

**The Honorable Senator Tom Coburn
United States Senate Committee on the Judiciary
Oversight of Intellectual Property Law Enforcement Efforts**

- 1. According to your March Report on the counterfeit pharmaceutical working group, several members of the Internet industry have come together to establish a private industry response to the problem of online sales of counterfeit pharmaceuticals.**
 - a. What is the status of the working group as of today?**
 - b. What specific actions has it taken to combat counterfeit pharmaceutical sales?**
 - c. Do you feel such a private industry group would be effective at combating other types of online counterfeit websites? Why or why not?**
 - d. What other types of industry working groups have been established to-date?**

Private sector cooperation is essential if we are serious about effectively addressing online sales of counterfeit pharmaceuticals. I believe that private sector voluntary actions that are practical, effective and consistent with public policy principles, including privacy protections, free speech, competition, and due process, have the potential to dramatically improve online enforcement.

In December, I announced that American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft, PayPal, Visa and Yahoo! had agreed to start a new non-profit organization to increase cooperation among themselves and to take voluntary action against illegal pharmaceutical sites. The group established core operating principles that include information sharing among group members and with law enforcement about fake Internet pharmacies, funding educational campaigns and expansion of information about legitimate online pharmacies. In January, the group adopted a name – the Center for Safe Internet Pharmacies (“CSIP”) – and began working on the initial corporate structure and governance documents. CSIP has confirmed those companies that will serve as founding members; by this fall they plan to hire staff to manage the day-to-day operations of the organization and establish a website.

I am pleased that these companies have shown leadership with this initiative and I am confident that similar voluntary efforts, in combination with law enforcement action and educational awareness, can be effective in combating similar Internet-related problems that involve copyrights and trademarks. My office has been convening meetings with

various Internet intermediaries and has successfully worked with the major payment processors – American Express, Discover, MasterCard, PayPal and Visa - on a set of voluntary best practices to investigate complaints and remove payment services from any site that continues to operate unlawfully. These best practices are now final and operational and we will watch with interest in order to gauge the effectiveness of this process. We understand that Google has a payment processing arm and have asked them to consider joining this effort as well. We are also working with companies that advertise online and companies that sell online ads (ad brokers) including AOL, Bing, Google, and Yahoo to develop best practices to keep the ads of legitimate companies from financially supporting or lending legitimacy to sites engaged in infringement.

2. According to your 2010 Annual Report, you will be releasing a study this year on how intellectual property enforcement contributes to our economic growth. Could you explain why this study is needed and when you plan to release it?

The Department of Commerce, in consultation with the White House Council of Economic Advisors and the chief economists of many Federal agencies, is conducting an economic analysis to identify the industries that most intensively produce intellectual property, and to measure the importance of those industries to the U.S. economy. This will be the first time that the U.S. Government has conducted a broad study of this sort across all sectors of our economy. We believe that improved measures of intellectual property linked to measures of economic performance will help the U.S. Government understand the role and breadth of intellectual property in the American economy and inform policy and resource decisions related to intellectual property enforcement. On June 15, IPEC and Commerce met with a broad range of outside stakeholders to discuss the methodology of the report. We hope to finalize and release the report and the underlying data before the end of the year.

- 3. In October 2010, the GAO submitted a report on the implementation of the PRO-IP Act. It provided two recommendations related to the Joint Strategic Plan. GAO recommended 1) assigning implementation of all of the plan's priorities and action items to specific agencies; and 2) providing estimates of the resources needed to carry out the priorities of the plan. What is your response to these recommendations?**

I have worked very closely with the agencies with intellectual property responsibility on the Joint Strategic Plan (Strategy) and its implementation. Specific focus has been placed on each agency's mission and efficient use of resources to accomplish the Strategy's priorities and action items. To the extent practicable, the Strategy identified specific agencies that were responsible for implementing the priorities and action items, a fact that the GAO report acknowledged. Some priorities and action items were broad in scope and warranted a government-wide approach, which I have been coordinating since the issuance of the Strategy. Consistent with the 2010 Strategy and the GAO recommendation, future Joint Strategic Plans will continue to identify specific agencies that are responsible for implementing the priorities and action items of those plans where appropriate.

With respect to GAO's second recommendation, the Strategy was carefully planned to ensure that the action items can be implemented given current resources and with shifts in processes and prioritization of the intellectual property enforcement mission. In order to gauge what we are spending now and to better inform future resource allocation, in April 2010 and 2011, we collected data on resources expended by agencies with intellectual property enforcement responsibility, including the Departments of Justice (DOJ), Commerce, State, Homeland Security, Treasury, Health and Human Services, Agriculture and the Office of the U.S. Trade Representative (USTR). Due to shifts in the enforcement landscape, some priorities and action items will require additional resources, and some agencies have requested increased funding for intellectual property priorities in the President's FY2012 budget. For instance, DOJ requested an additional \$4.8 million for 6 attorney positions to support international intellectual property criminal enforcement. Similarly, the U.S. Patent and Trademark Office (USPTO) and USTR have requested an additional \$1.1 million and \$142,000, respectively, for additional personnel, including stationing personnel overseas. We will continue to work within the Administration's budget process to identify and request funding for items that will make a significant impact on intellectual property enforcement.

To All Witnesses

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

The IPEC office was created to make the government's efforts more efficient and effective in protecting people who innovate and create. My job is to work with the various agencies in the federal government and other offices in the White House to make sure intellectual property laws are enforced and working properly.

The U.S. Government as a whole has been working efficiently to tackle intellectual property enforcement issues. My office coordinates through a variety of formal and informal means, including daily correspondence and regular calls with the enforcement agencies, as well as more formal interagency meetings. With the passage of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Congress created an interagency intellectual property enforcement advisory committee, which has been helpful in coordinating these efforts. Furthermore, on February 8, President Obama signed Executive Order 13565, establishing a Cabinet-level advisory committee, chaired by IPEC, comprised of the heads of the departments responsible for intellectual property enforcement.

A key tool to improve agency coordination has been the establishment of four interagency working groups concerning U.S. Government procurement, U.S. Government personnel stationed overseas, international training efforts, and counterfeit pharmaceuticals. These working groups have used a collaborative approach to tackling enforcement issues identified in the June 2010 Joint Strategic Plan on Intellectual Property Enforcement, which has increased the amount and quality of coordination between the agencies. For example:

- The procurement working group is charged with developing legislative, regulatory and policy recommendations for President Obama to eliminate counterfeit products in the U.S. Government supply chain.
- The overseas personnel working group identified 17 countries as priority countries for intellectual property enforcement and recommended that U.S. embassies in each of those countries establish senior-level interagency working groups. The working groups have now been established and each working group has completed detailed work plans setting out the actions that embassy personnel will take to address the specific challenges in each country.

- The international training working group was formed to improve interagency coordination of international capacity building and training. As a result of this group's work, in March, the U.S. Patent and Trademark Office launched a publicly-accessible, online database that will lead to more efficient use of resources by allowing different agencies to share materials and avoid duplicative work.
- Last March, the counterfeit pharmaceutical working group presented a strategy to the Vice-President and to Congress that detailed how the U.S. Government would fight counterfeit drugs including from illegal online pharmacies. The group is now working on implementation of that strategy.

The National Intellectual Property Rights (IPR) Coordination Center, hosted by U.S. Immigration and Customs Enforcement (ICE), is another excellent example of regulatory agencies and law enforcement bodies coordinating with each other to fight intellectual property crimes. The IPR Center uses the expertise of its member agencies, also working closely with the Department of Justice's Computer Crime and Intellectual Property Section to share information, develop initiatives, coordinate enforcement actions, and conduct investigations related to intellectual property theft. Examples of these coordinated efforts include:

- The IPR Center has been making sure resources do not overlap, by working with the FBI and other IPR Center partners to de-conflict investigative activity, and their efforts have been effective. The de-confliction process has been collaborative and complementary, using each agency's comparative advantage to most efficiently conduct investigations.
- Over the past year, the IPR Center has added even more partners, including the State Department, the Consumer Product Safety Commission (CPSC), the Army Criminal Investigation Command – Major Procurement Fraud Unit, and the Defense Logistics Agency – Investigations Division. The IPR Center also added its second foreign government partner, the Royal Canadian Mounted Police, which joined the first foreign government partner, the Government of Mexico's Tax Administration Service, and added its first international law enforcement organization, INTERPOL.
- The FBI has improved the coordination of intelligence of global intellectual property threats through its Intelligence Fusion Group (IFG). The IFG, in collaboration with IPR Center partners, examines and defines the intellectual property rights threat, shares intelligence, issues intelligence reports and develops strategies for addressing intellectual property crimes.

- The FBI's Intellectual Property Rights Unit (IPRU), stationed at the IPR Center, is staffed by five full-time FBI agents who conduct complex intellectual property investigations and work with IPR Center partners to de-conflict intellectual property cases.
- ICE and the FBI have formed 30 law enforcement teams that include federal, state and local law enforcement coordinated across the country to fight intellectual property crime.

The DOJ Bureau of Justice Assistance (BJA) grant program has bolstered the coordination efforts of state and local authorities to enforce intellectual property rights. Taken together, the program grantees have seized over \$195 million worth of infringing merchandise since October of 2009 - 30 times the value of the grants (\$6.5 million) distributed to date. This is an excellent example of federal, state and local authorities working together to make a significant impact on intellectual property enforcement and we expect to see similar success in the future.

Federal, state and local authority coordination has also had positive effects beyond our borders as various agencies demonstrated in February with the extradition from Paraguay of a fugitive who allegedly supported the terrorist group Hezbollah with profits from counterfeit goods. A wide range of Federal, state, and local law enforcement agencies coordinated on that case including the FBI, ICE, Homeland Security Investigations (HSI), the New Jersey State Police, the Internal Revenue Service, the U.S. Secret Service, Defense Criminal Investigative Services, the Department of Commerce, the U.S. State Department, U.S. Customs and Border Protection (CBP), the Bureau of Alcohol, Tobacco, and Firearms and Explosives, Federal Air Marshals, Pennsylvania State Police, and the Philadelphia Police Department.

Federal agencies have demonstrated significant commitment to the goals of the Administration on enforcement of intellectual property. The Joint Strategic Plan on Intellectual Property Enforcement that we issued on June 22, 2010 reflected the cooperative efforts of agencies. Since then, we have documented our continuing progress in reports to Congress issued in February and June of this year.

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

The IPR Center has done an excellent job of leveraging the diverse resources of the federal government into an effective force for fighting intellectual property crime. The Center works with a broad spectrum of regulatory agencies and law enforcement bodies including U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, Federal Bureau of Investigation, Food and Drug Administration's Office of Criminal Investigations, U.S. Postal Inspection Service, U.S. Department of Commerce's International Trade Administration, U.S. Patent and Trademark Office, Naval Criminal Investigative Service, Defense Criminal Investigative Service, U.S. Army Criminal Investigative Command's Major Procurement Fraud Unit, General Services Administration's Office of Inspector General, Consumer Product Safety Commission, Defense Logistics Agency, U.S. Department of State's Office of International Intellectual Property Enforcement, INTERPOL, the Government of Mexico's Tax Administration Service, and the Royal Canadian Mounted Police. Through the Criminal Division's Computer Crime and Intellectual Property Section, DOJ also provides support to the IPR Center. The IPR Center has been making sure resources do not overlap, by working with the FBI and other IPR Center partners to de-conflict investigative activity, and their efforts have been effective. The de-confliction process has been collaborative and complementary, using each agency's comparative advantage to most efficiently conduct the investigation.

3. How does each of your agencies coordinate with private industry to improve your enforcement efforts?

Our 2010 Joint Strategic Plan (Strategy) committed to transparency in the development of enforcement policy, information sharing and reporting of law enforcement activities at home and abroad. I have traveled to Los Angeles, Silicon Valley, Illinois and New York and will continue to travel to different parts of the country to hear stakeholder concerns directly. My office is small, but we regularly meet with hundreds of stakeholders, including companies across an extremely broad range of sectors. We have met with book publishers, movie studios, music companies, videogame companies, software development companies, fashion houses, pharmaceutical manufacturers, aerospace companies, automobile companies, electronic component manufacturers, the biotech industry, green technology innovators, telecommunications companies, textile manufacturers, jewelers, writers, programmers, artists, inventors, Internet service providers, Internet search companies, Internet auction companies, advertisers, ad brokers, credit card companies, payment processors, think tanks, consumer advocacy groups, unions, students, academics, and other intellectual property stakeholders.

In addition to meetings, my office receives input from more formal mechanisms such as federal register notices (FRN). In preparation for developing the Strategy, my office published a FRN which produced significant input from the public with over 1,600 comments and suggestions from a broad array of Americans with specific and creative ideas. Recently, we published a FRN seeking public input regarding the dangerous presence of counterfeit products in the U.S. Government supply chain. These interactions have helped us to learn about the problems American companies face, provided a range of views on policy matters related to intellectual property enforcement, and led to solutions the Administration can pursue through agency action, legislative recommendations, or other approaches.

We have also worked with, and encouraged right holders and many different companies that benefit from or facilitate e-commerce to reach cooperative voluntary agreements to reduce infringement in a practical and effective manner consistent with important public policy principles, including privacy protections, free speech, competition and due process. The first success from this approach occurred in December when American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft, PayPal, Visa, and Yahoo! agreed to start a new non-profit organization to increase cooperation among themselves and to take voluntary action against illegal pharmaceutical sites. The non-profit organization is called The Center for Safe Internet Pharmacies (CSIP) and they are working on developing their initial corporate structure, hiring plans and establishing a website which they hope to complete by this fall.

My office has also successfully worked with the major payment processors – American Express, Discover, MasterCard, PayPal, and Visa - on a set of voluntary best practices that are now final and operational to investigate complaints and remove payment services from any site that continues to operate unlawfully.

We welcome the July 7, 2011 agreement between Internet service providers and content providers as a cooperative effort to combat online infringement. We continue to work with other Internet stakeholders, such as advertisers and ad brokers to develop voluntary best practices to keep ads of legitimate companies off of sites that engage in infringing activity.

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

Private industry has been working to enforce their rights and coordinate with the Federal government. They have assisted investigations and prosecutions of intellectual property crimes with witnesses, investigators, and other staff who have been working with the agencies to provide leads and other assistance that build and win cases. For example, pharmaceutical company agents tipped off law enforcement about sales of counterfeit pills from their undercover operations; this lead formed the basis of an investigation and guilty plea in connection with the sale of over 45,000 counterfeit pills.

Private industry has also trained U.S. Customs and Border Protection (CBP) at the ports and headquarters on how to distinguish their goods from infringing articles. CBP's Center for Excellence and Expertise is also educating more right holders on how to better enforce their rights specifically for pharmaceutical products, and the pharmaceutical industry is aiding CBP by providing advice on tracking illegal pharmaceutical shipments. The FBI and ICE have been conducting outreach and developing education programs for industry representatives with a stake in intellectual property enforcement.

Finally, DOJ's Computer Crime and Intellectual Property Section (CCIPS) organized and led approximately 10 conferences in the past four years which brought together right holders and federal, state, and local prosecutors to discuss aspects of intellectual property crime with federal law enforcement experts as well as businesses, private investigators, and corporate counsel. These conferences provide a forum for private industry to share information, ideas, and trends that they encounter with their intellectual property and can assist law enforcement to adjust their tactics accordingly.

4. 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?

IPEC spent \$230,949 in 2010. That covered the IPEC's salary and benefits, the salary and benefits of the office's confidential assistant, and the entire cost of the office's travel, furniture, IT equipment, supplies, and subscriptions. The IPEC expenditures have not increased since the passage of the PRO-IP Act in 2008.

5. 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?

Yes, both the amount and the quality of agency coordination have improved. Since the passage of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) and the introduction of the Joint Strategic Plan in June 2010, the Administration has made significant progress on intellectual property enforcement coordination in several areas including law enforcement, education/training, and interagency cooperation. Congress' creation of an interagency intellectual property enforcement advisory committee in the PRO-IP Act was an important step in increasing the amount and quality of agency coordination. President Obama took additional steps to increase agency coordination by establishing a Cabinet-level intellectual property advisory committee, chaired by the IPEC, comprised of the heads of the departments responsible for intellectual property enforcement.

In addition, my office established and chairs four interagency working groups concerning U.S. Government procurement, U.S. Government personnel stationed overseas, international training efforts, and counterfeit pharmaceuticals. These working groups have greatly increased the amount and quality of coordination between agencies.

- Recent reports issued by the Department of Commerce and the Government Accountability Office have found that counterfeits have infiltrated many sectors of the U.S. Government supply chain and have the potential to cause serious disruptions in national defense, critical infrastructure, and other vital applications. The procurement working group is made up of 14 government components and is charged with formulating legislative, regulatory and policy recommendations to President Obama to eliminate counterfeit products in the government supply chain.
- The overseas personnel working group identified 17 countries as priority countries for intellectual property enforcement and recommended that U.S. embassies in each of those countries establish senior-level interagency working groups. The working groups have now been established and each working group has completed detailed work plans setting out the actions that embassy personnel will take to address the specific challenges in each country.
- The international training working group was formed to improve interagency coordination of international capacity building and training. As a result of the group's work, in March, the USPTO launched a searchable database where agencies can post information on intellectual property enforcement trainings that will allow agencies to use resources more efficiently, improve training results and increase transparency and public participation.

- In March, the counterfeit pharmaceutical working group issued a strategy that detailed how the U.S. Government would fight counterfeit drugs and illegal online pharmacies. The group is now working on implementation of that strategy.

This activity is in addition to the daily agency coordination this office does by reaching out to multiple U.S. Government personnel to inform, discuss, and decide on the best approaches to intellectual property enforcement among the agencies. From these dialogues, we fine tune the Administration's approach on legislative recommendations, policy proposals, interagency initiatives, and other decisions that affect multiple U.S. Government agencies with intellectual property interests.

Law enforcement has also improved the amount and quality of coordination. In particular, the National Intellectual Property Rights (IPR) Coordination Center – hosted by U.S. Immigration and Customs Enforcement (ICE) – has done an excellent job de-conflicting agencies and optimizing the distribution of agency assets. For example:

- The FBI, through its Intelligence Fusion Group (IFG), has examined and assessed the intellectual property rights threat and shared intelligence assessments with its IPR Center partners. They have also deployed their Intellectual Property Rights Unit (IPRU) within the IPR Center to assist with de-confliction of cases and conduct complex intellectual property crime investigations. The de-confliction process has been collaborative and complementary, using each agency's comparative advantage to most efficiently conduct investigations.
- The IPR Center is also growing and expanding its reach by adding additional partners including the State Department, the Consumer Product Safety Commission (CPSC), the Army Criminal Investigation Command – Major Procurement Fraud Unit, and the Defense Logistics Agency – Investigations Division. The IPR Center also added its second foreign government partner, the Royal Canadian Mounted Police, who joined the first foreign government partner, the Government of Mexico's Tax Administration Service, and added its first international law enforcement organization, INTERPOL. This expansion will increase coordination and strengthen intellectual property enforcement efforts here and abroad.
- Federal, state and local law enforcement have teamed up to combat intellectual property crimes throughout the country as evidenced by the 26 ICE-lead Intellectual Property Theft Enforcement Teams (IPTETs) and the 4 FBI-lead Intellectual Property Task Forces. For example, the Houston IPTET had three significant enforcement actions over a four-month period. In July, it seized nearly a half million dollars' worth of counterfeit goods at a local boutique; in September, it seized more than \$1 million of pirated DVDs at a local flea market; and, in October, it seized \$2.5 million of counterfeit goods at three local businesses. Also, the FBI in California worked with the Placer County Sheriff's Office and Galt Police Departments on an investigation that lead to the arrest and

subsequent conviction of a defendant trafficking in a range of counterfeit items with an estimated retail value of over \$7 million, including some bearing the “UL” safety mark. In November, the defendant was sentenced to 26 months in prison, and was ordered to pay a \$25,000 fine and \$9,575 in restitution.

The DOJ Bureau of Justice Assistance (BJA) grant program has bolstered the efforts of state and local authorities to enforce intellectual property rights. Taken together, the program grantees have seized over \$195 million worth of infringing merchandise since October of 2009 - 30 times the value of the grants (\$6.5 million) distributed to date. This is an excellent example of federal, state and local authorities working together to make a significant impact on intellectual property enforcement and we expect to see similar success in the future.

Federal, state and local authority coordination has also had positive effects beyond our borders as various agencies demonstrated in February with the extradition from Paraguay of a fugitive who allegedly supported the terrorist group Hezbollah with profits from counterfeit goods. A wide range of federal, state, and local law enforcement agencies coordinated on that case including the FBI, ICE, Homeland Security Investigations (HSI), the New Jersey State Police, the Internal Revenue Service, the U.S. Secret Service, Defense Criminal Investigative Services, the Department of Commerce, the U.S. State Department, U.S. Customs and Border Protection (CBP), the Bureau of Alcohol, Tobacco, and Firearms and Explosives, Federal Air Marshals, Pennsylvania State Police, and the Philadelphia Police Department.

6. Are there certain products or offenses that dominate your enforcement efforts?

Many problems confront intellectual property enforcement today and my office is working hard to address each of these threats – financial, safety, or otherwise – to important sectors of the U.S. economy, including aerospace, automobile, electronic components, biotechnology, green technology, manufacturing, software, hardware, pharmaceuticals, telecommunications, military products, education, healthcare, movies, music, video games, entertainment, finance, fashion, publishing, as well as the upstream and downstream industries and people who make their living supporting or using the products and services of these innovators.

The primary concerns that drive our enforcement efforts are creating jobs, increasing exports, supporting innovation, maintaining our global competitiveness, and the health and safety of the American people. A few areas of specific focus that I would highlight include: counterfeit drugs, along with other counterfeit goods, that can cause harm to consumers, counterfeit goods in the military and government supply chains, the theft of trade secrets and innovative technology, online infringement, and intellectual property enforcement, including patent enforcement, abroad but especially in China.

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

Twelve countries—Algeria, Argentina, Canada, Chile, China, India, Israel, Indonesia, Pakistan, Russia, Thailand, and Venezuela—are listed on the Priority Watch List in this year’s USTR Special 301 Report. Priority Watch List countries are those that have the “most onerous or egregious acts, policies, or practices” that deny adequate intellectual property rights or equitable market access for persons that rely on intellectual property protection.

Of these twelve countries, China stands out. China is the top source country of intellectual property-infringing products seized by the U.S. Department of Homeland Security in FY2010, accounting for 66 percent of the total value of all intellectual property seizures during that year. In terms of monetary losses, U.S. companies in intellectual property-intensive industries report that China’s intellectual property infringement caused them approximately \$48 billion in losses in 2009, according to the U.S. International Trade Commission.

China’s unacceptable levels of retail and wholesale counterfeiting are noted in the USTR’s Special 301 Report, including persistently high-levels of book and journal piracy, end-user piracy of business software, and copyright piracy over the Internet. With regard to counterfeiting, China’s global manufacturing capacity also extends to all phases of the production and global distribution of counterfeit goods, including: apparel and footwear, mobile phones, pharmaceuticals and medical equipment, herbal remedies, wine and liquor, other beverages, agricultural chemicals, electronic components, computer and networking equipment, software and related products, batteries, cigarettes, cosmetics, home appliances, cement, and auto parts, as well as merchandise based on copyrighted works.

Piracy over the Internet in China continues to be a source of concern and injury to the copyright industries and the United States. As noted in the Special 301 Report, it is estimated that there are 457 million Internet users in China (as compared with 223 million in the United States), and that 99 percent of all music downloads in China are reported to be illegal. The Special 301 Report also recognizes industry concerns regarding China’s “indigenous innovation” policies—a set of regulations, rules and practices in a variety of fields that might be used to unfairly favor domestic Chinese intellectual property over foreign intellectual property, including preferences given to products embodying domestically-developed intellectual property in government procurement and standard setting.

Finally, there have been repeated and troubling instances of Chinese nationals and other individuals attempting to steal U.S. proprietary business information and sending that information to competitors in China. For example, in a case prosecuted by the U.S. Attorney’s Office for the Eastern District of Michigan, a Chinese national was sentenced in April to 70 months in Federal prison for misappropriating confidential design documents owned by Ford Motor Co. worth between \$50 – 100 million. In a case

prosecuted by the U.S. Attorney's Office for the District of New Jersey, a defendant was convicted in April 2011 of stealing confidential and proprietary business information—which he sent to China—for a database system with environmental uses, including hazardous waste management.

8. What kind of discussions have you been having with China?

President Obama, Vice President Biden, Attorney General Holder, Secretaries Geithner and Locke, U.S. Trade Representative Ron Kirk, U.S. Immigration and Customs Enforcement Director John Morton, U.S. Customs and Border Protection Commissioner Alan Bersin, Under Secretary of State Robert Hormats, and other senior Administration officials have directly and repeatedly pressed China and other countries to do much more to combat intellectual property theft.

In October I traveled to China, with Attorney General Holder, and met with Chinese officials, where I stressed the need for China to strengthen its enforcement of intellectual property rights and encouraged greater cooperation and information-sharing in cross-border intellectual property investigations with U.S. officials. Following that trip, I had discussions with senior Chinese officials on various intellectual property enforcement issues, including software legalization by China in the lead up to President Hu's state visit to Washington, DC in January of this year. Moreover, I work closely with U.S. agencies – including USTR, State, Commerce, Justice, and DHS – to ensure that the Administration's efforts are coordinated when the agencies engage China on intellectual property issues.

- a. 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?**

The meetings between American and Chinese law enforcement officials have resulted in the signing of memoranda to increase information-sharing between American and Chinese law enforcement agencies. Because most of these memoranda were signed in May, it is too early at this time to determine whether there has been a statistically significant change in the number of cases involving China, which may now be under investigation but not yet publicly announced, and which are attributable to the recent information-sharing agreements between our two countries.

- b. What else needs to be done to decrease the infringement threat from China?**

The wide variety of issues and the tremendous scale of intellectual property infringement in China mean that we must address enforcement there on multiple fronts. The United States will continue to press China, directly and repeatedly, at the

most senior levels of the U.S. Government on the need for China to strengthen its intellectual property enforcement.

The Administration is pursuing a coordinated strategy, in accordance with the 2010 IPEC Joint Strategic Plan, to press China to do more to enforce intellectual property rights, including the following:

- China's Special IPR Campaign: Using the coordinated framework described in the IPEC Joint Strategic Plan section "*Enforcing our Rights Internationally*," we are working with the U.S. Trade Representative, other Federal agencies, and U.S. businesses to assess China's progress (and to encourage further action) under China's "Special Campaign Against Piracy and Counterfeiting," which China's State Council launched in October 2010 and extended through the end of June 2011. The Special IPR Campaign has resulted in improved coordination between China's intellectual property enforcement agencies and higher levels of enforcement activity in some areas. But more is needed, and we will continue to urge China, through trade dialogues such as the U.S.-China Joint Commission on Commerce and Trade (JCCT), to maintain a long-term, high-level focus on intellectual property enforcement and to continue its interagency coordination of IP enforcement at senior political levels, as they did during the Special IPR Campaign.
- Special 301 Report: This year, China was again listed on USTR's annual Special 301 Report as a Priority Watch List country. This list is reserved for countries with the most onerous or egregious acts, policies, or practices harming U.S. intellectual property owners. This year, in accordance with the IPEC Joint Strategic Plan action item "*Strengthen Special 301 Action Plans*," the USTR's Special 301 Report includes an open invitation to all trading partners listed in the report to cooperatively develop action plans to resolve IPR issues of concern. Agreement on such a plan will not by itself change a trading partner's status. However, in the past, successful completion of action plans has led to the removal of trading partners such as Saudi Arabia, Taiwan, and many others from Special 301 lists.
- Notorious Markets List: In February 2011, as part of the IPEC Joint Strategic Plan action item "*Identify Foreign Pirate Websites as Part of the Special 301 Process*," USTR released the first-ever out-of-cycle Notorious Markets List—a list of physical and online overseas markets that traffic in infringing products, including several markets in China. The list helps to raise public awareness of online piracy and counterfeiting and to focus our diplomatic efforts with China. For example, Taobao.com, China's leading business-to-consumer website (and the

fifth most-visited site in China), announced in response to having been listed in the Notorious Markets List, that it will launch a major campaign to stop online piracy and counterfeiting occurring on its site. In addition, the Government of Hong Kong took quick action against a market listed in the report, utilizing a new enforcement strategy, including increased patrols, arrests and prosecutions, and displaying an anti-piracy banner, at the notorious “Ladies’ Market.” In July, Baidu, a leading Chinese search engine listed in the report, concluded a music licensing agreement with One-Stop China, a joint venture between the Universal Music Group, the Warner Music Group, and Sony BMG.

- Building Alliances with Chinese Law Enforcement: Ultimately, we need Chinese law enforcement to do more. Both the Attorney General and DHS ICE Director Morton have traveled to China to press their counterparts for increased cooperation to fight intellectual property crime. (This is the first time an ICE director has traveled to mainland China, and Director Morton made intellectual property enforcement a major focus of his trip.) In addition, as part of the IPEC Joint Strategic Plan action item “*Enhance Foreign Law Enforcement Cooperation*,” we are working with foreign law enforcement to do more by having U.S. law enforcement on the ground working closely with Chinese law enforcement – building relationships that will lead to increased enforcement. To do so, we have been working with DOJ, FBI, and ICE to have IP-focused law enforcement personnel on the ground in China. In September 2010, the ICE Assistant Attaché in Guangzhou was designated as ICE’s first “IP Attaché” in China. The FBI is also preparing to send an IP -dedicated attaché to China later this year. In addition, the DOJ’s Criminal Division and the Chinese Ministry of Public Security (“MPS”) co-chaired the Intellectual Property Criminal Enforcement Working Group (“IPCEWG”) of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation (“JLG”), which has resulted in an open dialogue on intellectual property criminal enforcement issues, increased information sharing on selected investigations, and a number of successful joint intellectual property operations.
- Software legalization: China recently made several commitments to ensure that its government agencies and State Owned Enterprises (SOEs) use only legitimate software. These commitments were achieved and are now being monitored under the IPEC Joint Strategic Plan action item “*Promote Enforcement of U.S. Intellectual Property Rights through Trade Policy Tools*.” For example, during the 2^{1st} JCCT in December 2010, China promised to allocate current and future budgets for purchasing, upgrading, and replacing agency software. At this meeting, China also announced that thirty SOEs will participate in a pilot project to encourage these SOEs use only legitimate software. During President Hu

Jintao's state visit in January 2011, China committed to conduct audits to ensure that government agencies at all levels use legitimate software and to publish the auditing results as required by China's law. We are now closely monitoring China's efforts to ensure that these commitments are fully implemented and that its agencies and SOEs pay for the software they use.

- Educating U.S. Small- and Medium-sized Entities: Key to increasing U.S. exports is the protection of intellectual property rights in China and the Administration's efforts to assist U.S. companies as they contemplate entering the Chinese market. Under the IPEC Strategic Plan action item "*Support U.S. Businesses in Overseas Markets*," the Department of Commerce's International Trade Administration hosts the "Intellectual Property Rights in China Webinar Series," a free webinar series for U.S. small- and medium-sized entities considering doing business in China. So far this year, eight webinars have been conducted on China-specific IP topics, including bad-faith trademark registrations, domain names disputes, and indigenous innovation. These webinars are available for viewing at www.stopfakes.gov. In addition, the U.S. Patent & Trademark Office each year conducts a "USPTO China Road Show," a series of free, two-day seminars for U.S. businesses to learn how to protect against intellectual property theft from China.

The Honorable Senator Al Franken
United States Senate Committee on the Judiciary
Oversight of Intellectual Property Law Enforcement Efforts

- 1. According to the National Association of Boards of Pharmacy, counterfeit drug sales account for approximately \$75 billion in annual global sales. Your office has done a great deal to focus on counterfeit pharmaceuticals, which can pose a serious risk to Americans' health and safety. However, other counterfeit products, such as faulty car parts, electronics, and even toys, also endanger the health and safety of Americans. How does your office prioritize cases, and what are you doing to make sure that we are targeting the most dangerous counterfeit products?**

My office cannot direct individual law enforcement operation priorities, but the Administration has undertaken several coordinated efforts to stop the entrance of counterfeit products into the stream of U.S. commerce through broad interagency collaboration. In deciding upon which problem areas to prioritize our resources, we consider a multitude of factors including employment effects, global competition, costs to the Federal government, how efficiently the Administration can pursue a solution, the burden on industry, and many others - but safety has always been paramount.

We are particularly concerned about unsafe products entering into the military or government supply chain. Recent reports issued by the Department of Commerce and the Government Accountability Office have found that counterfeits have infiltrated many sectors of the U.S. Government supply chain and have the potential to cause serious disruptions in national defense, critical infrastructure and other vital applications. In order to fight this problem we formed an interagency working group comprised of 14 U.S. Government components focused on eliminating counterfeit products from our supply chain. Law enforcement has stepped up efforts to investigate, arrest, and prosecute offenders who sell counterfeit goods to the military and U.S. Government. For instance, DOJ, the FBI, and ICE Homeland Security Investigations have investigated and prosecuted defendants under Operation Network Raider, which targeted the sale of counterfeit computer network hardware, including to the U.S. military. That Operation has led to more than 30 convictions and the seizure of more than \$143 million in counterfeit goods. Also, in June the IPR Center partners began Operation Chain Reaction to target counterfeits in the military and U.S. Government supply chain. In addition to the vanguard domestic and military investigative authorities, the IPR Center will be aided in its efforts to stop unsafe counterfeit products by the Consumer Product Safety Commission who joined as an IPR Center partner last year.

Ongoing efforts by the agencies to target the most dangerous counterfeit products have been successful. For example, CBP reported a 97 percent increase in seizures of safety-

relevant products at the border in FY 2010. Also, in September Operation Safe Summer, a two-month initiative involving several surge operations conducted by ICE, CBP, and the Mexican Tax Administration Service, targeted infringing imports of health and safety items at international mail and express carrier hubs in the United States and Mexico, leading to 800 seizures including counterfeit automobile airbags, rifle sites, cellular phones and chargers, and beauty products. Another similar international operation targeted towards safety-relevant products is slated for fall 2011. Recently, as we reported in our April/May/June 2011 *Spotlight*, the U.S. Government has had a recent string of successes in stopping or punishing infringement related to products that threaten health and safety including:

- An 87-month prison sentence was imposed on June 3 for trafficking in fake weight loss drugs; one of the victims of the fake drugs suffered a mild stroke.
- Also on June 3, a 48-month prison sentence was imposed on an operator of an Internet pharmacy which sold counterfeit and misbranded drugs to treat conditions including heart disease and psychiatric disorders. The defendant was apprehended in Costa Rica and extradited to the United States.
- On April 4, a 33-month prison sentence was imposed on a seller of counterfeit pills that contained a substance used in sheetrock manufacturing.
- On May 9, two 37-month prison sentences and one 30-month prison sentence were imposed on people engaged in selling hazardous counterfeit lead jewelry with over 20 times the lead deemed safe by the Consumer Products Safety Commission.
- Also, on May 9, a guilty plea from an individual for trafficking in over 2,000 counterfeit exercise equipment machines.
- A seizure of 30,000 counterfeit cans of sardines in June.
- On May 17, an indictment for selling 6,000 units of counterfeit diabetic test strips.

These examples are demonstrative of the efforts the Administration has taken and will continue to take to stop dangerous counterfeit products from harming consumers.

2. **You have hosted meetings with private companies, including Google, American Express, MasterCard, Visa, GoDaddy, and others, to take voluntary actions against illegal online pharmacies. In your testimony, you said that you have been encouraged by the willingness of private companies to collaborate to end the distribution of counterfeit pharmaceuticals online. Are there any companies we need to be pushing to step up and do more? What can we do to encourage this collaboration to continue?**

Our focus with the voluntary cooperation initiative is to help all relevant private sector actors to cooperate with each other to reach practical solutions that support public policy goals.

We have made significant progress combating fake online pharmacies by helping to facilitate a range of private sector actors - American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft, PayPal, Visa and Yahoo! - that are cooperating among themselves to battle a problem that poses an immense health and safety risk to the American public. Similar progress has been made with best practices recently developed by credit card companies and payment processors to withdraw payment processing services from sites selling counterfeit goods. In addition, on July 7, 2011, a collaborative agreement was announced between Internet Service Providers and content providers to combat online piracy. We would like to see similar progress with search engines and ad networks – both advertisers and ad brokers – to further disrupt the business model of illegal online sites that undermine U.S. businesses, U.S. job growth, and consumer confidence.

We believe that private sector cooperation is a positive step and consistent with our strategy of encouraging voluntary efforts to strengthen online intellectual property enforcement and with our broader Internet policy principles, emphasizing privacy, free speech, competition and due process. Congress can encourage the collaboration to continue by supporting the Administration's efforts and continuing to highlight the critical importance of intellectual property enforcement to our country, our economy and our citizens.

3. **In February 2011, Immigration and Customs Enforcement (ICE) seized mooo.com as part of a child pornography investigation. This seizure redirected more than 84,000 subdomains to a warning that mooo.com had been seized for involvement with child pornography, despite the fact that the overwhelming majority of these subdomains only had legal content. ICE fixed what they later admitted was an inadvertent mistake, but it took several days before the site was restored and the warnings were removed. Has your office considered putting out a set of best practices or guidelines that all law enforcement can rely on to conduct due diligence before seeking a court order to shut down entire top level domains?**

It is unfortunate that this happened. ICE realized there was a problem and moved quickly to correct it. Law enforcement's objective is only to go after serious criminal activity. There are significant safeguards in place in Operation In Our Sites to avoid mistakes, and ICE and DOJ are in the best position to address the operational specifics of those safeguards.

4. China's piracy and counterfeit goods markets are notorious. What steps can we take to put more international pressure on China to reform its intellectual property infringement problems?

In February 2011, USTR released the first stand-alone Notorious Markets List. The Notorious Markets List identifies over 30 Internet and physical markets worldwide that traffic in infringing products, including several markets in China. The list helps to raise public awareness of online piracy and counterfeiting, and encourages responsible governments to take increased enforcement action. The February 2011 Notorious Markets List has been followed by several notable actions involving listed markets in China and elsewhere. For example, *Taobao.com*, China's leading business-to-consumer website (and the fifth most-visited site in China), announced in response to having been listed in the Notorious Markets List, that it will launch a major campaign to stop online piracy and counterfeiting occurring on its site. In addition, the Government of Hong Kong took quick action against a market listed in the report, utilizing a new enforcement strategy, including increased patrols, arrests and prosecutions, and displaying an anti-piracy banner at the notorious "Ladies' Market." In July, Baidu, a leading Chinese search engine listed in the report, concluded a music licensing agreement with One-Stop China, a joint venture between the Universal Music Group, the Warner Music Group, and Sony BMG.

The United States has worked multilaterally with other trading partners to press China to do more to enforce intellectual property rights. For example, the Asia-Pacific Economic Cooperation (APEC)—which includes the United States, China, and 19 other members—will conduct a training workshop in September, during this year's third Senior Officials Meeting on investigating and prosecuting corruption and illicit trade, with a focus on counterfeit pharmaceuticals. On June 1, 2011, the APEC Mutual IPR Enforcement Operation, a joint operation between the United States and other APEC customs authorities, was initiated to target counterfeit pharmaceuticals and to develop model practices for intellectual property enforcement in international postal and express courier facilities. This is the first time a joint enforcement operation has ever been conducted under the auspices of APEC. China is an APEC member and it aspires to play a greater role on the world stage. Hence, the expectation that China will bring its intellectual property enforcement into conformity with international norms is even greater than it might otherwise be. For this reason, multilateral engagement through organizations like APEC will be an increasingly important means of applying international pressure on China to do more to enforce intellectual property rights. We will continue this multilateral approach, in addition to our bilateral engagement with China, going forward.

During the hearing, you mentioned that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) World Trade Organization (WTO) agreement was outdated and should be revised to reflect the enormous growth in intellectual property and new technologies since 1995, when TRIPS became effective. What changes would you recommend, and what other steps do you think we can take to address piracy via our trade agreements with China?

The scope and scale of online intellectual property infringement that we currently face did not exist in 1995 when the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entered into force, and as such, the TRIPS Agreement does not necessarily reflect many of today's enforcement challenges in the digital environment. Nonetheless, the TRIPS Agreement remains a vitally important minimum standard for intellectual property protection and enforcement. As a complement to the TRIPS Agreement, the United States has worked with many of our trading partners to address new challenges through dialogue, cooperation, and, where appropriate, through trade agreements. The Anti-Counterfeiting Trade Agreement (ACTA) is a prime example. ACTA provides a model for effectively combating global proliferation of commercial-scale counterfeiting and piracy in the 21st century through provisions that build on the minimum standards of TRIPS. It includes provisions on civil, criminal, border and digital environment enforcement measures, provisions on cooperation among ACTA parties to assist in their enforcement efforts, and provisions regarding best practices for effective intellectual property enforcement. ACTA negotiations were concluded last November with 37 other countries, who together with the United States represent over half of global trade. Although China was not a party to the negotiations, we are hopeful that as more countries sign ACTA, China will eventually join and implement this agreement.

With regard to addressing intellectual property violations via our existing trade agreements with China, the United States has previously pursued WTO disputes challenging China's intellectual property-related measures in cases where bilateral consultations with China were not successful. The United States will continue to vigilantly monitor China's implementation of TRIPS and other agreements and, where appropriate, seek recourse through WTO dispute settlement. However, short of filing cases in the WTO, the United States prefers to resolve issues with China through constructive bilateral engagement, including the following:

- China's Special IPR Campaign: Using the coordinated framework described in the IPEC Joint Strategic Plan section "*Enforcing our Rights Internationally*," we are working with the U.S. Trade Representative, other Federal agencies, and U.S. businesses to assess China's progress (and to encourage further action) under China's "Special Campaign Against Piracy and Counterfeiting," which China's

State Council launched in October 2010 and extended through the end of June 2011. We will continue to urge China, through trade dialogues such as the U.S.-China Joint Commission on Commerce and Trade (JCCT), to maintain a long-term, high-level focus on intellectual property enforcement and to continue its interagency coordination of IP enforcement at a senior political level, as they did during the Special IPR Campaign.

- Special 301 Report: This year, China was again listed on USTR's annual Special 301 Report as a Priority Watch List country. This list is reserved for countries with the most onerous or egregious acts, policies, or practices harming U.S. intellectual property owners. This year, in accordance with the IPEC Joint Strategic Plan action item "*Strengthen Special 301 Action Plans*," the USTR's Special 301 Report includes an open invitation to all trading partners listed in the report to cooperatively develop action plans to resolve IPR issues of concern. Agreement on such a plan will not by itself change a trading partner's status. However, in the past, successful completion of action plans has led to the removal of trading partners such as Saudi Arabia, Taiwan, and many others from Special 301 lists.
- Notorious Markets List: In February 2011, as part of the IPEC Joint Strategic Plan action item "*Identify Foreign Pirate Websites as Part of the Special 301 Process*," USTR released the first-ever out-of-cycle Notorious Markets List—a list of physical and online overseas markets that traffic in infringing products, including several markets in China. The list helps to raise public awareness of online piracy and counterfeiting and to focus our diplomatic efforts with China. For example, *Taobao.com*, China's leading business-to-consumer website (and the fifth most-visited site in China), announced in response to having been listed in the Notorious Markets List, that it will launch a major campaign to stop online piracy and counterfeiting occurring on its site. In addition, the Government of Hong Kong took quick action against a market listed in the report, utilizing a new enforcement strategy, including increased patrols, arrests and prosecutions, and displaying an anti-piracy banner, at the notorious "Ladies' Market." In July, Baidu, a leading Chinese search engine listed in the report, concluded a music licensing agreement with One-Stop China, a joint venture between the Universal Music Group, the Warner Music Group, and Sony BMG.
- Building Alliances with Chinese Law Enforcement: Ultimately, we need Chinese law enforcement to do more. Both the Attorney General and DHS ICE Director Morton have traveled to China to press their counterparts for increased cooperation to fight intellectual property crime. (This is the first time an ICE director has traveled to mainland China, and Director Morton made intellectual

property enforcement a major focus of his trip.) In addition, as part of the IPEC Joint Strategic Plan action item “*Enhance Foreign Law Enforcement Cooperation*,” we are working with foreign law enforcement to do more by having U.S. law enforcement on the ground working closely with Chinese law enforcement – building relationships that will lead to increased enforcement. To do so, we have been working with DOJ, FBI, and ICE to have IP-focused law enforcement personnel on the ground in China. In September 2010, the ICE Assistant Attaché in Guangzhou was designated as ICE’s first “IP Attaché” in China. The FBI is also preparing to send an IP-dedicated attaché to China later this year. In addition, the DOJ’s Criminal Division and the Chinese Ministry of Public Security (“MPS”) co-chaired the Intellectual Property Criminal Enforcement Working Group (“IPCEWG”) of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation (“JLG”), which has resulted in an open dialogue on intellectual property criminal enforcement issues, increased information sharing on selected investigations, and a number of successful joint intellectual property operations.

- Software legalization: China recently made several commitments to ensure that its government agencies and State Owned Enterprises (SOEs) use only legitimate software. These commitments were achieved and are now being monitored under the IPEC Joint Strategic Plan action item “*Promote Enforcement of U.S. Intellectual Property Rights through Trade Policy Tools*.” For example, during the 21st JCCT in December 2010, China promised to allocate current and future budgets for purchasing, upgrading, and replacing agency software. At this meeting, China also announced that thirty SOEs will participate in a pilot project to encourage these SOEs to use only legitimate software. During President Hu Jintao’s state visit in January 2011, China committed to conduct audits to ensure that government agencies at all levels use legitimate software and to publish the auditing results as required by China’s law. We are now closely monitoring China’s efforts to ensure that these commitments are fully implemented and that its agencies and SOEs pay for the software they use.

**The Honorable Senator Chuck Grassley
United States Senate Committee on the Judiciary
Oversight of Intellectual Property Law Enforcement Efforts**

1. 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?

The creation of this office with its mission to coordinate enforcement across the agencies, coupled with strong support from the President, the Vice President and Federal agencies, as well as the bipartisan and bicameral support for our mission, has significantly increased the priority level placed on intellectual property enforcement.

We know that intellectual property enforcement is critical if we are to create and protect jobs, increase our exports, support our innovative industries and protect the safety of the public. Pursuing that objective has resulted in actions across a number of fronts. For instance, since 2010, law enforcement efforts have increased significantly, including both online enforcement through Operation in our Sites and physical enforcement. From fiscal year 2009 to 2010, ICE's opened intellectual property investigations were up more than 41 percent and arrests were up more than 37 percent, DHS intellectual property seizures were up more than 34 percent, and FBI intellectual property investigations opened were up more than 44 percent. In fiscal year 2010, CBP and ICE intellectual property seizures of consumer safety and critical technology increased by 97 percent. Outreach with rights holders and other stakeholders has significantly increased. The private sector has stepped up its efforts and expressed a willingness to do more to help U.S. businesses threatened by infringing activities by exploring voluntary actions aimed at reducing infringement. I believe that this is only the beginning. I will continue to work with Federal agencies, U.S. companies and other stakeholders to ensure that we are employing the most effective and coordinated actions to combat infringement.

2. In your opinion, what is the greatest challenge that the IPEC faces with respect to IP theft?

There are a number of challenges with enforcement against intellectual property infringement.

First, advancement in technology, particularly the critical role the Internet plays in our society and economy, has created a more complex environment for enforcement efforts. It is extremely important that our laws continue to keep pace with advances in technology to ensure that infringing activity, whether done physically or over the Internet, can continue to be addressed by our laws. Second, there is a substantial amount of infringement that originates beyond the jurisdictional reach of U.S. law. For example, sites engaged in infringement, including cyber-lockers - online file storage sites usually located in foreign countries - are a particular problem as they are capable of harboring massive amounts of digital content that is made available to infringers via peer-to-peer and similar networks. Third, piracy and the methods of infringers have become more sophisticated, further complicating the job of enforcement officials. Infringers have been using various methods to conceal their counterfeit goods including resorting to high volume, low value shipments sent via postal service or private courier to evade border enforcement. Fourth, the distribution chain for infringing goods is increasingly global in reach.

My office is acutely aware of these issues and we are engaged in coordinating an effective response with agencies that are responsible for enforcement.

3. The PRO-IP Act increased penalties for certain intellectual property crimes. How effective have stricter penalties been in deterring intellectual property rights violations?

Increased penalties for intellectual property crimes can effectively address the harm caused by these offenses and serve as a strong deterrent message to potential offenders. While the Prioritizing Resources and Organization for Intellectual Property Act's increase in penalties was helpful, more needs to be done to protect and grow American jobs and exports and to protect the health and safety of the American people.

In March of this year, we issued a White Paper that set forth the Administration's 20 legislative recommendations designed to strengthen intellectual property enforcement. These legislative recommendations seek to provide enhanced penalties for offenses involving the misappropriation of trade secrets, economic espionage, and for intellectual property offenses involving organized crime, repeat offenders, counterfeit drugs and sales of infringing products to the military and law enforcement. The recommendations also outline legislative changes that will provide enforcement agencies with additional tools to combat infringement and curb the sale of counterfeit pharmaceuticals. Finally, the White Paper recommends that Congress amend the laws to keep up with technology by making distribution by streaming or other new technology a felony similar to infringement by traditional distribution methods.

I look forward to working with Congress on these legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

4. 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?

The trends that we are seeing with respect to intellectual property theft, piracy and counterfeiting include a substantial amount of infringement that originates in foreign countries that is beyond the jurisdictional reach of U.S. law. The Internet and other emerging technologies have provided unique challenges to law enforcement trying to enforce intellectual property rights. Intellectual property infringers have also developed more sophisticated methods using the latest technologies to attempt to avoid detection, further complicating the job of enforcement officials. Infringers have resorted to high volume, low value shipments sent via postal service or private courier to evade border enforcement. The global nature of distribution chain for infringing goods has further complicated efforts to enforce the intellectual property rights of U.S. rights holders.

However, we are making progress. For instance, from Fiscal Year 2009 to 2010, Immigration and Customs Enforcement intellectual property investigations are up more than 41 percent and arrests are up more than 37 percent, Department of Homeland Security intellectual property seizures are up more than 34 percent, and FBI intellectual property investigations are up more than 44 percent.

We will not solve the intellectual property theft problem by simply doing more of the same thing. Improved coordination, greater focus on enforcement and ensuring that our laws are strong are potential tools to address intellectual property infringement. The Joint Strategic Plan on Intellectual Property Enforcement seeks to advance many of those changes and we are implementing those changes. We have also adopted a new and innovative approach to combat infringement online, which focuses on increased law enforcement action, voluntary private sector cooperation, and increased education to the public about the risks of and damage done by infringement.

As to the effectiveness of the laws currently on the books, in March of this year, we issued a White Paper that set forth the Administration's 20 legislative recommendations designed to strengthen intellectual property enforcement. These legislative recommendations seek to provide enhanced penalties for offenses involving the misappropriation of trade secrets, economic espionage, and for intellectual property offenses involving organized crime, repeat offenders, counterfeit drugs, and sales of infringing products to the military and law enforcement. The recommendations also outline legislative changes that will provide enforcement agencies the tools to combat infringement and curb the sale of counterfeit pharmaceuticals. Finally, the White Paper recommends that Congress amend the laws to continue to keep up with technology by clarifying that distribution by streaming or other new technology is a felony, similar to infringement by traditional distribution methods. Throughout this legislative session,

Congress has acted on many of the recommendations including introducing bills to punish economic espionage, fight counterfeit drugs, clarify that commercial streaming is a felony, improve disclosure authority, and increase penalties for sales of counterfeits to the military. I look forward to working with Congress on these legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

5. In your opinion, in what ways has the increased FBI-DOJ partnership been productive? How can it be improved in the future?

Our Strategy committed to ensure the efficiency and coordination of Government resources in intellectual property rights enforcement, including the coordination of Federal, state, and local law enforcement. In February 2010, U.S. Attorney General Eric Holder announced the formation of a Department of Justice Task Force on Intellectual Property, which, among other things, prioritized coordinating with state and local law enforcement partners as a way to strengthen efforts to fight intellectual property crimes. Consistent with this priority, the FBI has increased its coordination with state and local law enforcement. For example, the FBI in California worked with the Placer County Sheriff's Office and Galt Police Departments on an investigation that led to the arrest and subsequent conviction of a defendant trafficking in a range of counterfeit items with an estimated retail value of over \$7 million, including some counterfeit goods bearing the "UL" safety mark. In November, the defendant was sentenced to 26 months in prison, and was ordered to pay a \$25,000 fine and \$9,575 in restitution. Also, the multitude of investigative efforts that FBI agents put forward build the solid cases the DOJ U.S. Attorney's Offices need for convictions and stiff penalties for intellectual property criminals.

6. What are your thoughts on how the various enforcement agencies are cooperating in the federal government's efforts to combat intellectual property theft? What can be improved?

The coordination and the response among the various enforcement agencies have been good. The Joint Strategic Plan on Intellectual Property Enforcement (Strategy) that we issued in June 2010 reflected the cooperative efforts of the Federal agencies, and the progress reflected in the report to Congress that my office released in February and the Anniversary report we released in June, are a good indication of our effective coordination and ongoing cooperative work to implement that Strategy. My office coordinates through a variety of formal and informal means, including daily correspondence and regular calls with the enforcement agencies as well as more formal interagency meetings. With the passage of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Congress created an interagency intellectual property enforcement advisory committee, which has been helpful in coordinating these efforts. Furthermore, on February 8, President Obama signed Executive Order 13565 establishing a Cabinet-level advisory committee, chaired by IPEC, comprised of the heads of the departments responsible for intellectual property enforcement.

A key tool that highlights agency cooperation has been the establishment of four interagency working groups concerning U.S. Government procurement, U.S. Government personnel stationed overseas, international training efforts, and counterfeit pharmaceuticals. These working groups have used a collaborative approach to tackling enforcement issues identified in the June 2010 Joint Strategic Plan on Intellectual Property Enforcement that has increased the amount and quality of coordination between the agencies. For example:

- The procurement working group is made up of 14 government components and is charged with developing legislative, regulatory and policy recommendations for President Obama to eliminate counterfeit products in the U.S. Government supply chain.
- The overseas personnel working group identified 17 countries as priority countries for intellectual property enforcement and recommended that U.S. embassies in each of those countries establish senior-level interagency working groups. The working groups have now been established and each working group has completed detailed work plans setting out the actions that embassy personnel will take to address the specific challenges in each country.
- The international training working group was formed to improve interagency coordination of international capacity building and training. As a result of this group's work, in March, the USPTO launched a publicly-accessible, online database that will lead to more efficient use of resources by allowing different agencies to share materials and avoid duplicative work.

- Last March, the counterfeit pharmaceutical working group presented a strategy to the Vice-President and to Congress that detailed how the U.S. Government would fight counterfeit drugs including from illegal online pharmacies. The group is now working on implementation of that strategy.

The IPR Center, hosted by ICE, is an excellent example of regulatory agencies and law enforcement bodies coordinating together to use the expertise of its member agencies to share information, develop initiatives, coordinate enforcement actions, and conduct investigations related to intellectual property theft. The FBI and IPR Center partners have improved the coordination of intelligence of global intellectual property threats by examining, reporting and sharing intelligence on those threats. The IPR Center has also been making sure resources do not overlap by working with IPR Center partners to de-conflict investigative activity. The de-confliction process has been collaborative and complementary, using each agency's comparative advantage to most efficiently conduct the investigation. These various agencies have cooperatively worked on investigations by using their agency-specific expertise to develop cases with one another. This includes FDA pharmaceutical testing, CPSC product safety analysis, IRS financial audits, Postal Service package inspections, CBP import targeting, ICE undercover operations and many other activities.

Federal, state and local law enforcement have teamed up to combat intellectual property crimes throughout the country as evidenced by the 26 ICE-lead Intellectual Property Theft Enforcement Teams (IPTETs) and the 4 FBI-lead Intellectual Property Task Forces, and their results have been telling. For example, the Houston IPTET had three significant enforcement actions over a four-month period. In July, it seized nearly a half million dollars' worth of counterfeit goods at a local boutique; in September, it seized more than \$1 million of pirated DVDs at a local flea market; and, in October, it seized \$2.5 million of counterfeit goods at three local businesses. Also, the FBI in California worked with the Placer County Sheriff's Office and Galt Police Departments to investigate and arrest a trafficker of counterfeit items – including some bearing the “UL” safety mark – that, if genuine, would have been worth over \$7 million. In November, after being found guilty, the trafficker was sentenced to 26 months in prison, and was ordered to pay a \$25,000 fine and \$9,575 in restitution.

Federal, state and local authority coordination has also had positive effects beyond our borders as various agencies demonstrated in February with the extradition from Paraguay of a fugitive who allegedly supported the terrorist group Hezbollah with profits from counterfeit goods. A wide range of federal, state, and local law enforcement agencies coordinated on that case including the FBI, ICE, Homeland Security Investigations (HSI), the New Jersey State Police, the Internal Revenue Service, the U.S. Secret Service,

Defense Criminal Investigative Services, the Department of Commerce, the U.S. State Department, U.S. Customs and Border Protection (CBP), the Bureau of Alcohol, Tobacco, and Firearms and Explosives, Federal Air Marshals, Pennsylvania State Police, and the Philadelphia Police Department.

With respect to improvements, there is a tremendous problem involving the export of illegal or otherwise inadmissible pharmaceuticals that FDA cannot destroy. CBP and FDA are working to address this matter and my office has consistently been engaging both agencies and other stakeholders – both public and private – on how best to proceed. Going forward, we expect to be able to put the complexities of this issue into context and to propose a way to address it in the update to our pharmaceutical strategy, which we plan to release this fall.