under Operation In Our Sites to date. But this is an ongoing operation with three phases already completed in 2011 and more planned.

Question#:	2
Topic:	GAO
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: In 2008, GAO reported that ICE planned to move the IPR Center and its relocation would be an opportunity to return the center to its original concept and purpose. Do you believe the IPR Center has returned to an appropriate focus as an effective coordination center?

Response: Yes. The National Intellectual Property Rights Coordination Center (IPR Center) brings together 17 key federal investigative member agencies,and the governments of Canada and Mexico in a task force setting. The task force structure enables the IPR Center to efficiently and effectively leverage the resources, skills, and authorities of each participating agency and government, and provides a comprehensive response to intellectual property (IP) theft, resulting in "one-stop shopping" for IPR law enforcement and industry in the United States and around the world. Cooperation among IPR Center partners has continued to grow over the past year, with member agencies participating in several joint operations and investigations. This cooperation includes the recently announced Operation Chain Reaction, in which nine IPR Center partner agencies and prosecutors from the Department of Justice (DOJ) are working together to target counterfeit items entering the supply chains of the Department of Defense and other U.S. Government agencies.

In addition, the IPR Center recently added several agencies to more comprehensively address the mission of the IPR Center to combat predatory and unfair trade practices that threaten our economic stability and national security, undermine the competitiveness of U.S. industry in world markets, and place the public's health and safety at risk.

Thus far in 2011, the IPR Center has welcomed the following new partners: the U.S. Consumer Product Safety Commission; the Defense Logistics Agency, Office of Inspector General; the U.S. Department of State, Office of International Intellectual Property Enforcement; the U.S. Air Force, Office of Special Investigations; the National Aeronautics and Space Administration, Office of the Inspector General; and our second international partner, the Royal Canadian Mounted Police. While DOJ is not an official partner at the IPR Center, federal prosecutors work closely with all agency partners at the IPR Center. As noted above, this close relationship has contributed to the IPR Center's goal of establishing a "one-stop shop" for IP theft victims and industry, reducing duplication, and allowing us to leverage and benefit from our unique missions and different areas of expertise.

Question#:	2
Topic:	GAO
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: How does the IPR Center coordinate with other agencies and de-conflict cases?

Response: The IPR Center was created to share information and to promote a coordinated U.S. Government response to IP theft. The IPR Center provides one-stop shopping for IPR law enforcement and industry in the United States and around the world. The IPR Center utilizes a multi-layered approach to investigate, interdict, and prosecute criminals engaged in IP theft.

Investigative case referrals and leads to IPR Center partner agencies are researched and reviewed by all partners through a process called vetting and de-confliction. When leads are received directly by the IPR Center, intelligence reports are first generated from those leads as part of the "vetting" process. Leads are distributed to all partner agencies and the DOJ Computer Crime and Intellectual Property Section to determine whether an agency is already investigating the alleged IP violation. Information from agencies' active cases is also shared with the partner agencies in a process called "de-confliction" to determine whether multiple agencies have an interest in the same target. All IPR Center partners meet weekly to review the results of this vetting and de-confliction process and to establish which partner agency or agencies will be responsible for determining future action on leads. The lead partner agency then coordinates with the IPR Center to ensure any further enforcement action is tracked, monitored, de-conflicted, and reported to IPR Center partners. IPR Center partner agencies also share information acquired from their investigations including information about emerging criminal trends, and information about new technologies that infringers are using.

Question: Has it been successful in preventing unneeded overlap in various agencies dealing with IP enforcement? How?

Response: The IPR Center is a repository and gateway for most IP investigative case referrals, particularly from American manufacturers and rights holders. If the de-confliction process reveals that an agency is investigating a case or has dedicated significant agency resources, consideration will be given to how to handle an investigation in order to avoid duplication of resources and waste. In fiscal year (FY) 2010, the IPR Center vetted more than 240 potentially actionable leads received and de-conflicted 544 leads from IPR Center partner agency investigations. From the beginning of FY 2011 through May 31, 2011, the IPR Center has vetted 150 leads and de-conflicted 849 leads. In addition, IPR Center partner agencies share information acquired from their investigations, including information about emerging criminal trends, and information about new technologies used in infringement. All of these efforts have made the U.S. Government more efficient at enforcing IP theft.

Question#:	3
Topic:	IPEC
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: According to reports from the Office of the Intellectual Property Enforcement Coordinator (IPEC), ICE entered into agreements with China and Korea to cooperate between enforcement agencies to combat IP crime and money laundering. What steps have those countries taken to fulfill these agreements? Do you feel these agreements have been effective to-date?

Response: ICE has not seen significant steps taken to increase enforcement actions or cooperation between the U.S. and China on money laundering or intellectual property violations since Director Morton signed a Memorandum of Understanding (MOU) with the Ministry of Public Security. ICE would like to see more complete responses from Chinese authorities when ICE requests assistance on investigations. ICE also wished to have leads and requests for joint investigations in China followed up on and results shared with ICE. One bright note has been the increased cooperation between Guangdong and Fujian China Inspection and Quarantine Bureau (CIQ) and ICE. CIQ has expressed increased interest in investigating products with a safety nexus, including electronic products that contain counterfeit certification labels, such as counterfeits of labels that the Underwriters Laboratories (UL) issues. After several initial meetings with CIQ, CIQ is now actively reaching out to ICE for leads on manufacturers and shippers of goods containing counterfeit UL labels, and possibly joint criminal investigations to be conducted in Guangdong province. Outside of Guangzhou CIQ, cooperation seems to occur typically when ICE is requested to provide information and/or assistance to Chinese authorities as part of an ongoing domestic (Chinese) investigation.

In September 2010, ICE and the Supreme Prosecution Service (SPS) of the Republic of Korea signed a MOU, which includes a provision on cooperation in the areas of anti-money laundering and intellectual property rights (IPR). Prior to this agreement, the SPS and ICE already conducted joint investigations; the MOU served to formalize the cooperation. The SPS and ICE continue to conduct joint IPR investigations and there has been an increase in leads/referrals from the SPS for potential money laundering investigations. ICE considers this agreement effective thus far.

Question#:	4
Topic:	enforcement
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: Could you each explain briefly your responsibilities in IP enforcement and how you coordinate with one another?

Response: U.S. Immigration and Customs Enforcement (ICE) is a leading agency in the investigation of criminal intellectual property (IP) violations involving the illegal production, smuggling, and distribution of counterfeit and pirated products, as well as associated money laundering violations. With regard to counterfeit goods entering the United States through ports of entry, ICE targets and investigates individuals and criminal enterprises and also seizes, for forfeiture, goods associated with these investigations, including goods that infringe trademarks, trade names, and copyrights. With regard to copyright violations, a large portion of these crimes now occur over the internet. ICE investigates copyright violations and, together with the Department of Justice, has seized domain names of websites engaging in copyright violations as well as trademark counterfeiting. ICE has also seized assets of criminal organizations and instrumentalities of the criminal activity. In FY 2010, ICE's Homeland Security Investigations (HSI) directorate initiated 1033 IP theft enforcement cases, a 42 percent increase over FY 2009. HSI agents also worked 281,218 investigate hours on IP theft enforcement cases in FY 2010, a 27 percent increase over FY 2009.

However, ICE HSI recognizes that no single U.S. law enforcement agency can succeed alone against IP theft. Rather, it is essential that all relevant federal agencies work together and with rights holders to confront this challenge. Therefore, ICE HSI initiated the National Intellectual Property Rights Coordination Center (IPR Center) to efficiently and effectively leverage the resources, skills, and authorities of each participating agency. The IPR Center promotes coordination and communication among 17 key federal investigative agencies and the governments of Canada and Mexico with roles in enforcing IP laws, through the mechanism of a task force concept. The task force structure enables the IPR Center to provide a comprehensive response to IP theft, resulting in one-stop shopping for IPR law enforcement and for rights holders in the United States and around the world.

Investigative case referrals and leads to IPR Center partner agencies are researched and reviewed by all partners through a process called de-confliction. When leads are received directly by the IPR Center, intelligence reports are first generated from those leads as part of the vetting process. Leads and case referrals from partner agencies are distributed to all partner agencies and the Department of Justice Computer Crime and Intellectual Property Section for vetting and de-confliction to determine whether an agency is already

Question#:	4
Topic:	enforcement
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

investigating the alleged IPR violation. All IPR Center partners meet weekly to review the results of this de-confliction process and to establish which partner agency or agencies will be responsible for determining future action on that lead. The lead partner agency then coordinates with the IPR Center to ensure any further enforcement action is tracked, monitored, de-conflicted and reported to IPR Center partners.

Question#:	5
Topic:	IPR Center
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: How effective has the IPR Center been at coordinating agency efforts and de-conflicting cases to ensure no duplication occurs?

Response: ICE believes the IPR Center has been very effective at coordinating agency efforts and at de-conflicting cases to ensure that no duplication occurs. The IPR Center was created to share information and promote a coordinated U.S. Government response to intellectual property (IP) theft . The IPR Center provides one-stop shopping for IPR law enforcement and industry in the United States and around the world utilizing a multi-layered approach to investigate, interdict, and prosecute criminals engaged in IP theft.

Investigative case referrals and leads to IPR Center partner agencies are researched and reviewed by all partners through a process called de-confliction. When leads are received directly by the IPR Center, intelligence reports are first generated from those leads as part of the vetting process. Leads and case referrals from partner agencies are distributed to all partner agencies and the Department of Justice Computer Crime and Intellectual Property Section for vetting and de-confliction to determine whether an agency is already investigating the alleged IP violation. All IPR Center partners meet weekly to review the results of this de-confliction process and to establish which partner agency or agencies will be responsible for determining future action on that lead. The lead partner agency then coordinates with the IPR Center to ensure that any further enforcement action is tracked, monitored, de-conflicted and reported to IPR Center partners. IPR Center partner agencies also share information acquired from their investigations such as emerging criminal trends and information about new technologies that infringers utilize.

The success of the IPR Center is not due to any single agency, but rather to the combined and sustained commitment of each individual partner agency to conduct a collegial and effective coordination process.

Question#:	6
Topic:	agencies
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: How does each of your agencies coordinate with private industry to improve your enforcement efforts?

How has the private industry stepped up their efforts to enforce their rights and coordinate with the federal government?

Response: For ICE's Homeland Security Investigations (HSI), coordination with industry is achieved through Operation Joint Venture, an outreach initiative coordinated through the National Intellectual Property Rights Coordination Center (IPR Center). Operation Joint Venture aims to increase information sharing with public and private sectors to combat the illegal importation and distribution of counterfeit, substandard, and tainted goods. Operation Joint Venture reaches rights holders, manufacturers, importers, customs brokers, freight forwarders, bonded facilities, carriers, and others to discuss the IPR Center's priorities of protecting public health and safety, the economy and the war fighter. Since July 2008, the IPR Center and ICE HSI agents have led or participated in approximately 638 outreach events, including formal presentations and meetings, speaking with approximately 34,078 people.

Through the IPR Center's aggressive outreach efforts, ICE ensures that rights holders understand: (1) to whom and how to report a potential intellectual property crime; (2) the types of cases generally accepted by the U.S. Government for criminal prosecution in intellectual property cases; and (3) information that victims and rights holders should provide to assist law enforcement in developing an intellectual property case. The IPR Center ensures communication with rights holders during criminal investigations, subject to the limitations imposed by the government's legal, ethical, and law enforcement obligations. This can enable rights holders to seek civil remedies, including in cases where a lead is declined for investigation.

Question: How has the private industry stepped up their efforts to enforce their rights and coordinate with the federal government?

Response: Private industry from all sectors routinely visit the IPR Center to discuss the latest industry trends related to IP theft and provide information and leads that can be utilized by ICE and other partner agencies to initiate criminal investigations and national initiatives. Leads that do not meet the threshold for criminal investigations or initiatives are referred back to private industry, who may pursue civil action against the violators. The increased activity over the past two years of U.S. law enforcement and other federal

Question#:	6
Topic:	agencies
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

agencies, including efforts coordinated by the Intellectual Property Enforcement Coordinator (IPEC), seems to have spurred private industry to greater efforts to enforce their rights and to coordinate with the federal government. The IPEC has also achieved great success through encouraging voluntary cooperation among stakeholders to reduce IP theft.

Question#:	7
Topic:	Pro-IP Act
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: How much does each of your agencies spend annually on IP enforcement? Has that increased since the passage of the PRO-IP Act in 2008?

Response: ICE's Homeland Security Investigations (HSI) estimates it will spend approximately $50 million for IP theft enforcement in FY 2011, based upon the amounts spent as of the second quarter of the fiscal year. The spending by HSI for IP theft enforcement for the fiscal years since the passage of the PRO-IP Act is set out below. Expenditures on IP theft enforcement have generally increased since the passage of the PRO-IP Act of 2008 although HSI does not budget specifically for particular investigative missions and instead allows crime trends and agency priorities determine resource allocation. In the FY 2010 budget, the President did request, and Congress approved, $5 million for the IPR Center. Otherwise, all funding for IP theft enforcement by HSI is part of ICE's base investigatory budget.

FY 2008 – $27.699M
FY 2009 – $32.237M
FY 2010 – $42.643M
FY 2011 – $27.785M (as of the end of the 2nd quarter of FY 2011).

Question#:	8
Topic:	amount
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: Has the amount and/or quality of agency coordination improved since the formation of the Office of the IP Enforcement Coordinator in 2009? Why or why not?

Response: Yes, the amount and/or quality of agency coordination has greatly improved since the formation of the Office of the IP Enforcement Coordinator (IPEC) in 2009. The IPEC has assisted in the coordination between agencies on a number of matters including legislative recommendations, international efforts to curb IP theft, and other important areas. The IPEC has also raised the profile of intellectual property (IP) crime within the federal government and the private sector.

Since the issuance of the IPEC's Joint Strategic Plan in June 2010, ICE's Homeland Security Investigations and the National Intellectual Property Rights Coordination Center (IPR Center) have worked closely with the IPEC to aggressively implement the strategy, including by participating in a series of IPEC-led interagency working groups and through development of several reports to Congress and President Obama and Vice President Biden. These actions have led to increased coordination in IP enforcement policy, which complements the efforts of the IPR Center to increase coordination on enforcing criminal laws against IP theft.

Question#:	9
Topic:	products
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: Are there certain products or offenses that dominate your enforcement efforts?

Response: The intellectual property (IP) theft enforcement of ICE's Homeland Security Investigations (HSI) most often pertain to the importation and trafficking of counterfeit goods, also known as "hard goods." These enforcement efforts target a wide range of counterfeit products, including pharmaceuticals, clothing, consumer electronics, critical technical components, electrical articles, electronic media, eyewear, footwear, luxury goods, and cigarettes.

Historically, counterfeit goods were smuggled into the U.S. in bulk shipments utilizing sea containers, and were typically sold at storefronts or by street vendors. While ICE HSI still sees IP theft occurring through these means, criminal organizations involved in IP theft are now increasingly using the Internet to distribute counterfeit trademarked goods and copyrighted content. Foreign-based IP smuggling organizations are also shifting their shipping methods to express consignment couriers and mail services to send smaller amounts of their products directly to purchasers.

Question#:	10
Topic:	property
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: Are there certain countries that pose more serious threats to American intellectual property than others?

Response: While the criminal activity of IP theft is seen in many countries, the level of such activity is greater in some countries. For instance, in FY 2010, U.S. Customs and Border Protection (CBP) and ICE's Homeland Security Investigations (HSI) seized goods with a domestic value of $124,681,247 from China; $26,173,057 from Hong Kong; $7,713,398 from Jordan; $1,571,142 from India, and $1,286,373 from Malaysia. Seizures of goods originating from all other countries had a combined domestic value of $26,700,129, approximately one-fifth of the amount attributable to seized goods from China. The domestic value represents the cost of the merchandise when last purchased, plus all duties, fees, broker's charges, profit unloading charges, and U.S. freight charges to bring the property to the importers premises; the manufacturer's suggested retail price (MSRP) is the value the counterfeit goods would have sold at retail if they had been genuine. The MSRP for FY 2010 IPR seizures by CBP and HSI was $1.4 billion.

Question#:	11
Topic:	China
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: What kind of discussions have you been having with China?

From the reports submitted by the IPEC, DOJ and FBI, it appears a majority of the cases involve Chinese products seized and/or Chinese defendants. Do you feel there has been a corresponding decrease in cases involving China since the meetings between American and Chinese officials took place last fall? Why?

What else needs to be done to decrease the infringement threat from China?

Response: The criminal investigations of ICE's Homeland Security Investigations (HSI) often uncover criminal operatives and organizations overseas. This is especially true in intellectual property theft enforcement because there is almost no "purely" domestic intellectual property theft.

Therefore, ICE's HSI must have "boots on the ground" to work with foreign law enforcement. HSI has the largest presence of a U.S. law enforcement agency in China, with offices in Beijing and Guangzhou, as well as Hong Kong. Our Assistant Attaché in Guangzhou has been designated ICE's first "IP Attaché" and ICE's point of contact for all IP matters involving China.

China continues to be the primary source country for intellectual property theft involving products exported to the United States, as it has been for the last 10 years. When comparing data from May and June of 2010 and 2011, respectively, seizures of counterfeit goods from China entering the United States have remained the same. In 2011, seizures of counterfeit goods from China comprised a slightly smaller percentage of all seizures of counterfeit goods made by U.S.Customs and Border Protection (CBP) and HSI, but this percentage change is related to the increase in seizures of counterfeit goods from other countries, not a decrease in seizures from China. China still accounts for nearly half (49 percent) of all seizures of counterfeit goods attempting to enter the United States.

ICE's HSI participates regularly in the U.S.-China Joint Liaison Group for Law Enforcement Cooperation (JLG), through our attaché offices in China. HSI also takes part in the JLG Intellectual Property Criminal Enforcement Working Group, led by the Department of Justice Computer Crime and Intellectual Property Section. An anecdotal assessment supports the conclusion that China responds more favorably to requests for assistance in investigations and prosecutions of foreign nationals that violate Chinese law

Question#:	11
Topic:	China
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

in China, as opposed to Chinese nationals engaging in criminal activity that violates the laws of the United States. HSI will continue to work through the JLG, and other vehicles, to increase IP theft enforcement cooperation with China, but with recognition that there has not been full cooperation so far.

While other federal agencies are heavily engaged in non-law enforcement efforts to decrease the importation of infringing goods from China, HSI continues to believe that the key three pillars for effective criminal IP theft enforcement between the United States and China are: training, information sharing, and joint operations. In this regard, HSI and the IPR Center, recently conducted a three day IPR Symposium funded by the Department of State, with participation from DOJ, USPTO, and CBP, in Hong Kong for representatives from Chinese, Hong Kong, Macanese, and Malaysian law enforcement and has future Department of State-funded training planned in the Philippines.

Current discussions with Chinese officials relating to IP theft enforcement tend to focus on the accomplishments made by China during their Special IPR Campaign that recently concluded. From October to December of 2010, during this campaign, China Customs advised HSI that it seized more than 2,000 shipments of counterfeit goods departing China with a value of more than $18 million USD. These seizures included items that could pose a significant public safety risk, including counterfeit toothpaste, cigarettes, and electronics.

Unfortunately, U.S. law enforcement continues to encounter obstacles when attempting to obtain evidence for investigations or joint investigative efforts from the Chinese government in IP theft enforcement and several other important areas of U.S. national interest.

Question#:	12
Topic:	music sites
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: In November 2010, several music sites had their domain names seized, including Dajaz1.com, OnSmash.com, RapGodFathers.com, and rmx4u.com. The site operator of OnSmash.com, a hip-hop music blog, has said the illegal music clips were given specifically to him by artists and record labels to generate publicity, and when asked, he always removed content. Other sites, like TVShack.net, host no illegal content, only link to infringing content. In all of these cases, the site operators did not receive notice prior to the domain name seizure, and they were given no opportunity to correct the infringement. By seizing an entire domain name, you are potentially disrupting access to both legal and illegal content.

Can you explain how ICE makes the decision to seize a domain name?

Response: ICE does not make decisions to seize domain names. That decision is made by a federal magistrate judge upon application under Section 2323 of Title 18 by ICE and attorneys with the Department of Justice. The application must be supported by an affidavit, signed and sworn to by an ICE Homeland Security Investigations' (HSI) agent. While there is not a minimum or maximum page length, many of the affidavits submitted for seizure of the domain names have regularly been dozens of pages long. One hundred and twenty five domains names have been seized during Operation In Our Sites, and in each of these cases, the seizure was preceded by a federal magistrate judge's determination that probable cause existed that the involved website was engaged in violations of federal copyright or trademark laws, resulting in issuance of federal seizure warrants. In addition to seizures of domain names, Operation In Our Sites has also resulted in seizure of approximately $600,000 in cash from criminal as well as computer servers and other instrumentalities of criminal copyright and trademark violations. Two individuals have been charged criminally so far in U.S. District Court for the Southern District of New York.

All of the domain names seized through court orders obtained during Operation In Our Sites were commercial sites, profiting from criminal trademark violations and criminal copyright infringement, through a combination of sales, advertising revenue, and subscription fees. As a law enforcement agency, ICE has no interest in disrupting lawful commerce or protected speech. The targeted sites were designed with the specific intent to derive profits from other individuals' protected trademarked goods and copyrighted materials. Of the 125 domain names seized by ICE's HSI throughout Operation In Our Sites, almost 100 were engaged in the sale of counterfeit luxury goods, while the remaining sites illegally offered copyrighted first-run movies, music, and software.

Question#:	12
Topic:	music sites
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Investigative leads for Operation In Our Sites come to HSI from various sources. These leads are run through established standard operating procedures for vetting and de-conflicting leads for potential domain name seizures and determining which domain names are targeted for seizure. This process, with multiple layers of oversight, takes several issues into account, including whether the sites significantly engage in illegal activity, whether HSI agents have purchased counterfeit merchandise from the site, and whether seizing the violative domain name will have an impact beyond the seizure itself.

During Operation In Our Sites, HSI special agents independently obtained counterfeit trademarked goods or pirated copyrighted material prior to applying for a federal seizure warrant based on probable cause. There were numerous layers of legal review throughout the process of obtaining a warrant, from supervisory agents within HSI, to Assistant U.S. Attorneys and trial attorneys within the Department of Justice (DOJ), and, ultimately the review by federal magistrate judges. As with all seizure warrants, the owners of the seized property have the opportunity to petition for a return of their property by challenging the judge's determination through a mandatory hearing. If the petition is filed, a hearing is held in a federal court to determine the validity of the affidavit supporting the seizure. In addition, the law provides several other vehicles by which a domain name owner can seek return of the domain name.

Question: Is there a way that ICE could more narrowly tailor blocking orders or verify intent and content prior to seeking a blocking order?

Response: ICE does not obtain "blocking orders" that deny access to websites. The order issued by a federal magistrate is a seizure warrant that instructs the domain name registry to redirect the violative domain name to a contract server retained by ICE's Homeland Security Investigations (HSI). The only content on the contract server is a seizure notice advising the owner of the domain name, and any visitors, that the domain name was seized pursuant to a court order issued by a U.S. District Court.

The criminal investigations undertaken by HSI and the Department of Justice (DOJ) must be incredibly thorough, because the law enforcement agencies bear the burden of showing, by probable cause, that the website is engaging in criminal copyright or criminal trademark violations. The criminal investigations include verification, prior to application for the seizure warrant, that the content, in a criminal copyright violation, was not authorized to be distributed through the particular website. In a trademark violation case, an HSI agent will purchase at least one and usually more counterfeit articles from the target website. If a petition is filed to return the domain name, ICE and DOJ would retain the burden at a full evidentiary hearing of proving the validity of the affidavit,

Question#:	12
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Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

including whether the copyrighted content or trademarked goods were authorized for distribution on the website.

ICE cannot comment on the above noted domain name seizure because it is in litigation.

Question: Would a notice process which would allow domain operators to remove the illegal content prior to the domain name seizure be less effective or more difficult to implement?

Response: When Congress passed the *Prioritizing Resources and Organization for Intellectual Property Act of 2008* ("PRO IP Act"), it provided law enforcement with a civil forfeiture tool in Section 2323 of Title 18, for, *inter alia*, the forfeiture to the United States Government of "[a]ny property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to [copyright infringement or trademark violations) . . . ." This provision, similar to other civil forfeiture provisions within the criminal code, is linked to the search and seizure provisions of the Federal Rules of Criminal Procedure and the forfeiture provisions of Title 18. These statutory provisions do not provide for "prior notice" before execution of a search and seizure warrant. Further, law enforcement agencies do not notify suspects of impending enforcement actions prior to their execution. Domain names are seized, through Operation In Our Sites, in furtherance of ongoing criminal investigations of violations of U.S. federal laws.

Question#:	13
Topic:	mooo.com
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: In February 2011, ICE seized mooo.com as part of a child pornography investigation. This seizure redirected more than 84,000 sub domains to a warning that mooo.com had been seized for involvement with child pornography, despite the fact that the overwhelming majority of these sub domains only had legal content. ICE did fix what was later admitted to be an inadvertent mistake, but it took several days before the site was back up without the warnings displayed. What is ICE doing to make sure that other investigations that result in domain name seizures do not run into this sort of problem again?

Response: During a child pornography investigation involving websites offering graphic images of pre-pubescent children forced to engage in sexual acts, ICE, working with the Department of Justice, served a seizure warrant that was overly broad. This resulted in the seizure for 48 hours of domain names in addition to the intended target. Significantly, during that 48-hour period, over 1,000 individuals were prevented from visiting the site that contained the sexually exploitive images of children. However, the overly broad nature of the seizure warrant was not appropriate and, as noted in the question, ICE took the remedial action to restore all of the domain names associated with Mooo.com, except of course for the criminally violative one which had been removed by Mooo.com in the interim.

In subsequent investigations, ICE, working with DOJ, has instituted a significant site vetting process for domain names targeted for seizure and forfeiture. This process is memorialized in an IPR Center Standard Operating Procedure (SOP). This process contains multiple layers of oversight within the agency followed by numerous layers of legal review, throughout the process of obtaining a court-ordered seizure warrant, by Assistant U.S. Attorneys and trial attorneys from the Department of Justice, ultimately up to the federal magistrate judges. In a separate action, DOJ also sent out guidance to Assistant U.S. Attorneys that handle child pornography and intellectual property theft cases.

Question#:	14
Topic:	opinion
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In your opinion, what has been the most successful aspect of the PRO-IP Act in achieving its goals of comprehensive intellectual property rights enforcement?

Response: The most successful aspect of the PRO-IP Act in achieving its goals of comprehensive intellectual property rights enforcement has been the seizure and civil forfeiture provision provided to law enforcement. This provision has facilitated the ability of law enforcement to prevent entities and/or persons from profiting from the commission of intellectual property theft and allowing seizures of instrumentalities of IP theft.

Question#:	15
Topic:	challenge
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In your opinion, what is the greatest challenge that ICE faces with respect to IP enforcement? What is the greatest challenge that we face with respect to IP theft?

Response: While globalization provides boundless opportunities for commerce, it also brings a growing set of challenges, especially in combating the theft of intellectual property (IP).

The Internet has now become the primary vehicle through which to market, distribute, and sell counterfeit or copyrighted items illegally, making IP theft enforcement much more complex and challenging. The Internet enables criminal enterprises to sell counterfeit goods directly to customers around the world, often times while appearing legitimate. Offenders create websites that appear similar to the rights holder's own websites, potentially deceiving consumers into purchasing counterfeit goods. In recent years, the supply for counterfeit goods has shifted from the lower profit secondary market, where consumers know they are purchasing counterfeit goods, to the primary market, a marketplace in which consumers are not as capable of determining whether they are purchasing genuine goods. The price points of counterfeit goods sold over the Internet are not always so low that a consumer should have the requisite indicators that the product is counterfeit.

There are many challenges to combating Internet-based crime. It is often difficult to identify and locate foreign website operators. When the foreign website operators are located, foreign government cooperation is required to obtain successful prosecution. This is why domain name seizure is sometimes the best option U.S. law enforcement has to enforce federal criminal copyright and trademark laws.

ICE's Homeland Security Investigations (HSI) is also working on increasing public awareness of IP violations through enforcement actions, press releases, and public service announcements. ICE meets with Internet advertising associations and various Internet and online payment providers to discuss ways to fight IP crimes committed over the Internet and we participate in the IPEC's stakeholders meetings on these issues. The National Intellectual Property Rights Coordination Center is working with its agency partners and with industry on a number of different initiatives related to public messaging.

Question#:	16
Topic:	penalties
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The PRO-IP Act increased penalties for certain intellectual property crimes. How effective have stricter penalties been in deterring intellectual property rights violations? What effect have they had on enforcement?

Response: U.S. Immigration and Customs Enforcement defers to the Department of Justice on the effectiveness of stricter penalties in deterring intellectual property rights.

Question#:	17
Topic:	trends
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What kinds of trends are you seeing with respect to intellectual property theft, piracy and counterfeiting? Are we able to keep up with the evolving methods and technologies utilized by IP criminals? Are the laws on the books able to keep up with the criminals?

Response: Historically, counterfeit goods were smuggled into the U.S. in bulk shipments utilizing sea containers and were typically sold at storefronts or by street vendors. Criminal organizations involved in intellectual property (IP) theft are now increasingly using the Internet to distribute their goods and content. Foreign-based IP smuggling organizations are also shifting their shipping methods to express consignment couriers and mail services to send smaller amounts of their products directly to purchasers.

ICE's Homeland Security Investigations (HSI) has adapted to the evolving distribution and shipping methods used by criminals by targeting illicit Internet-based companies and working closely with U.S. Customs and Border Protection at seaports, mail facilities, and express consignment centers. As an example, HSI initiated Operation In Our Sites in June 2010, targeting websites used in violation of federal criminal copyright and trademark laws. Through Operation In Our Sites, HSI has seized 125 domain names of websites actively engaged in counterfeiting or copyright violations.

In addition, the HSI-led National Intellectual Property Rights Coordination Center works closely with industry, government, and the public to further educate them on counterfeit goods and associated laws. In FY 2010, HSI conducted 225 outreach events with 14,684 participants. For FY 2011 to date, ICE has conducted 162 events with 7,844 participants.

ICE has worked closely with its U.S. Government counterparts and the Intellectual Property Enforcement Coordinator on the Administration's White Paper on IP Enforcement Legislative Recommendations. ICE strongly supports the recommendations in this document to increase penalties and enhance legislation to strengthen IP theft enforcement.

Question#:	18
Topic:	input
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Walk us through the specific methods that the IPR Center uses to get input from its partners. How many more members are you hoping to add to the IPR Center?

Response: The National Intellectual Property Rights Coordination Center (IPR Center) currently has 19 partners. The IPR Center Principals, which include senior management from each partner agency, meet regularly to discuss issues relevant to the center and the addition of potential new partner agencies. Any agency with an intellectual property mission is invited to attend and petition to join the IPR Center or contribute to its mission.

In addition, the IPR Center receives input from all of the IPR Center partners through weekly led dissemination and case de-confliction meetings. Investigative case referrals and leads to IPR Center partner agencies are researched and reviewed by all partners through a process called de-confliction. When leads are received directly by the IPR Center, intelligence reports are first generated from those leads as part of the vetting process. Leads and case referrals from partner agencies are distributed to all partner agencies and the Department of Justice Computer Crimes and Intellectual Property Section for vetting and de-confliction to determine whether an agency is already investigating the alleged IP violation. At the weekly de-confliction meeting, IPR Center partners review the results of this de-confliction process and establish which partner agency or agencies will be responsible for determining future action on that lead. The lead partner agency then coordinates with the IPR Center to ensure any further enforcement action is tracked, monitored, de-conflicted, and reported to IPR Center partners.

Question#:	19
Topic:	CCIPS
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What can improve the IPR Center's efficiency and cooperation? Would it improve the effectiveness of the IPR Center if CCIPS were a partner?

Response: Many of the National Intellectual Property Rights Coordination Center (IPR Center) partners are assigned to the IPR Center as a collateral duty, based upon personnel and budgetary issues. They attend the scheduled de-confliction meetings and further communicate via emails and phone, but are not at the IPR Center on a daily basis. Having partners at the IPR Center on a regular basis would further enhance the efficiency and cooperation of the IPR Center. Although not a formal partner, the Department of Justice Computer Crime and Intellectual Property Section (CCIPS) is an active participant at the IPR Center. CCIPS personnel attend the weekly de-confliction meetings. CCIPS regularly attends IPR Center meetings including operational strategy meetings, meetings concerning ongoing operations or investigations, and those with private industry.

Question#:	20
Topic:	seizures
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Has ICE been the subject of any civil legal action as a result of its seizures in Operation In Our Sites or other counterfeit goods seizures?

Response: There are several pending civil actions resulting from the seizure of domain names through Operation In Our Sites. ICE defers to the Department of Justice for further information.

Question#:	21
Topic:	memorandum
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: ICE recently signed a Memorandum of Understanding with the Chinese government, has two offices in China, and is engaged in significant enforcement work in Shenzhen. What else is ICE doing to obtain increased cooperation in IPR enforcement from the Chinese government?

Response: In addition to the actions mentioned in the question above, U.S. Immigration and Customs Enforcement (ICE) has taken a proactive approach to increase cooperation with the Chinese Government on intellectual property (IP) theft enforcement focusing upon senior level engagement, information exchange, and training.

On September 14, 2010, Director Morton met with Chinese Ministry of Public Security (MPS) Director General Meng Qing-Fing and signed an agreement for greater cooperation between the two agencies to combat intellectual property crime and money laundering. The agreement is historic and shows progress in a sustained effort to secure MPS cooperation on cases of mutual concern. The signing of the agreement resulted in an unplanned meeting between Director Morton and MPS Vice Minister Meng Hongwei. Embassy representatives were encouraged by the level of agreement to exchange investigative information, as previously such information sharing had been entirely ad hoc. Chinese law enforcement officials agreed to exchange information, engage in joint intellectual property investigations, and meet regularly at the highest levels. ICE would like to see more timely cooperation and joint investigations, which so far have not been readily apparent.

ICE participates regularly in the U.S.-China Joint Liaison Group for Law Enforcement Cooperation (JLG). ICE takes part in the JLG Intellectual Property Criminal Enforcement Working Group, which is led by the Department of Justice Computer Crime and Intellectual Property Section. China favors investigations and prosecutions of foreign nationals that violate Chinese law in China; as such, during the November 2010 meeting, U.S. law enforcement members of the JLG proposed three joint investigations involving ICE targets in China. Activity on these investigations is ongoing. ICE will continue to work through the JLG to increase IP theft enforcement cooperation with China.

Through the assistant attaché in Guangzhou, ICE has agreed to provide MPS with data about CBP seizures with a nexus to China and with actionable information from ICE investigations and operations in order to further investigations in both countries. ICE has already provided such information to China and will continue to do so.

Question#:	21
Topic:	memorandum
Hearing:	Oversight of Intellectual Property Law Enforcement Efforts
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

The MPS in China requested help from the ICE Attaché in Beijing related to the transnational distribution and smuggling of counterfeit cigarettes by a U.S. citizen. On August 26, 2010, acting on information provided by MPS, U.S. Customs and Border Protection in Long Beach seized 19,804 cartons of Chinese brand cigarettes with an MSRP value of $1.5 million. Two defendants were tried recently in China, and on December 8, 2010, the U.S. citizen was sentenced by Chinese authorities to 16 years incarceration for criminal violations related to the manufacture and distribution of counterfeit goods, and prior criminal violations related to vehicle smuggling. The other defendant, a Chinese national, was sentenced to three years' incarceration for criminal violations related to the manufacturing and distribution of counterfeit goods.

ICE has worked with other U.S. Government partners to provide training to Chinese government officials jointly with other government officials in Asia in order to better enhance collaboration. The ICE Office of Homeland Security Investigations Southeast Asia IPR Criminal Enforcement Symposium was held in Hong Kong from May 24-27, 2011. IP Attaché Guangzhou coordinated the participation of 28 officials from Mainland China, including representatives from the Ministry of Public Security, the General Administration for China Customs, and the Supreme People's Procuratorate Office. Other law enforcement participants in the symposium included representatives from Malaysia, Hong Kong, and Macau.

HSI Attaché Beijing is working with the U.S. Embassy on an IPR Symposium that will be co-hosted by Chinese and Japanese officials in Qingdao, China on September 7-9, 2011. If this symposium occurs, this will be the first time IPR Center training will be held in mainland China.

Additionally, ICE has been aggressively reaching out to U.S.-based businesses operating or manufacturing in China to inquire about their IPR problems and educate them on some of the legal issues they need to be aware of to protect their IPR when operating in China. Some companies ICE has spoken to have been unable to get responses from Chinese officials when they have IPR issues. ICE has subsequently learned that some of these companies have never actually registered their patents or trademarks with China, leaving them with no protection at all from infringers.