U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 25, 2006

The Honorable Arlen Specter
Chairman
Committee on the the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the September 28, 2005, appearance before the Committee of United States Attorney Debra Wong Yang at a hearing entitled, "Protecting Copyright and Innovation in a Post-*Grokster* World." We hope this information is useful to the Committee.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

September 28, 2005
Hearing on
"Protecting Copyright and Innovation in a Post-Grokster World"
Committee on the Judiciary
United States Senate

Questions for
Debra Wong Yang
United States Attorney
Central District of California

1. **You noted in your testimony that there were eighteen (18) Cyber-Hacking and Intellectual Property (CHIP) Units throughout the country. Could you please provide some background information on these units? Specifically, could you please provide the Judiciary Committee with the following information: the individual(s) who decide where the units are located; the process by which this person(s) decide where they are located; the factors that are considered when determining the allocation of resources amongst the units; and, the areas that are in need of a CHIP unit.**

Computer & Telecommunications Coordinators (CTCs)/CHIP Coordinators

In 1995, the Department of Justice created the Computer & Telecommunications Coordinator ("CTC") program to address concerns about the rising tide of computer crime. The CTC Program designated at least one Assistant United States Attorney ("AUSA") in each United States Attorney's Office as a CTC, and some districts designated more than one prosecutor, depending on the needs of the particular region. In addition, a number of components and divisions within the Department of Justice, such as the Tax Division, also designated CTCs for their respective organizations.

Under the CTC program, the prosecutors were assigned four areas of responsibility: (1) prosecuting computer crime; (2) serving as a technical advisor for other prosecutors and law enforcement agents; (3) assisting other CTCs in multi-district investigations; and (4) providing training and community outreach regarding computer-related issues. In October 2004, the Department of Justice's Task Force on Intellectual Property recommended that the CTC designation be changed to "CHIP Coordinator" to clarify that intellectual property offenses were included within the responsibilities of the AUSAs and align all 94 United States Attorneys' Offices with the Attorney General's CHIP program explained below. There are approximately 230 CHIP Coordinators, including CHIP Unit prosecutors, designated to handle both computer crime and intellectual property matters.

CHIP Units

In July 2001, the Justice Department created 10 Computer Hacking and Intellectual Property ("CHIP") units to address the increasing threat of cyber crime and intellectual property offenses in specific regions of the country. The program was expanded twice, once in 2002 and again in 2004. The offices were chosen based on the crime problems and victim industries within the particular district.

The CHIP Program was created to augment the number of prosecutors designated as CTCs, described above, who served in every United States Attorney's Office. The Department provided districts with additional funding to hire prosecutors and support personnel to form the units and focus on fighting intellectual property and cyber offenses.

The CHIP unit prosecutors focus on prosecuting intellectual property offenses such as trademark violations, copyright infringement, and thefts of trade secrets. In addition, they prosecute high-technology offenses, including computer hacking, virus and worm proliferation, Internet fraud, and other attacks on computer systems.

In addition to prosecuting cases, CHIP unit prosecutors also are involved actively in training other prosecutors and Federal agents regarding high-tech investigations, and they work closely with victims of intellectual property theft and cyber crime on prevention efforts.

The first CHIP unit was created in February 2000, in the United States Attorney's Office in San Jose, California, to address cyber crime and intellectual property cases in the Silicon Valley area. Based on the success of the CHIP unit in San Jose, in 2001 and 2002, then-Attorney General John Ashcroft expanded the program to include 11 cities in addition to San Jose, California:

* Alexandria, Virginia
* Atlanta, Georgia
* Boston, Massachusetts
* Chicago, Illinois
* Dallas, Texas
* Kansas City, Missouri
* Los Angeles, California
* Miami, Florida
* New York, New York (Brooklyn and Manhattan)
* San Diego, California
* Seattle, Washington

In October 2004, the Department of Justice created five additional CHIP units in:

* Nashville, Tennessee
* Orlando, Florida

* Pittsburgh, Pennsylvania
* Sacramento, California
* Washington, D.C.

These last five units were created pursuant to the findings and recommendations of the Department's Task Force on Intellectual Property, which issued its report in October 2004. There currently are 18 CHIP units, with a total of approximately 73 Federal prosecutors allocated to address intellectual property and cyber crime cases, in addition to the approximately 160 CHIP coordinators in the remaining districts and Justice Department divisions. Attached as Exhibit A is a chart specifying the number of AUSAs allocated for each of the CHIP units.

2. **With regard to the focus of the CHIP units on intellectual property matters, please provide the following information for each unit: the number of prosecutors assigned, indicating how much time/prosecutors are devoted to investigating intellectual property violations; the number of criminal intellectual property violations pursued, indicating the number of successful convictions and sentence imposed whether by plea or verdict; and, what additional resources are needed to ensure that more criminal intellectual property violations are pursued.**

A chart showing the number of prosecutors assigned to each CHIP Unit is attached as Exhibit A. This data does not indicate the number of hours devoted to investigating and prosecuting intellectual property crimes because, currently, that information cannot be collected accurately. A time code for intellectual property is being created that, once implemented, will allow the collection of this data.

A chart showing, by district, the number of criminal intellectual property cases filed, defendants charged, defendants convicted, and the sentencing range imposed, is attached as Exhibit B-1. For comparison purposes, the chart also shows the same information for all of the United States Attorneys' Offices in all districts, including those districts that do not have a CHIP unit.

Attached as Exhibit B-2 is a bar chart showing the number of cases filed and defendants charged in all districts between FY 2001 and FY 2005. The most significant jump occurred this past year: 350 defendants were charged with intellectual property offenses in FY 2005, nearly doubling the 177 defendants charged in FY 2004.

A similar jump took place in districts with CHIP units. As shown in Exhibit B-3, the number of defendants charged in CHIP districts climbed from 109 in FY 2004 to 180 in FY 2005, a 65% increase.

We note that, historically, Justice Department-compiled statistics have under-reported the number of Federal intellectual property prosecutions across the country. For example, the statistics for intellectual property prosecutions do not include intellectual property cases charged and reported solely as conspiracies (18 U.S.C. § 371) – a common lead charge in cases involving organized groups and multi-jurisdictional criminal activity

As far as additional resources, the Administration recently has presented its FY 2007 budget request. The Department expects to continue using its base budget in an effective manner to prosecute intellectual property and cyber crime cases vigorously.

3. **Are the CHIP units currently coordinating efforts to investigate intellectual property violations with any other government agencies (i.e. an FBI "cybersquad," the Bureau of Immigration and Customs Enforcement, and United States Secret Service)? If so, for each coordinating agency, please provide the following information: the division within the coordinating agency working with the CHIP unit and, if necessary, indicate which unit the agency is working with; the number of agents assigned to work with the units, indicating where they are assigned; whether the agents serve in a full or part-time capacity; and, indicating the number of successful convictions and sentence imposed whether by plea or verdict. Would increased coordination with other agencies increase the number of successful criminal prosecutions? If yes, please give your suggestions for how the CHIP Units might better coordinate their efforts with other agencies.**

CHIP unit prosecutors coordinate with other law enforcement agencies to investigate intellectual property crimes. On the Federal level, primary jurisdiction over intellectual property offenses rests with the Federal Bureau of Investigation ("FBI") and U.S. Immigration and Customs Enforcement ("ICE"), the latter because most of the counterfeit and infringing products distributed in this country are manufactured abroad. Intellectual property prosecutors work with other Federal agencies as well: the Food and Drug Administration's Office of Criminal Investigations in counterfeit drug cases; the Postal Inspection Service in cases where counterfeit products are distributed through the mail; the Office of Consumer Protection in cases where the counterfeit products pose a risk of harm to the consuming public; and IRS Criminal Investigation in cases involving related tax offenses or money laundering.

Although thousands of cases a year are investigated by State and local authorities and are prosecuted in State and local courts, some investigations may result in Federal prosecution if the offense meets Federal criteria. Certain CHIP units are located in districts with a multi-agency task force, which provides another source for coordination and intellectual property case generation.

Federal investigators are sometimes, but rarely, assigned to work intellectual property cases full-time, although such full-time assignments can occur if an agent is working on a complicated intellectual property case or group of cases that warrant the allocation of substantial resources.

In the Central District of California, for example, the FBI maintains two Cyber Squads with a total of 21 agents when fully staffed. In addition to intellectual property offenses, the squads are responsible for investigating Internet fraud, including Internet-based identity theft, computer intrusions and other cyber crimes. ICE has assigned eight agents to work intellectual property offenses full-time and they are assigned to the Trade Fraud Group in Los Angeles. Los Angeles also has an active Electronic Crimes Task Force ("ECTF"), consisting of over 35 investigators from the Secret Service, the FBI, the Los Angeles District Attorney's Office, the Los Angeles Police Department, the Los Angeles Sheriff's Department, the Internal Revenue Service, and the California Highway Patrol. The ECTF generates cases pursued in Federal court through Federal law enforcement agencies. Case statistics are set forth in the answer to Question 2.

CHIP prosecutors have not identified lack of coordination as an obstacle to effective IP law enforcement. To the contrary, although the involvement of multiple law enforcement agencies sometimes creates coordination concerns, the risk of duplicative efforts or other adverse consequences are far outweighed by the benefits obtained by the creative leveraging of multiple sources of law enforcement resources to IP prosecution.

4. **Of the thirty-five (35) attorneys in the Computer Crime and Intellectual Property Section (CCIPS) of the Criminal Division, please provide the following information: the relative amount of time devoted exclusively to intellectual property violations, indicating the number of attorneys committed full or part-time to intellectual property matters; the number of violations pursued and their outcome; and, whether other agencies are working with the CCIPS prosecutors.**

Currently, CCIPS has 13 attorneys devoted to intellectual property enforcement, including a Deputy Chief for Intellectual Property, whose primary responsibility is to oversee and manage CCIPS's intellectual property enforcement program. These attorneys work full-time on intellectual property criminal issues, including the prosecution of cases, intellectual property policy and legislative reform, and international training and technical assistance. CCIPS's prosecution strategy stresses the development of multi-district and international investigations, and prosecutions of organized criminal groups engaged in large-scale intellectual property theft.

CCIPS's intellectual property prosecutions have increased dramatically in recent years. For instance, at the beginning of FY 2002 (October 1, 2001), CCIPS had 23 pending criminal intellectual property cases and investigations for which it was responsible; at the beginning of FY 2006 (October 1, 2005), there were 203 pending intellectual property cases and investigations.[1] That constitutes nearly an 800% increase

[1]Because investigations are opened to determine whether a prosecutable violation has occurred, not all open investigations will result in a charge and conviction.

in prosecution workload in four years. During the same time frame, CCIPS prosecutions resulted in 103 convictions for intellectual property offenses. Since CCIPS prosecutes its cases in the various Federal judicial districts in which there are United States Attorneys' Offices, the cases filed and defendants charged by CCIPS attorneys are included in the case statistics appearing in Exhibit B-2.

Although CCIPS prosecutors have been lead counsel in a majority of these matters, they work closely with prosecutors throughout the CHIP network, both during the investigative and prosecution phases of the cases. CCIPS prosecutors also work closely with investigating agencies, including the FBI and ICE. For instance, in one of the first large-scale Internet software piracy investigations and prosecutions (*Operation Buccaneer*), CCIPS and ICE (then the Customs Service) led an 18-month, undercover investigation, culminating in more than 70 searches in six countries in December 2001. *Operation Buccaneer* has since led to 30 felony convictions in the United States, 10 overseas, and some of the longest sentences ever imposed for online copyright crimes: from 27 to 50 months imprisonment.

More recently, CCIPS worked closely with CHIP prosecutors and the FBI to develop two additional, large-scale, international investigations focusing on organized online software piracy: *Operations FastLink* and *Site Down*. In *Operation FastLink*, law enforcement in 12 cooperating countries executed in April 2004 over 120 search warrants against dozens of online piracy criminals. Similarly, *Operation Site Down* culminated in the execution in June 2005 of over 90 search warrants by law enforcement in 12 countries around the world. Together these operations resulted in the confiscation of hundreds of computers and illegal online distribution hubs, and the removal of more than 100 million dollars worth of illegally-copied copyrighted software, games, movies, and music from illicit distribution channels. Countries participating in these United States-led operations included: France, Canada, Sweden, Denmark, the Netherlands, the United Kingdom, Portugal, Hungary, Israel, Spain, Australia, Singapore, Belgium, Brazil, and Germany. *Operation FastLink* has yielded 26 felony convictions to date, while *Operation Site Down*, in which searches were executed only nine months ago, has led to the indictment of 44 defendants and 17 convictions obtained by the United States Attorney's Office for the Northern District of California – including the first convictions for illegal camcording and online distribution of pre-release works, under the recently-enacted Family Entertainment and Copyright Act.

6. **Your testimony indicates that many of the recommendations contained in the Department's October 2004 Intellectual Property Task Force Report have been implemented by Attorney General Gonzales. What specific recommendations from that report have yet to be implemented? What are the Department of Justice's top intellectual property priorities for the coming year?**

In March 2004, then-Attorney General John Ashcroft created the Department of Justice's Task Force on Intellectual Property to examine the Justice Department's efforts in addressing the increasing problem of intellectual property theft. The Task Force examined how the Department protects intellectual property through criminal, civil, and antitrust enforcement, legislation, international coordination, and prevention. In October 2004, the Task Force released its report recommending significant and comprehensive improvements in the Department's efforts to protect the Nation's intellectual resources. Some of the Department of Justice's accomplishments since the report was released are set forth below.

Criminal Enforcement Accomplishments

- Continued to dismantle and prosecute multi-district and international criminal organizations that commit intellectual property crimes, including:
    - leading the international law enforcement effort against members of over 22 major online software piracy groups in *Operation Site Down* in June 2005, which involved 12 countries, the simultaneous execution of over 90 searches worldwide, and the eradication of at least eight major online distribution sites; prosecutors have obtained indictments against 44 defendants and 17 convictions to date;
    - shutting down a sophisticated international peer-to-peer network known as "Elite Torrents," used by 133,794 members, in the first-ever criminal action against a BitTorrent file-sharing network;
    - obtaining felony conspiracy and copyright convictions against 26 software, music, and movie pirates as part of the ongoing *Operation FastLink*, the largest law enforcement action ever taken against online intellectual property offenders; and
    - obtaining convictions against two Los Angeles-area men for conspiracy and trafficking in over 700,000 counterfeit Viagra tablets manufactured in China and worth over $5.6 million.
- By the end of FY 2005, increased the number of defendants prosecuted for intellectual property offenses by 97% since the issuance of the intellectual property task force report in October 2004.
- Provided training to over 200 Federal cyber and intellectual prosecutors in Albuquerque, New Mexico, regarding computer crime and intellectual property offenses and issues.
- Provided a comprehensive training program in New York City on various aspects of criminal intellectual property prosecution for all CHIP coordinators, and provided regional training and guidance to prosecutors and Federal agents in Los Angeles.

- Distributed over 1,000 copies of the report of the Task Force on Intellectual Property, and electronically distributed thousands more. The report contains a checklist to help potential victims report intellectual property crime to law enforcement officials.

- Expanded CHIP units in San Jose and Los Angeles and created five CHIP units in the United States Attorneys' Offices in Nashville, Orlando, Pittsburgh, Sacramento, and Washington D.C., bringing the total number of specialized units to 18.

International Cooperation Accomplishments

- Participated in interagency trips to Asia and Europe through the Strategy Targeting Organized Piracy Initiative ("STOP!") to encourage international partnerships to protect intellectual property rights and international cooperation in criminal enforcement.

- Engaged in law enforcement-to-law enforcement discussions with the Chinese government on criminal enforcement of intellectual property rights through the United States-China Joint Liaison Group.

- Executed agreements to implement obligations of the United States/European Union Mutual Legal Assistance and Extradition Agreements that ensure cooperation regarding intellectual property crimes with Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom; and completed negotiations with the nine remaining EU countries (Cyprus, the Czech Republic, Estonia, Germany, Greece, Italy, Malta, Poland, Slovakia).

- In the last year alone, CCIPS prosecutors met with more than 2,000 prosecutors, investigators, judges, and intellectual property experts from 94 countries to provide training and technical assistance, to learn about the nature and scope of criminal intellectual property offenses in foreign countries, and to develop the type of law enforcement contacts necessary for better coordination of international protection of intellectual property rights.

- Deployed a Federal prosecutor based in Bangkok, Thailand, as the intellectual property law enforcement coordinator ("IPLEC") to coordinate intellectual property issues and training, and to assist in United States-based enforcement actions in the Asian region.

Civil Enforcement Accomplishments

- Continued intervening in Federal and State court actions to defend copyright owners' use of civil subpoenas to identify anonymous Internet users allegedly engaged in copyright infringement.

- Filed an *amicus curiae* brief and participated in oral arguments before the Supreme Court in *MGM v. Grokster*, arguing that the court of appeals had adopted an unduly narrow view of the scope of secondary liability for copyright infringement.

Antitrust Accomplishments

- Presented over 15 public speeches by senior Department of Justice antitrust attorneys regarding international convergence, enforcement policies, and the Department's views on the right of intellectual property owners to decide independently whether to license.

- Participated in discussions with the Fair Trade Commissions of Japan, Taiwan, and Korea regarding appropriate intellectual property and antitrust laws.

Legislative Accomplishments

- Worked with Congress to achieve the following legislative accomplishments:

    - legislation recognizing the passive sharing of copyrighted works, as enacted in the Family Entertainment and Copyright Act, S. 167, on April 27, 2005;

    - legislation recognizing the premium value of copyrighted works before they are released to the public, as enacted in the Family Entertainment and Copyright Act, S. 167, on April 27, 2005; and

    - legislation allowing law enforcement officials to seize material and equipment used to make counterfeit products and labels, as enacted in the Anti-Counterfeiting Amendments of 2004, H.R. 3632, on December 23, 2005.

- Presented to Congress the President's draft legislation entitled the "Intellectual Property Protection Act of 2005," which toughens penalties for intellectual property crimes, expands criminal intellectual property protections, and adds investigative tools for criminal and civil intellectual property rights enforcement.

Prevention Accomplishments

- Then-Attorney General John Ashcroft participated in a national education and prevention program at the Department of Justice entitled "Activate Your Mind: Protect Your Ideas," involving over 100 area high school students and presentations by songwriters, Department of Justice officials, victim representatives, and students regarding the impact of piracy. The event was filmed by Court TV and broadcast to thousands of high school students.

- Attorney General Alberto Gonzales participated in the second installment of Court TV's "Activate Your Mind: Protect Your Ideas" program at UCLA, with over 120 high school students, to discuss movie and television piracy and the importance of protecting creativity.

- Conducted an anti-piracy educational campaign with numerous presentations by a convicted intellectual property offender who developed informational materials and an anti-piracy informational video.

- The Justice Department is coordinating with other Federal agencies through the STOP initiative to raise awareness of Intellectual Property Rights.

Recommendations in Progress

In addition to the numerous recommendations that we implemented, as set forth above, the Department continues to diligently implement the remaining recommendations. For example, the Department currently is seeking funding for additional attorneys for the CCIPS, which is reflected in the President's Fiscal Year 2007 budget request. The Department continues to explore ways to deploy a regional IPLEC in Eastern Europe to coordinate intellectual property enforcement issues and build relations with foreign law enforcement.

The Department also is working to co-locate prosecutors and FBI personnel in key regions where intellectual property theft is a concern and continues to explore methods to increase the effectiveness of computer forensic methods. With respect to victim cooperation and awareness, the Department is planning two Victim Conferences in Los Angeles and New York within the next three months to promote the public-private partnership that is the key to a successful intellectual property protection program. Finally, the Department continues to develop its youth awareness program on intellectual property and has secured funding for a teacher training program and other educational events.

Exhibit B-1: Intellectual Property Offenses Prosecuted By Districts With CHIP Units in Fiscal Year 2005

District	Defendants Charged	Cases Charged	Defendants Sentenced	No prison	1-12 months	13-24 months	25-36 months	37-60 months	60+ months
CALIFORNIA CENTRAL	39	13	23	16	5	2	0	0	0
CALIFORNIA EASTERN	2	1	1	0	0	0	0	0	1
CALIFORNIA NORTHERN	9	7	4	2	2	0	0	0	0
CALIFORNIA SOUTHERN	2	1	3	0	1	1	0	0	1
DISTRICT OF COLUMBIA	5	5	4	4	0	0	0	0	0
FLORIDA MIDDLE	4	4	8	3	2	2	0	0	1
FLORIDA SOUTHERN	11	8	6	3	1	1	1	0	0
GEORGIA NORTHERN	6	4	8	3	2	1	1	1	0
ILLINOIS NORTHERN	8	7	0	0	0	0	0	0	0
MASSACHUSETTS	0	0	1	1	0	0	0	0	0
MISSOURI WESTERN	2	2	2	1	1	0	0	0	0
NEW YORK EASTERN	5	4	9	5	1	3	0	0	0
NEW YORK SOUTHERN	69	9	6	3	0	2	1	0	0
PENNSYLVANIA WESTERN	8	7	2	0	1	0	0	1	0
TENNESSEE MIDDLE	2	1	1	1	0	0	0	0	0
TEXAS NORTHERN	0	0	3	2	0	1	0	0	0
VIRGINIA EASTERN	8	7	8	2	2	1	1	2	0
WASHINGTON WESTERN	0	0	0	0	0	0	0	0	0
CHIP UNIT TOTALS	**180**	**80**	**89**	**46**	**18**	**14**	**4**	**4**	**3**
TOTAL FOR ALL USAO DISTRICTS	**350**	**169**	**149**	**79**	**33**	**18**	**7**	**7**	**5**

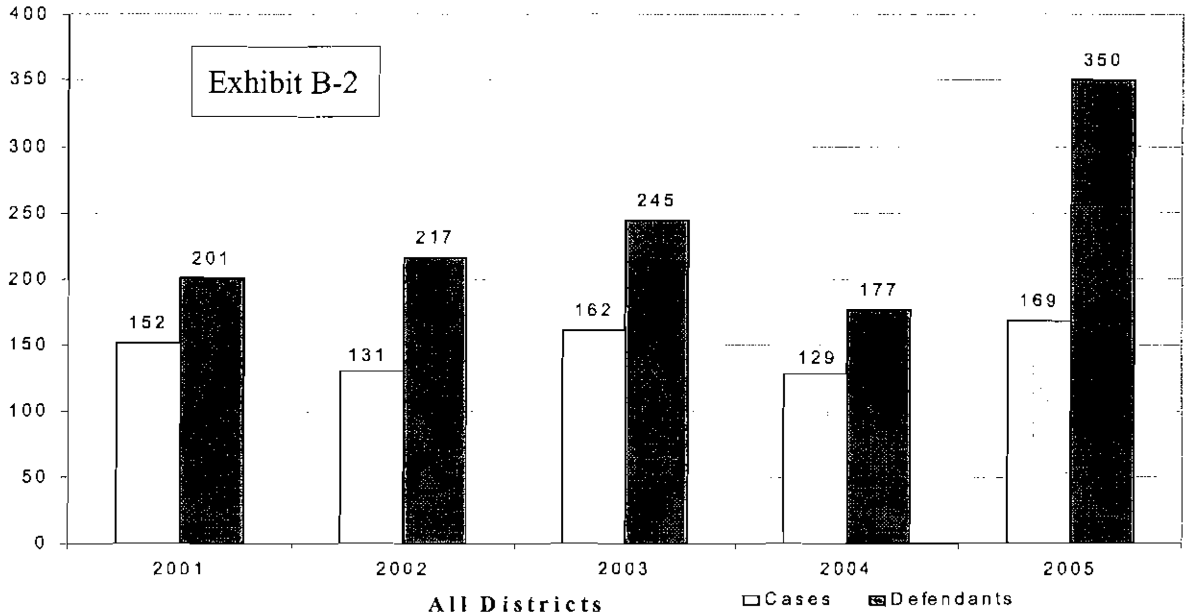
Case Statistics were compiled by the Executive Office for United States Attorneys, U.S. Department of Justice. This chart includes data on any and all criminal cases/defendants where the following charges were brought as any charge against a defendant: 17 U.S.C. 1201 to 1205 (circumvention of copyright protection systems); 18 U.S.C. 1831 (economic espionage); 18 U.S.C. 1832 (theft of trade secrets); 18 U.S.C. 2318 (counterfeit labeling); 18 U.S.C. 2319 (criminal copyright infringement); 18 U.S.C. 2319A (live musical performance infringement); 18 U.S.C. 2320 (trafficking in counterfeit goods); or 47 U.S.C. 553 and 605 (signal piracy). However, the statutes were run together to eliminate any double counting of cases/defendants where more than one of the statutes was charged against the same defendant. This chart may not include criminal cases/defendants involving these offenses where the charges filed included only a conspiracy to violate any of the identified offenses. In addition, the data does not include month of September 2005 information for the Eastern District of Louisiana due to Hurricane Katrina.

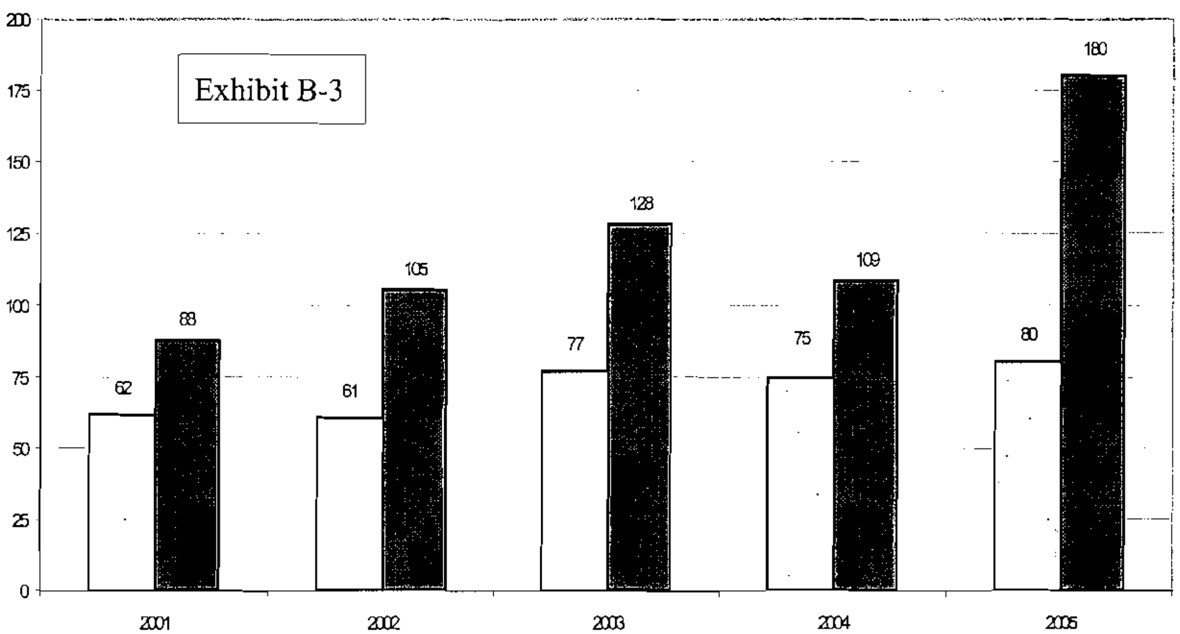
EXHIBIT A

CHIP RESOURCES - AUSA ALLOCATIONS

District	7/2001 Allocation	2002 Allocation	2004 Allocation	Matching	Total
CDCA	2		2	4	**8**
NDCA	4		1	2	**7**
SDCA	2			2	**4**
NDGA	3			1	**4**
MASS	2			2	**4**
EDNY	2			2	**4**
SDNY	3			2	**5**
NDTX	3			1	**4**
EDVA	4			2	**6**
WDWA	3			2	**5**
WDMO		2		2	**4**
NDIL		2		2	**4**
SDFL		2		2	**4**
EDCA			2		**2**
MDFL			2		**2**
WDPA			2		**2**
DDC			2		**2**
MDTN			2		**2**
	28	6	13	26	**73**

Department of Justice Intellectual Property Prosecutions in Fiscal Years 2001 - 2005





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