The Honorable Senator Chuck Grassley
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1) Ms. Espinel, we've heard about the various industry sector working groups that have gotten together to work on voluntary best practices to combat intellectual property theft.

A) Can you tell us what you think is working and what is not? Can these guidelines and best practices be improved? In your opinion, what more can be done to encourage voluntary best practices?

No single approach will solve the problem of intellectual property infringement, and we are committed to pursuing a variety of tactics simultaneously, including using tools of law enforcement, voluntary agreements, public awareness, foreign partnership, and supporting the development of authentic alternatives for consumers. We know that effective enforcement must involve private sector stakeholders, so voluntary agreements are a big priority for the Administration. We will continue to encourage and work with the private sector to do more to fight counterfeit and pirated goods.

My office has worked closely with Internet service providers (ISPs), advertisers, industry associations, credit card companies, payment processors, search engines, domain name registrars and registries to encourage voluntary action against illegal activity.

Here are some examples of recent voluntary actions taken by the private section:

- In May 2012, the Association of National Advertisers and the American Association of Advertising Agencies issued a leadership pledge to address online piracy and counterfeiting. In their joint statement, they recognized that Internet advertising may unintentionally provide financial support to or otherwise legitimize Internet sites whose primary and apparent purpose is to infringe on intellectual property.

- In June 2011, American Express, Discover, MasterCard, PayPal and Visa—major credit card companies and payment processors—developed voluntary best practices to withdraw payment services for sites selling counterfeit and pirated goods.

- In July 2011, a voluntary agreement was finalized among several ISPs – AT&T, Comcast, Cablevision, Verizon, and Time Warner Cable – and major and independent music labels and movie studios to reduce online piracy. Under the agreement, ISPs will notify subscribers, through a series of alerts, when their Internet service account appears to be misused for infringement on peer-to-peer networks. The Center for Copyright Information (CCI) was formed as a part of that collaborative effort. CCI hired an executive director and announced its Board of Directors in April 2012.

- Finally, in December 2010, as a result of the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and Internet intermediaries

announced that they would form a non-profit group to combat illegal online "pharmacies" – criminals masquerading as legitimate pharmacies. In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions. CSIP officially launched on July 23, 2012.

Some of the voluntary agreements are currently operational, such as the agreement between payment processors and CSIP. Other agreements have been concluded, but are not yet operational, for example, CCI. With all of these voluntary measures, we will be vigilant and revisit them to make sure that they are working and that they are effective. This highlights a key benefit of best practices initiatives – that the parties, if willing, can change the terms of the agreement to better adapt to changing threats and to improve efficiency. We remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement while respecting the principles of due process, free speech, fair use, privacy, and competition.

Looking forward, we believe that Congressional focus on voluntary agreements will be beneficial, as continued oversight by and support from Congress will encourage parties to commit to doing more to fight counterfeits and piracy. Furthermore, we want to encourage our trading partners to pursue voluntary agreements, too, and Congress's interest in this area will emphasize the value and importance of best practices as a tactic against infringers.

B) Are all industry sectors participating in this effort to craft voluntary best practices?

We are pleased that a number of different private sector entities that make the Internet function have participated in voluntary agreements. This includes a variety of actors such as payment processors, Internet service providers, advertisers, search engines, and domain name registrars and registries. We look forward to continued work with other parts of the Internet economy, including ad networks and search engines, as well as interested stakeholders, to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

2.) As you know, I've been particularly interested in combating counterfeit drugs.

A) Could you elaborate on what is being done to address counterfeit pharmaceuticals? How successful has law enforcement been in cracking down on these counterfeits?

Like you, the Administration recognizes the significant threat of dangerous counterfeit, unapproved, or illegally prescribed pharmaceuticals. For this reason, we have employed a wide range of responses to tackle this problem.

Federal law enforcement has met with great success in fighting counterfeit pharmaceuticals, as the number of counterfeit pharmaceuticals seizures by U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) has risen steadily in the past few years, increasing from 181 in FY 2009 to 433 in FY 2010 and 1,239 in FY 2011. That trend represents an almost 200 percent increase in counterfeit pharmaceutical seizures between FY

2010 and FY 2011 and a nearly 600 percent increase from FY 2009 to FY 2011. Specifically, as part of this increase, there was an almost 200 percent increase in counterfeit drugs seized from China between FY 2010 and FY 2011.

We continue to increase law enforcement efforts against counterfeit pharmaceuticals. In FY 2011, CBP instituted a pilot program on pharmaceuticals, the Center of Excellence and Expertise (CEE), which ran from November 2010 through September 2011. In 2011, the CEE focused on developing the infrastructure at CBP to better understand the pharmaceutical industry's practices, segment risk for different shipments of medication, and leverage this information into more efficient and effective enforcement. The CEE's work includes developing closer partnerships with legitimate pharmaceutical companies, comprehensive reviews of their pharmaceutical importation practices, and pharmaceutical enforcement blitzes. This effort has been successful, leading to a nearly 200 percent increase in seizures between FY 2010 and FY 2011. As part of this increase in counterfeit pharmaceutical seizures, CEE contributed to the 200 percent increase in counterfeit pharmaceuticals seized from China between FY 2010 and FY 2011. To build upon these successes, CBP permanently established the Pharmaceutical CEE in Newark, New Jersey in November 2011.

We have examined the vulnerability in international mail facilities posed by the thousands of small packages being shipped from illegal pharmacies worldwide. In 2011, CBP and the Food and Drug Administration (FDA) worked together to develop a pilot compliance measurement program in which they select packages entering the United States through mail facilities for random inspection and collected data on the results of these random inspections. This CBP/FDA pilot has generated data on importations of pharmaceuticals through international mail, and the data will provide CBP and FDA with a better understanding of the importation trends and methods for pharmaceuticals and the rate at which imported pharmaceuticals comply with the laws enforced by CBP and FDA. On August 6, 2012, CBP expanded the compliance measurement pilot to include packages sent through express carriers.

We have collaborated with foreign law enforcement partners to disrupt and dismantle illicit networks trading in these harmful counterfeits. The Administration has taken an active role in establishing and developing strong working relationships with foreign law enforcement to fight counterfeit pharmaceuticals, including in APEC where the U.S. implemented three initiatives (a High Level Dialogue, a Seminar on Illicit Trade and Corruption and a program on Detection Technology for Counterfeit Medicines) all in 2012. These efforts often lead to joint global operations and multilateral international investigations such as *Operation Pangea,* which focused on websites supplying illegal and dangerous medicines to consumers in the U.S. and abroad. According to INTERPOL, as a result of *Operation Pangea IV* in 2011, 2.4 million potentially harmful medicines worldwide worth $6.3 million were confiscated, 13,495 websites were shut down, and 55 individuals are currently under investigation or under arrest.

We have increased training and public awareness efforts, both domestically and internationally. The Department of Justice (DOJ), under the auspices of the IP Task Force Outreach and Education Working Group, developed a public awareness campaign to educate the public about the risks associated with piracy and counterfeiting, including counterfeit pharmaceuticals. DOJ's Office of Justice Programs, through the Bureau of Justice Assistance, engaged the National

Crime Prevention Council (NCPC) to research public perceptions of IP crime and develop the advertising campaign. In November 2011, DOJ, IPEC, the Department of Commerce, ICE, and the National Crime Prevention Council unveiled a comprehensive public awareness campaign that educates the public on different aspects of intellectual property theft, including the health and safety dangers involved with counterfeit pharmaceuticals. And in 2011, the State Department renewed its focus on combating counterfeit pharmaceuticals and devoted one-third third of its international intellectual property training funds to help other countries build capacity to combat counterfeit drugs through training and technical assistance conducted by DOJ, the Department of Homeland Security, and the U.S. Patent and Trademark Office. Training provided to foreign customs authorities, law enforcement, prosecutorial, and judicial personnel has been complemented by funding for related public diplomacy initiatives. These have been conducted in concert with host governments, NGO's, and the private sector to better educate foreign public opinion on the importance of intellectual property protections.

We have encouraged the private sector to voluntarily participate in the effort to address fake online pharmacies responsible for distributing illegal pharmaceuticals. As mentioned above, in December 2010, as a result of the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and Internet intermediaries announced that they would form a non-profit group to combat fake online "pharmacies" – criminals masquerading as legitimate pharmacies. These companies included American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft (Bing), Neustar, PayPal, Visa, and Yahoo!. In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions, and on July 23, 2012, it announced that it would begin functioning. CSIP is also actively adding new partners. For example, we understand that Facebook is giving serious consideration to joining CSIP.

B) Have foreign law enforcement been cooperative in these efforts to stop counterfeit drugs? What more can be done?

Yes, foreign law enforcement has been cooperative in the fight against counterfeit drugs, and the results have been encouraging. Please refer to my response to Question 2A above, which details the cooperative work we encourage with foreign law enforcement, including the success of *Operation Pangea*. *Operation Pangea*'s success and the cooperation with foreign law enforcement are perhaps best demonstrated by the growing level of international participation, which has increased dramatically from 24 countries in 2009 to 45 countries in 2010 and ultimately 81 countries in 2011.

As another example of successful cooperation with foreign law enforcement, CBP led a 10 day law enforcement operation in 2011 with the Asia Pacific Economic Cooperation (APEC) targeting counterfeit pharmaceuticals shipped via international mail and express couriers. The initiative led to enforcement action against over 1,200 shipments in the Asia Pacific region and seizures of $231,136 worth of counterfeit pharmaceuticals. We will continue to reach out to foreign law enforcement officials to expand international partnerships, provide investigative and prosecutorial training on counterfeit pharmaceutical cases, and help other countries build capacity to combat counterfeit drugs.

Additionally, we want to encourage our trading partners to pursue voluntary steps by the private sector to combat counterfeit drugs. This year, the G8 Leaders released a Joint Statement firmly declaring the pressing need for diligent protection and enforcement of intellectual property rights. The statement contains a strong expression of support for voluntary best practices and action against counterfeit pharmaceuticals.

Congressional focus on voluntary agreements will also be beneficial, as continued oversight by and support from Congress will demonstrate to our trading partners the value and importance of best practices as an effective tactic against infringers.

3.) Congress passed and the President signed legislation to protect against military counterfeits. This law authorized the U.S. Customs and Border Protection (CBP) to share information and samples of suspected counterfeits with intellectual property rights holders to help determine whether goods being imported into the U.S. are counterfeit. Treasury/CBP recently issued an interim rule, but some are concerned that the rule is inadequate. Specifically, some are concerned that holding back un-redacted pictures from the rights holder until after seven days makes for an ineffective process. They argue that a criminal importer will be able to lie in the authentication process, whereby the rights holder is the best resource available with the capability of making a rapid assessment on whether a product is counterfeit. How do you respond to these concerns?

The submission of false information is an issue CBP has tackled in a number of contexts, including attempts to submit fraudulent information during the importation process. The Agency is well-situated to address any such efforts through a variety of methods.

To minimize this risk, CBP has experienced Import Specialists and CBP Officers trained to weed out counterfeits, including those who specialize in sophisticated hi-tech products such as computer chips. CBP personnel work to analyze the risks associated with different shipments and to further investigate suspect shipments and suspicious supporting documentation. Any information received from the importer in response to a notice of detention is just one of many pieces of information that CBP officers will use to make their infringement determinations.

We believe the likelihood of a bad actor responding to CBP's request for additional information once an illegal shipment has been detained is fairly limited. As a practical matter, a bad actor would typically view the interdiction of smuggled goods as a cost of doing business, and are unlikely to risk continued engagement with law enforcement in connection with a shipment that they know CBP considers suspicious.

Additionally, CBP engages in a number of industry partnership programs, which further enhance the information and expertise CBP officers have available to make infringement determinations.

4.) How is the federal government ensuring that all interested parties and the public are able to provide input on intellectual property enforcement policies? How is your office specifically helping to make sure that processes are transparent and the public can participate?

My office strongly believes in the importance of public input and participation in shaping the Administration's intellectual property enforcement strategy and efforts. The IPEC utilizes a variety of formal and informal approaches to ensure for a transparent policy environment and to garner public participation in the development of intellectual property enforcement policy.

For example, one of the formal methods IPEC has used to solicit public input is through use of *Federal Register* Notices during the preparation of significant strategy items. In 2011, the Administration sought public input on a range of intellectual property enforcement issues through eight *Federal Register* Notices listed below:

- On February 3, 2010, IPEC issued a *Federal Register* Notice seeking public input as part of the Administration's development of the first Joint Strategic Plan on Intellectual Property Enforcement.
- On December 30, 2010, USTR issued a *Federal Register* Notice and held a public hearing on March 2, 2011, to identify countries that deny adequate and effective protection of intellectual property rights as part of USTR's annual Special 301 review.
- On August 9, 2011, IPEC issued a *Federal Register* Notice soliciting public comments on ways to prevent counterfeit products from entering the U.S. Government supply chain.
- On August 12, 2011, USTR issued a *Federal Register* Notice requesting public comments regarding China's compliance with World Trade Organization ("WTO") commitments, including China's commitments to protect and enforce intellectual property rights.
- On September 22, 2011, USTR issued a *Federal Register* Notice to identify online and physical foreign markets that deal in infringing goods as part of USTR's Out-of-Cycle Review of Notorious Markets.
- On October 7, 2011, USPTO issued a *Federal Register* Notice seeking input on how the USPTO, in coordination with other agencies, can best help small businesses obtain international patent protection.
- On October 17, 2011, USPTO issued a *Federal Register* Notice requesting public comments on the state of China's patent enforcement system, including any challenges companies have faced when attempting to enforce patents in China.
- On June 25, 2012, IPEC issued a *Federal Register* Notice seeking strategy recommendations and public input as part of the Administration's development of a new Joint Strategic Plan on Intellectual Property Enforcement.

Moreover, throughout the year, IPEC regularly meets with hundreds of stakeholders, large and small, across a broad range of sectors in developing and implementing the Administration's strategy for intellectual property enforcement. Stakeholders participating in IPEC meetings include: software developers, pharmaceutical manufacturers, the biotech industry, green technology innovators, Internet service providers, Internet search companies, Internet auction companies, online advertisers, ad brokers, credit card companies, payment processors, think tanks, consumer advocacy groups, labor unions, students, academics, chemical manufacturers, the fragrance industry, video game companies, biofuel companies, authors, song writers, toy manufacturers, defense contractors, movie studios, aerospace companies, automobile companies, industrial equipment manufacturers, book publishers, electronic component manufacturers, apparel companies, music labels, telecommunications companies, textile manufacturers,

jewelers, semi-conductor companies, farm equipment manufacturers, artists, independent inventors, and public interest groups.

IPEC also communicates with the public regularly through White House blog posts and through the office's bi-monthly report to the public, called the Intellectual Property Spotlight, which is also available on the IPEC website.

5.) As I indicated in my hearing statement, a recent report issued by the Commerce Department found that intellectual property intensive industries generate approximately 40 million jobs, 60% of exports, and $5 trillion in GDP for the United States. In light of the report's findings on the importance of intellectual property intensive industries to American jobs, economic development and competitiveness, can you describe how this Administration will secure meaningful intellectual property protections, including in our trade agreements?

Securing meaningful intellectual property protection in overseas markets is a top priority, and that commitment is demonstrated at the highest levels of the Administration. Trade policy is an effective way to accomplish these goals and 2011 was a banner year for the promotion of intellectual property rights through trade policy tools. On October 1, 2011, the Anti-Counterfeiting Trade Agreement (ACTA) was signed by the United States and seven other countries. ACTA represents a considerable improvement in international trade norms for effectively combating the global proliferation of commercial-scale counterfeiting and piracy in the 21st Century. Further, Free Trade Agreements (FTAs) with Colombia, Panama, and South Korea were overwhelmingly approved by Congress on October 12, 2011 and signed by President Obama on October 21, 2011. Each of these trade agreements contains a chapter dedicated to intellectual property rights, with state-of-the-art protections spanning all types of intellectual property, and requirements to join key multilateral intellectual property rights agreements. They also contain strong provisions to ensure that intellectual property rights are efficiently and effectively protected in those countries. Negotiations aimed at concluding the Trans-Pacific Partnership (TPP) among Australia, Brunei, Canada, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam are another important arena where IPR figures prominently. The prospect of Mexico and Japan possibly joining this cross-cutting 21st Century multilateral FTA underscores the TPP's potential to secure enhanced IPR protection and enforcement.

6.) What is the greatest challenge that the IPEC faces with respect to intellectual property crimes? What do you believe is the most important thing that needs to be done to stop intellectual property crime?

There are a number of challenges that must be overcome in order to enforce laws prohibiting 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 often located in foreign countries - are a particular problem that we need foreign law enforcement to do more. Moreover, in order to increase foreign law enforcement cooperation, it would be useful to have personnel stationed overseas to assist in building relationships with their counterparts. Therefore, the President's FY2013 budget request seeks funding for placement of six International Computer Hacking and Intellectual Property (ICHIP) coordinators to be placed in key locations overseas. These ICHIP positions could be very effective in strengthening law enforcement relationships and enhancing cooperation so that the Department of Justice and law enforcement can build stronger cases in the U.S. and encourage capacity building abroad.

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 international mail or express carrier to evade border enforcement.

There are a number of important measures which would enhance efforts to combat violations of intellectual property rights. We will continue to improve agency coordination and information sharing to increase the efficiency and effectiveness of law enforcement efforts at the Federal, state and local level. By minimizing duplication and waste, we will continue to spend our limited resources for intellectual property enforcement wisely.

Enhanced international law enforcement cooperation is another critical part to combating the global nature of piracy and counterfeiting. Federal law enforcement agencies will encourage cooperation with their foreign counterparts to: (1) enhance efforts to pursue domestic investigations of foreign intellectual property infringers; (2) encourage foreign law enforcement to pursue those targets themselves; and (3) increase the number of criminal enforcement actions against intellectual property infringers in foreign countries in general. Federal law enforcement agencies will also use, as appropriate, formal cooperative agreements with foreign governments as a tool to strengthen cross-border intellectual property enforcement efforts. The deployment of U.S. Government personnel abroad cultivates foreign law enforcement cooperation and expands the capabilities of foreign partners to enforce intellectual property rights, and serves to further signal the commitment of the U.S. Government to protecting U.S. intellectual property rights abroad.

Further, it is clear that government action alone will not solve the problem of intellectual property infringement and, as such, continued private sector involvement and collaboration will be emphasized. Over the past year, voluntary agreements for private sector best practices have proven a successful tool in complementing U.S. law enforcement and regulatory efforts. This approach is a priority for the Administration, and we will continue to work with the private sector to do more to stop intellectual property crime.

7.) In your opinion, what is the most effective thing Congress can do to help combat intellectual property crimes?

The most effective support Congress can provide in the fight against intellectual property crime is a continued focus on intellectual property rights, including its impact on the economy, trade and job creation. Apart from continuing to bring attention to intellectual property issues, Congress can be helpful in working to pass the Administration's legislative recommendations for intellectual property enforcement.

In March 2011, I 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 effective 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 the 112th Congress, members have acted on many of the recommendations including introducing bills to punish economic espionage and enhance criminal penalties for the distribution of counterfeit drugs. Through the enactment of the National Defense Authorization Act for FY 2012, two recommendations, one to improve disclosure authority for CBP, and the second to increase penalties for sales of counterfeits to the military, have become law.

Three additional legislative recommendations became law on July 9, 2012, when President Obama signed the Food and Drug Administration Innovation and Safety Act (FDAISA), which contained a number of provisions directed at combating counterfeit drugs. Specifically, FDAISA provides for enhanced penalties under Title 18 for trafficking in counterfeit drugs and directs the U.S. Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements related to offenses that involve counterfeit drugs. It allows the FDA to require that companies notify the Agency if their drug has been counterfeited or stolen. In addition, the Act allows the FDA to destroy, without the opportunity to export, counterfeit drugs distributed in small packages (valued at $2,500 or less).

I welcome the continued focus and attention of Congress on intellectual property enforcement and I look forward to opportunities to continue to work with you and the committee on the remaining legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

8.) Which country presents the biggest problem with respect to intellectual property theft and why? What do you see as the most difficult challenge with respect to enforcing American intellectual property rights abroad?

Each year, the Office of the United States Trade Representative (USTR) releases its annual "Special 301" Report on the adequacy and effectiveness of U.S. trading partners' protection and

enforcement of intellectual property rights (IPR). The Special 301 Report is an annual review of the global state of IPR protection and enforcement, and this year the report placed thirteen countries–Algeria, Argentina, Canada, Chile, China, India, Indonesia, Israel, Pakistan, Russia, Thailand, Ukraine, and Venezuela–on the Priority Watch List.

China -- given its status as the number one source of infringing goods seized at the U.S. border -- is a major focus of the Administration's attention, and our commitment to the strong enforcement of intellectual property rights in China is demonstrated at the highest levels of the Administration.

A foreign nation's insufficient intellectual property law enforcement, limited technical capabilities, and deficient political will all present challenges to U.S. right holders operating in overseas markets. Further, U.S. companies may be reluctant to export to countries where there is a lack of certainty that innovation, and the intellectual property rights in that innovation, can be protected. In addition, exporters may not be familiar with the legal environment in which they need to operate to protect their rights.

9.) Could you provide us with more details on how state and local law enforcement are participating in fighting intellectual property crimes? In your opinion, has the state training grant program been successful?

State and local law enforcement serve critical functions in the enforcement of intellectual property rights through their daily contacts with businesses and citizens located in their jurisdictions. The efficient coordination of Federal, state, and local law enforcement allows investigators to work in unison to jointly investigate and combat intellectual property crimes throughout the country.

Nationwide there are now 26 ICE Homeland Security Investigations-led Intellectual Property Theft Enforcement Teams (IPTETs) and 4 FBI-led Intellectual Property Task Forces. These teams and task forces are partnerships with state and local law enforcement built on the best practices identified by the IPR Center and DOJ. The teams and task forces have led to more efficient use of law enforcement resources and several major law enforcement operations.

Additionally, DOJ's Bureau of Justice Assistance continues to provide grant funding to state and local law enforcement agencies, as well as nonprofit organizations, to establish or maintain ongoing IP task forces and to support efforts to educate the public to prevent, deter, and identify intellectual property crimes. The BJA grant program has bolstered the efforts of state and local authorities to combat intellectual property crime at a local level. In 2011, there were a number of notable successful cases resulting from BJA grants, including the seizure of $1.1 million in counterfeit UL-labeled stereo and audiovisual equipment by North Carolina state law enforcement authorities. In that case, the items seized posed a shock and fire hazard to users and would have endangered consumers had these products reached their intended markets.

Taken together, the program grantees have seized approximately $200 million worth of infringing merchandise, currency, and other assets since October of 2009—over 18 times the amount invested in this program ($10.9 million) as of June 2012. In 2011 alone, program grantees seized nearly $64 million worth of infringing merchandise.

The Honorable Senator Tom Coburn M.D.
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1. The 2011 report outlines several developments with China, including the Chinese search engine (Baidu) music licensing agreement with One-Stop China, which is a joint venture between Universal Music Group, Warner Music Group and Sony BMG.

a. Can you explain how this agreement has had an effect on US-China relations and whether it has actually reduced infringing online music purchases through Baidu?

In February 2011, the Office of the United States Trade Representative (USTR) released the first-ever out-of-cycle Notorious Markets List. This list identified more than 30 online and physical foreign markets that deal in infringing goods, including several markets based in China. Baidu, a leading Chinese search engine was listed in the report. In July 2011, Baidu signed a music licensing agreement with One-Stop China, a joint venture between Universal Music Group, The Warner Music Group and Sony BMG.

As far as the effect on U.S.-China relations and the reduction of music piracy, I can report to you that Baidu was removed from the Notorious Markets List when USTR issued its second out-of-cycle review of the Notorious Markets List on December 20, 2011. The removal of China's most popular search engine from the Notorious Markets List has had a positive impact on U.S.-China relations and has sent an important signal to the marketplace about the need to have legitimate content on websites available in China.

b. Does the music industry also agree as to the effectiveness of this agreement?

The Baidu and One-Stop China agreement was recognized as a positive accomplishment. The music industry agrees that this was the right agreement to strike and that turning Baidu from an illegitimate source of content to a legitimate one was a good result. However, this is not the end of China's piracy problem, as evidenced by the mention of "Sogou MP3" and "Gougou," two Chinese online services, in the USTR's Notorious Markets List.

c. Was your office involved in negotiating this agreement or were the parties to the agreement the only negotiators?

My office was not involved in the negotiations of the music licensing agreement.

2. Last year, China also launched its Special Campaign against IP infringement. The annual report notes China has agreed to make aspects of the Special Campaign, including the State Council-level leadership structure, permanent by the end of 2011. Has this occurred? What other parts of the Special Campaign have been effectively implemented by China?

In March 2011, China's State Council extended through June 2011 the Special IPR Campaign begun in October 2010. The Special IPR Campaign targets a broad range of IPR violations including copyright piracy and trademark counterfeiting over the Internet, distribution of infringing optical discs and publications, counterfeit cell phones, counterfeit pharmaceuticals, counterfeit seeds, and counterfeit bulk commodities for export.

U.S. rights holders in the trademark and copyright sectors have reported that enforcement agencies in China were markedly more active in conducting raids, seizures and arrests during the Special Campaign. It also appears that during the Special Campaign the Chinese Government focused its efforts with respect to infringement that occurs online in a manner that was meant to ensure that online entities were more responsive to requests from rights holders to remove infringing materials.

Given the results of the Special Campaign, we have welcomed the creation of the National Intellectual Property Enforcement Office, which is led by Vice Premier Wang Qishan and staffed by the Ministry of Commerce and its division on Market Order and Supervision. The office was established in November 2011 under State Council Order 37 to provide a permanent mechanism under senior leadership for IPR enforcement and investigation. We look forward to engaging with the office and working to ensure that the good progress made on these issues during the Special Campaign continues unabated.

3. In May 2011, ICE signed a Memorandum of Understanding (MOU) with China's Administration Customs to enhance cooperation on law enforcement. CBP also signed an MOU with China's Ministry of Public Security to increase information sharing and enforcement.

a. Could you provide an update on the results of these MOUs and other meetings between US leadership and Chinese officials?

Although no one country stands alone as the cause of intellectual property crime, China continues to be the largest source of trademark counterfeiting and copyright piracy in the world, and these activities bear a direct or indirect relationship to the majority of economic espionage and federal trade secret prosecutions in the United States.

U.S. Immigration and Customs Enforcement (ICE) has not seen significant steps taken to increase enforcement actions or cooperation between the U.S. and China on intellectual property violations since Director Morton signed a Memorandum of Understanding (MOU) with the Ministry of Public Security. ICE would like to see more complete responses from Chinese authorities when ICE requests assistance on investigations. ICE also would like to have leads and requests for joint investigations in China followed up on and results shared with ICE. On May 10, 2011, CBP signed a memorandum of understanding "Regarding Cooperation in Law Enforcement Matters" with China's Ministry of Public Security (MPS). The MOU contains general provisions for sharing enforcement related information, including information about IPR enforcement. CBP is seeking to identify the appropriate information to

share and the proper method for sharing that information with MPS, and is working with ICE to coordinate information sharing efforts with MPS.

b. Have U.S. efforts truly had an effect on increasing Chinese IP enforcement and eliminating China's indigenous innovation policies?

President Obama, Vice President Biden, Secretaries Clinton and Geithner, Attorney General Holder, Ambassadors Kirk and Locke, and I have directly and repeatedly pressed China to significantly improve its intellectual property enforcement, as well as end the practices that discriminate against foreign firms in the Chinese marketplace under the banner of "indigenous innovation policy." As an Administration we are attentive to the dangers of losing sensitive commercial and military technology in the course of cooperation with China. While we remain vigilant in monitoring the efforts of our Chinese counterparts in protecting intellectual property and eliminating forced technology transfers, direct negotiation has yielded some significant commitments from China.

For example, in May 2011, during the third round of the U.S.-China Strategic and Economic Dialogue (S&ED), China agreed to eliminate all "indigenous innovation" government procurement catalogues and to revise its regulations in a way that delinks indigenous innovation products from the provision of government procurement preferences. China also pledged to improve on the high-level, long-term mechanism of intellectual property protection and enforcement, building on the Special Campaign, and to strengthen inspections of software on government computers.

In November 2011, during the 22nd session of the U.S.-China Joint Commission on Commerce and Trade (JCCT), China agreed to eliminate any "indigenous innovation" product accreditation catalogues or other measures linking innovation policies to government procurement preferences at the provincial, municipal, and regional level by December 1, 2011. The Chinese also committed to make permanent, for the first time, a State Council-level leadership structure, headed by a Vice Premier, to lead and coordinate intellectual property enforcement across all of China. Lastly, the Chinese pledged to ensure that PRC government agencies at all levels use only legitimate software and that all types of software used by government agencies are licensed.

In May 2012, at this year's first round of the S&ED, the United States and China committed to intensive, on-going discussions of the implementation of China's February 2012 commitment that technology transfer and technology cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access. Both countries will ensure the full participation and timely cooperation of all relevant agencies and authorities. China agreed to prioritize trade secrets in its IPR protection policies and to increase enforcement against trade secret misappropriation. China also recognized the importance of increasing the sales of legitimate IP-intensive products and services within its borders.

Engagement with China on intellectual property enforcement is a worthy enterprise. However, it remains to be seen what the true impact of China's commitments will be. The impact is

dependent on the follow through and execution of these commitments by the Chinese government.

4. As part of the report's section on international capacity building and training, you note PTO established a searchable online database where all federal agencies involved in IP enforcement training can post their activities online. The report states, "In 2011 alone, the database lists over 100 training programs conducted by 7 US government agencies in 36 countries." I agree it helpful to have this new database, but this website is only an effective resource if used consistently and correctly by federal agencies.

a. How consistent have federal agencies been in uploading accurate information to the database?

The following U.S. Government agencies reported training events in the IPR training database for 2011: United States Patent and Trademark Office; Other Department of Commerce (including International Trade Administration); U.S. Immigration and Customs Enforcement; Federal Bureau of Investigation; Copyright Office; and Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training. To avoid duplicate reporting, the leading agency of a program has the responsibility to report the program and list all of the participating agencies. The leading agency is the agency responsible for the activity, event, or program planning. The leading agency is the sponsor and manages the agenda and activities taking place with the meeting, event, or program. Many of these programs include other participating agencies, that is, agencies that participate or are involved in the planning of an activity, event, or program with a leading agency.

We understand that the agencies are frequently providing accurate information to the database. The number of reported training programs and variety of countries is evidence of the database's utility. We will continue to work with agencies on a regular basis to ensure that the database is an accurate reflection of the government's IPR training efforts.

b. In addition to the website and the IPR Center, does any other agency coordination occur in order to avoid conducting overlapping training or other education programs, particularly those offered in the same foreign countries?

There are several ways in which the agencies communicate and work cooperatively to minimize instances of overlapping training and to make efficient use of limited training resources. First, my office has led an interagency working group to improve the effectiveness of U.S. government personnel overseas. These working groups have used a collaborative approach to tackling enforcement issues, which has increased the amount and quality of coordination between the agencies. Last year marked the first time that 17 key overseas U.S. embassies had in place annual interagency work plans that set objectives and activities to address critical intellectual property issues in the host country identified by the United States. The 17 countries in which U.S. embassies developed interagency IPR work plans are: China, Brazil, India, Russia, Thailand, Canada, Chile, Egypt, Colombia, Mexico, Ukraine, Spain, Saudi Arabia, Israel, Peru, Turkey, and Nigeria. Each of these work plans include training objectives tied directly to specific policy

goals, which helps to ensure that training events are coordinated and that resources are used in a focused and efficient manner.

Second, the Department of State uses foreign assistance anti-crime funds managed by the Bureau of International Narcotics and Law Enforcement Affairs, in collaboration with the Bureau of Economic and Business Affairs (EB), to provide capacity-building, training, and technical assistance to foreign law enforcement and judicial officials to combating intellectual property rights crime. The State Department plans to enable U.S. Government law enforcement interagency training teams to prioritize assistance to less developed countries in Latin America, Africa and the Asia Pacific which are both on the Special 301 list and face health and human safety risks associated with counterfeit medicines, as well as those countries faced with growing digital piracy.

Third, my office established an interagency international training working group last year to improve the efficiency and coordination of international intellectual property enforcement capacity-building and training, and to ensure the U.S. Government makes the best possible use of its limited training resources by focusing on Administration priorities, such as training foreign law enforcement officials to tackle counterfeit drugs, conducting online enforcement, and developing new techniques to combat intellectual property crime. As a result of the IPEC interagency working group to improve efficiency and results of the training and capacity building, the U.S. Patent and Trademark Office launched the Global Intellectual Property Training Database to help facilitate the group's coordination and oversight of all training activities.

c. Appendix C of your 2012 report lists the major IP enforcement activities of every agency. I reviewed just the *international capacity building programs* conducted in 2011 and found 25 PTO programs, approximately 56 International Trade Administration (ITA) programs, Customs and Border Protection programs in 18 different countries, 109 Immigration and Customs Enforcement trainings, significant State Department government-to-government training programs, and the U.S. Copyright Office's hosting of international training, education and outreach programs. I understand not all of these programs focus on the exact same issue in the same countries, but do you believe there are any training programs that can be eliminated or consolidated to both improve the training programs and reduce government expenditure in this area? Why or why not?

Appendix C of my office's 2011 Annual Report on Intellectual Property Enforcement, issued in March 2012, contains reports and examples from several agencies describing their various training programs the organize, or in which they participate. There exists overlap in reporting because individual agencies reported separately for the same training event. In addition, some agencies also provided information on meetings or conferences that they participated in as an expert speaker, which may have been organized by the private sector, or another government.

We believe that the current enforcement training programs make sense because they focus on the specific challenges in foreign countries. We will continue to work with agencies to further coordinate our training efforts and to make sure that our limited resources are used wisely.

i. Do you plan to use the database to perform a duplication and consolidation analysis of domestic and international IP enforcement training programs in the future?

The IPR training database was a product of the international training working group, led by my office and formed to improve interagency coordination of international capacity building and training. The database is intended to allow agencies to use resources more efficiently, prevent duplication, improve training results, and increase transparency and public participation. We will work with Federal agencies to examine whether the database entries can be used to review government training efforts and to suggest improvements.

ii. What other oversight measures do you believe could be helpful to ensure agencies are not conducting overlapping programs abroad or domestically?

One of the overarching principles outlined in the 2010 IPEC Joint Strategic Plan is ensuring efficiency and coordination. To that end, we pledged to strengthen the coordination of law enforcement efforts at the Federal, state and local level; increase personnel stationed overseas; and enhance international training and capacity building efforts to increase efficiency and effectiveness and to minimize duplication and waste.

A key tool that highlights agency cooperation has been the establishment of four interagency working groups, among them a group that focuses on U.S. Government personnel stationed overseas and another that concentrates on international training efforts. 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.

We believe that this collaborative approach is working well. These interagency working groups, along with the work of the National Intellectual Property Rights Coordination Center, have been successful in ensuring that training efforts are well coordinated. We will continue to work with the agencies to make sure that the U.S. government's limited training resources are used efficiently.

5. I was encouraged to read about the Administration's focus on voluntary private industry agreements to address counterfeiting and piracy. However, I am somewhat concerned about the time it has taken to establish these working groups. Could you provide a brief update on the status of each private sector group, including the Center for Safe Internet Pharmacies (CSIP), payment processors, Internet Service Providers (ISPs) and ad networks and exchanges and the willingness of companies to participate?

The founding members of CSIP include American Express, Discover, eNom, GoDaddy, Google, MasterCard, Microsoft (Bing), Neustar, PayPal, Visa, and Yahoo! CSIP is also actively adding new partners. For example, we understand that Facebook is giving serious consideration to joining CSIP. CSIP has prepared an education campaign, complete with official media tools, and it has produced a public service announcement. CSIP launched its data-sharing tool in early June 2012, and formally launched on July 23, 2012.

The payment processors completed their agreement in June 2011. American Express, Discover, MasterCard, PayPal, and Visa all participated. Google Wallet is considering whether to join. Based on our discussions with processors and rightholders that are using the mechanisms, we understand that the program is working effectively. However, we know that criminal enterprises will always be changing tactics, so we look forward to continuing to work cooperatively with the payment processors.

In July 2011, five major ISPs—AT&T, Cablevision, Comcast, Time Warner Cable, and Verizon—and major and independent music labels and movie studios signed a memorandum of understanding to help educate the public and deter copyright infringement. The Center for Copyright Information (CCI) was formed as a part of that collaborative effort. CCI hired an executive director and announced its Board of Directors in April 2012.

In May 2012, the Association of National Advertisers and the American Association of Advertising Agencies issued a joint statement of best practices to address online piracy and counterfeiting. The two industry groups took this important step to avoid unintentionally providing financial support to, or otherwise legitimizing Internet sites whose primary and apparent purpose is to infringe intellectual property.

As indicated above, some of the voluntary agreements are currently operational, while others have been concluded, but are not yet operational. Consequently, we are still in the early stages for voluntary practices, and we remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement. We will be vigilant and revisit them to make sure that they are working and that they are effective.

The Administration is committed to encouraging voluntary agreements as one tool in the fight against infringement, and we believe that the U.S. Government's attention to this has encouraged companies to be willing to explore best practices. We further believe that continued oversight by and support from Congress will encourage parties to commit to doing more to fight counterfeits and piracy, and that much can be achieved in this manner while respecting the principles of due process, free speech, fair use privacy, and competition.

a. Regarding CSIP, I understand, in 2010, a core group agreed to form a non-profit, and more recently elected a Board of Directors and hired a part-time executive director. Is CSIP now fully operational? If not, what have been the primary causes of delay?

Yes, CSIP is now fully operational. CSIP hired its executive director in December 2011 and formally announced its launch in July 2012. CSIP has prepared an education campaign, complete

with official media tools, and it has produced a public service announcement. CSIP launched its data-sharing tool in early June 2012. CSIP is also actively adding new partners. For example, we understand that Facebook is giving serious consideration to joining CSIP.

b. Could you tell me what concrete actions CSIP has taken to address the problem of counterfeit pharmaceuticals? What type of partnership does CSIP have with law enforcement and has that been helpful in addressing this issue?

In addition to the several actions listed above in part (a) that it has completed, CSIP is briefing other government agencies on its efforts and progress. The organization continues to prepare executives of its member companies to raise awareness of CSIP's efforts and the problem of counterfeit pharmaceuticals at various meetings and conferences, and CSIP is actively adding new partners. We understand that Facebook, for example, is giving serious consideration to joining CSIP. CSIP is discussing with FDA and the IPR Center how it can best partner with law enforcement.

c. How does your staff coordinate with the private sector on these working groups and agreements? What type of metrics have you established to evaluate the success of these voluntary groups and to determine the level of involvement needed and resources expended by your office?

My office is committed to facilitating and encouraging discussion among the relevant private sector on voluntary best practices that are consistent with our commitment to due process, free speech, fair use, privacy, competition, and other important privacy concerns. We are able to identify issues or concerns based on our experience in brokering voluntary agreements. We recognize that the agreements ultimately should be driven by the private sector to best encourage participation and cooperation by companies and to ensure success in these efforts.

My office regularly meets with private sector participants to discuss their progress, review any available data, and consider changes in strategy to combat infringement. We have emphasized to the private sector the need for sharing empirical data and information on trends with us so we can assess whether this approach is as effective as we believe it will be. Because we are still in the early stages for voluntary practices – some are operational while others have reached agreement only – we remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement. We will be vigilant and revisit them to make sure that they are working and that they are effective.

d. During the oversight hearing, you noted several other areas where voluntary working groups might be helpful to bolster intellectual property protection, such as cyber lockers, domain name registrars, and ad brokers.

i. Does your office plan to reach out to businesses in these industries in order to establish such voluntary agreements, or are companies in

these industries already beginning discussions to establish best practices?

My office has worked with domain name registrars, for example in the effort to address fake online pharmacies responsible for distributing illegal pharmaceuticals, as they formed the non-profit organization Center for Safe Internet Pharmacies. My office is committed to continuing to work with ad brokers to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

We are acutely aware that cyberlockers pose a particular problem. I very much appreciate knowing of your interest in voluntary best practices for cyberlockers and will actively consider what we can effectively do here.

ii. Is there a particular reason ad brokers were not a part of the recent agreement between the Association of National Advertisers and the American Association of Advertising Agencies to address online piracy and counterfeiting?

In addition to the work my office has accomplished working cooperatively with Internet service providers, credit card companies, domain name registrars and registries, and online advertisers, we are committed to continuing to work with ad brokers and ad networks to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

The Interactive Advertising Bureau (IAB), the advertising business organization that represents a large number of the most prominent ad brokers and media outlets, openly supported the Association of National Advertisers (ANA) and the American Association of Advertising Agencies (4As) agreement through comments from the IAB President and CEO, quoted in the 4As/ANA press release.

Separately, Facebook, Google, Twitter, and AOL formed the Ads Integrity Alliance, an initiative intended to protect users from bad ads, such as ads for counterfeit goods, and maintain trust in the online advertising ecosystem. This is a positive step. However, it is important that we also continue to work on the problem of good ads from legitimate companies supporting sites that are dedicated to online infringement.

6. Your 2012 annual report notes, as part of increasing transparency in policymaking, the Administration solicits and receives comments through Federal Register notices. The report then outlines several examples of IP enforcement issues on which it sought comment, such as Special 301 review, ways to prevent counterfeit products from entering the US supply chain, and helping small businesses obtain international patent protection. Can you provide several examples of how public comment has been incorporated into Administration policy in some of these areas of IP enforcement?

My office strongly believes in the role public participation plays in the policy development process. Public comment has been incorporated into Administration policy in a number of ways, including the following:

- As part of the comments submitted during development of the Joint Strategic Plan on Intellectual Property Enforcement, numerous comments were submitted that recommended developing a solution to allow U.S. Customs and Border Protection to share information on suspect imports to assist the Agency with making a seizure determination. IPEC and CBP developed a legislative proposal for authorizing CBP to share this type of information as part of the Joint Strategic Plan and the Administration's 2011 legislative proposals. Through the National Defense Authorization Act for FY 2012, certain information sharing capabilities recommended in public comment were provided to CBP.

- Comments were also submitted advocating that CBP notify complainants who have obtained an Exclusion Order from the U.S. International Trade Commission when goods covered by the Exclusion Order are denied entry into the United States or seized by CBP. These recommendations were incorporated into the Joint Strategic Plan and DHS and IPEC are working to develop an approach and secure any necessary authorities.

- Building on recommendations concerning its Special 301 process, USTR began a new initiative in 2011 to increase the effectiveness and encourage the implementation of Special 301 action plans. The new initiative invites trading partners appearing on the Special 301 Priority Watch List or Watch List to negotiate a mutually agreed action plan designed to lead to that trading partner's removal from the list.

7. Are there any particular areas of IP enforcement where you believe there is a greater tendency for agencies to overlap or duplicate efforts? If so, how has your office addressed those concerns?

Part of IPEC's mission is to make the U.S. Government's efforts more efficient and effective in protecting the people and the companies that innovate and create. There has been significant progress in improving agency coordination and increasing the efficiency and effectiveness of law enforcement efforts at the federal, state and local level, of personnel stationed overseas, and of the U.S. Government's international training efforts.

In February 2011, President Obama created a significant tool to improve coordination by issuing Executive Order 13565 which established a Cabinet-level advisory committee, chaired by the IPEC, comprised of the heads of the departments responsible for intellectual property enforcement, namely the Departments of Agriculture, Commerce, Health and Human Services, Homeland Security, Justice, State, and Treasury, the Office of the United States Trade Representative, and the Office of Management and Budget.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market. .

To ensure that valuable investigative resources are not expended on duplicative efforts, the IPR Center brings together 20 partner agencies in a de-confliction process with participation from the Department of Justice's Computer Crime and Intellectual Property Section. The agencies work cooperatively on investigations using their agency-specific expertise to develop cases with one another. In FY 2011, the IPR Center vetted 178 leads directly referred to it and de-conflicted 2,877 investigative leads generated by field offices of partner agencies—an increase of 429% in comparison to FY 2010.

Key overseas U.S. embassies have in place annual interagency work plans that set country-specific objectives and activities to address the country's critical intellectual property issues. These work plans ensure that resources are used in a focused and efficient manner. The work plans were developed in coordination with the IPEC interagency working group established to improve the effectiveness and efficiency of overseas personnel to combat infringement in priority locations around the world.

As a result of the IPEC interagency working group to improve efficiency and results of the training and capacity building, the U.S. Patent and Trademark Office launched the Global Intellectual Property Training Database which serves as a searchable database (www.usipr.gov) where agencies now post information on their enforcement training. This publicly available database will allow resources to be used more efficiently by sharing training materials among agencies and avoiding duplicative programs.

8. Last month, the Department of Commerce released its report, *"Intellectual Property and the U.S. Economy: Industries in Focus,"* which provided an overview of the economic contributions by IP-intensive industries to the U.S. economy. I understand your office was very involved in its development and release, and this data will be very helpful to Congress as we continue to work on IP issues.

a. How often do you believe this type of report will be released or updated?

We are pleased that the report, the first of its kind, has been well-received. Never before has the U.S. Government produced a report of this scale that details the nature and impact of intellectual property across the entire American economy and I would like to take this opportunity to commend the work done by the Department of Commerce (led by ESA and PTO), in coordination with Council of Economic Advisors, USTR, the Department of Labor, and other relevant agencies, in producing this report.

We plan to make this an annual report. The Department of Commerce, working with the other relevant Federal agencies, will calculate the number of jobs and the contribution to the GDP on an annual basis and release those figures in an updated report each year.

b. How have the results of the report altered or informed, if at all, the focus of your office or the Administration's legislative recommendations to Congress in the area of intellectual property?

We have begun the process of working with the Federal agencies to develop the Administration's new Joint Strategic Plan on Intellectual Property Enforcement for submission to the President and Congress. The new Joint Strategic Plan will guide the Administration's efforts for the next three years. In developing the Strategy, we will consider all available data, including the information contained in the Department of Commerce's recent report *Intellectual Property and the U.S. Economy: Industries in Focus*.

With respect to legislative recommendations, we sent the Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations in March 2011, before the Department of Commerce report was released. We appreciate the recommendations we have received from Congress and look forward to continuing to work with Congress on these legislative recommendations.

The Honorable Senator Amy Klobuchar
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. I know there are many government agencies involved in protecting intellectual property - how do these agencies avoid duplicating efforts, and how does your office help in that effort?

Part of IPEC's mission is to make the U.S. Government's efforts more efficient and effective in protecting the people and the companies that innovate and create. There has been significant progress in improving agency coordination and increasing the efficiency and effectiveness of law enforcement efforts at the federal, state and local level, of personnel stationed overseas, and of the U.S. Government's international training efforts.

In February 2011, President Obama created a significant tool to improve coordination by issuing Executive Order 13565, which established a Cabinet-level advisory committee, chaired by the IPEC, comprised of the heads of the departments responsible for intellectual property enforcement, namely the Departments of Agriculture, Commerce, Health and Human Services, Homeland Security, Justice, State, and Treasury, the Office of the United States Trade Representative, and the Office of Management and Budget.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market.

To ensure that valuable investigative resources are not expended on duplicative efforts, the National Intellectual Property Rights Coordination Center (IPR Center) brings together 20 partner agencies in a de-confliction process with participation from the Department of Justice's Computer Crime and Intellectual Property Section. The agencies work cooperatively on investigations using their agency-specific expertise to develop cases with one another. In FY 2011, the IPR Center vetted 178 leads directly referred to it and de-conflicted 2,877 investigations opened by field offices of partner agencies—an increase of 429% in comparison to FY 2010.

Key overseas U.S. embassies have in place annually updated interagency work plans that set country-specific objectives and undertake activities to address individual countries' critical intellectual property issues. These work plans ensure that resources are used in a focused and efficient manner. The work plans were developed in coordination with the IPEC interagency working group established to improve the effectiveness and efficiency of overseas personnel to combat infringement in priority locations around the world.

As a result of the IPEC interagency working group to improve efficiency and results of the training and capacity building, the U.S. Patent and Trademark Office launched a searchable database (www.usipr.gov) where agencies now post information on their enforcement training.

This publicly available database will allow resources to be used more efficiently by sharing training materials among agencies and avoiding duplicative programs.

2. What can Congress do to help IPEC and the federal agencies responsible for investigating intellectual property theft?

The most effective support Congress can provide in the fight against intellectual property crime is a continued focus on intellectual property rights, including its impact on the economy, trade and job creation. Apart from continuing to bring attention to intellectual property issues, Congress can be helpful in working to pass the Administration's legislative recommendations for intellectual property enforcement.

In March 2011, I 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 effective 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 the 112th Congress, members have acted on many of the recommendations including introducing bills to punish economic espionage, enhance criminal penalties for the distribution of counterfeit drugs. Through the enactment of the National Defense Authorization Act for FY 2012, two recommendations, one to improve disclosure authority for CBP, and the second to increase penalties for sales of counterfeits to the military, have become law.

Three additional legislative recommendations became law on July 9, 2012, when President Obama signed the Food and Drug Administration Innovation and Safety Act (FDAISA), which contained a number of provisions directed at combating counterfeit drugs. Specifically, FDAISA provides for enhanced penalties under Title 18 for trafficking in counterfeit drugs and directs the U.S. Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements related to offenses that involve counterfeit drugs. It allows the FDA to require that companies notify the Agency if their drug has been counterfeited or stolen. In addition, the Act allows the FDA to destroy, without the opportunity to export, counterfeit drugs distributed in small packages (valued at $2,500 or less).

It has become clear that being able to address threats at the source is a highly effective method to reduce intellectual property crimes. For example, working with foreign law enforcement to shut down a factory producing counterfeit pharmaceuticals can provide greater protection to the consumer than attempting to seize every individual package shipped from that factory into the U.S. Similarly, working closely with foreign counterparts to disrupt international criminal networks that illegally distribute copyrighted material in the country of origin will often result in quicker results and greater deterrence than seeking to gather evidence and extradite defendants through traditional processes. In the President's 2013 budget, DOJ requested funds to place six

International Computer Hacking and Intellectual Property (ICHIP) Coordinators in strategic global locations to strengthen international intellectual property efforts. The ICHIP program would also support the DOJ's transnational organized crime strategy as related to intellectual property rights (IPR), online fraud, and data breaches that threaten U.S. economic security in targeted regions around the world.

I welcome the continued focus and attention of Congress on intellectual property enforcement and I look forward to opportunities to continue to work with you and the committee on the remaining legislative proposals that seek to strengthen enforcement of U.S. intellectual property rights.

3. Intellectual property theft is obviously an international issue. In what ways does your office coordinate with foreign governments? Are we getting good cooperation from foreign investigative and prosecutorial authorities in cases involving theft of American intellectual property?

In today's digital environment where virtually every significant IP crime and cybercrime investigated and prosecuted in the U.S. has an international component, it is impossible to address such crimes adequately without sustained and strong international engagement.

Operating from abroad, often beyond the reach of U.S. law enforcement, today's criminals committing intellectual property crimes are more technologically savvy than ever. They exploit new technology to develop increasingly sophisticated and diverse methods of committing every imaginable type of violation, including widespread online piracy and increased sales of counterfeit network hardware and other counterfeit goods. To successfully prosecute the perpetrators of these criminal enterprises, U.S. law enforcement relies on the cooperation of international counterparts. Some nations are considered to be better partners than others in the fight against intellectual property violations. I would, however, defer to those agencies to discuss the details of such cooperation in greater detail.

To address the international aspects of intellectual property crime, DOJ has continued to make significant efforts to strengthen international law enforcement relationships. The Administration believes that such efforts are, and will always continue to be, a high priority. These efforts are designed to increase cooperation and evidence sharing in criminal cases and to build capacity through training in foreign countries to prosecute these offenses. Building such foreign capacity would reduce the number of safe havens around the world and overcome jurisdictional and resource limitations in prosecuting crimes originating overseas.

It has become clear that being able to address threats at the source is a highly effective method to reduce intellectual property crimes. For example, working with foreign law enforcement to shut down a factory producing counterfeit pharmaceuticals can provide greater protection to the consumer than attempting to seize every individual package shipped from that factory into the U.S. Similarly, working closely with foreign counterparts to disrupt international criminal networks that illegally distribute copyrighted material in the country of origin will often result in quicker results and greater deterrence than seeking to gather evidence and extradite defendants through traditional processes. In the President's 2013 budget, DOJ requested funds to place six International Computer Hacking and Intellectual Property (ICHIP) Coordinators in strategic

global locations to strengthen international intellectual property efforts. The ICHIP program would also support the DOJ's transnational organized crime strategy as related to intellectual property rights (IPR), online fraud, and data breaches that threaten U.S. economic security in targeted regions around the world.

Some countries have been exceptional in their cooperation with U.S. law enforcement. For example, in the United Kingdom, the City of London Police, Metropolitan Police and the Serious Organized Crimes Agency continue to engage with ICE-HSI and the IPR Center. Other examples of cooperation include South Korean law enforcement efforts to partner with ICE-HSI Attachés on several significant cases; ICE-HIS has seen increased cooperation from Hong Kong Customs; Italian authorities are working with ICE-HSI on significant investigations; and French authorities have worked hard with ICE-HSI to address large organized criminal enterprises engaged in intellectual property theft. Many of these cases are active and still pending.

Based on public reports,a number of cases indicate cooperation between DOJ and multiple international Justice and law enforcement officials. The investigations of Megaupload, NinjaVideo and TVShack are examples. Multilateral organizations such as INTERPOL, the World Customs Organization and EUROPOL have stepped up their joint efforts with ICE-HSI, FBI, and FDA. EUROPOL recently joined the IPR Center as a partner. I would, however, defer to those agencies to discuss the details of such cooperation in greater detail.

The IPR Center has been able to expand its international membership and partnership with multilateral organizations that has resulted in increased participation from international partners. This is especially true with respect to cooperation from the European Union (EU). Since the addition of Europol earlier this year, EU law enforcement cooperation is increasing and is paying dividends. There is still much work to be done to foster cooperation internationally. In addition to international law enforcement coordination and cooperation, this can be achieved through continued diplomatic engagement by the Department of State, trade agreements and reporting mechanisms at USTR.

The Honorable Senator Al Franken
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. **Is IPEC conducting an interagency review to assess the number of "forced technology transfers" from U.S. companies to China? If no, will you commit to conduct such a review to assess this problem, what industries and companies are affected, the value of these transfers, and how much technology is being transferred to China that was developed using federal government resources?**

Many U.S. companies remain very concerned that the Chinese government has adopted policies or practices that systematically disadvantage foreign rights holders, by inappropriately conditioning market access and investment approvals, and other government benefits on the sale or licensing of IPR and other proprietary information to Chinese entities.

We have multiple mechanisms to address these concerns: U.S.-China Joint Commission on Commerce and Trade (JCCT) working groups, the U.S.-China Strategic and Economic Dialogue (S&ED) and the Innovation Dialogue. While we welcomed China's commitment, reiterated in the joint fact sheet issued during Vice President Xi Jinping's visit to Washington on February 14, 2012 "that technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access," we will continue to work with China to develop a mechanism designed to resolve, in an expeditious manner, any concerns regarding the implementation of this commitment.

We also are engaged in candid dialogue with our stakeholders about the importance of careful, long term strategic thinking about the protection and use of their core assets in every market where IPR protection and enforcement remains a challenge. Moreover, agencies across the Administration – including USTR and the Department of Commerce – have stepped up their efforts to address these issues. We can provide you with a briefing should you have any further questions on this topic.

2. **What is IPEC doing to coordinate with other agencies to limit the number of "forced technology transfers" where the intellectual property and/or technology was developed using federal grants, public-private partnerships, loans, loan guarantees, or other federal support?**

   Please see response above.

3. **Please provide your recommendations for safeguards that should be implemented at both the domestic and international levels that could protect against forced technology transfers.**

   Please see response above.

The Honorable Senator Mike Lee
United States Senate Committee on the Judiciary
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. The protection of intellectual property is vital to our nation's economy, and the enforcement of these rights often falls to the Federal agencies in your network. While I am committed to strong enforcement of IP rights, I am also keenly aware of the tension between the protection of IP interests and the protection of civil liberties. How have you attempted to strike a balance between these competing concerns?

The mission of this office is to develop effective intellectual property enforcement policies that ensure clarity and coordination so that precious resources are not wasted on duplicative efforts. As the country's first IPEC, I have followed the lead of President Obama in advancing Internet policies that promote free expression, privacy, open government and economic growth. My office and this Administration have never lost sight of preserving and protecting the rights guaranteed by the Constitution.

As an Administration we believe that we must pursue different tactics simultaneously to combat online copyright infringement as effectively as possible. These tactics include –

1) increased and coordinated domestic law enforcement efforts;
2) increased voluntary efforts by the private sector;
3) increased consumer education on the risks of infringement;
4) increased law enforcement by foreign countries;
5) create an environment that supports the development of legitimate alternatives that appeal to consumers.

It is our firm belief that intellectual property enforcement policies must not, need not and will not come at the cost of free speech, fair use, privacy, due process, competition, or the technical security of the Internet. I will continue to develop policies that will support intellectual property enforcement strategies that protect U.S. innovation with the overall goal of strengthening our economy and protecting American jobs.

2. Counterfeiting and piracy are not solely domestic or foreign problems, and any effective enforcement system must address both sources. How does the economic impact of infringement originating on American soil compare to piracy that comes from abroad? How does the enforcement of infringement differ between domestic and foreign sources?

I agree that incidents of counterfeiting and piracy often incorporate both foreign and domestic actors and it is therefore imperative that an effective enforcement strategy address both. There are at least two significant differences between our ability to address infringement of intellectual property here at home and overseas. First, the jurisdictional reach of US law enforcement is extremely limited overseas and therefore they are largely dependent on cooperation with foreign

governments to address intellectual property crime overseas. Second, our ability to encourage foreign companies and other stakeholders to take voluntary actions to reduce intellectual property infringement is also limited. Therefore, we again need the cooperation of foreign governments to work with us and to reach out to their constituencies.

The Department of Homeland Security (DHS) and Department of Justice (DOJ), with the support of this office and relevant Federal agencies are working successfully to increase cooperation with foreign law enforcement in some countries. Recent examples of cooperation on law enforcement operations include the Pangea operation against counterfeit drugs, conducted with the participation of 81 countries, the Asia Pacific Economic Cooperation (APEC) law enforcement operation overseen by INTERPOL– the first time APEC has been used to coordinate a law enforcement operation; the seizure of counterfeit goods valued at over $250,000,000 by Brazilian law enforcement working with U.S. Immigration and Customs Enforcement (ICE); and the Megaupload case. There are other examples detailed in our Annual Report on Intellectual Property Enforcement. Further, the President's budget includes funding to place additional DOJ law enforcement personnel in key countries because we believe that having additional DOJ personnel on the ground to directly and consistently build relationships will foster long term cooperation.

With respect to your second question, the Camp David G8 Leaders' Statement included a strong expression of support for voluntary best practices as part of the approach to address online infringement. My office, working with the Department of State and other relevant Federal agencies, has begun outreach to the G8 member countries – Canada, France, Germany, Italy, Japan, Russia, and the United Kingdom – to foster cooperation on these efforts and turn the statement into action.

We do not have precise data on the overall scale of domestic infringement versus foreign infringement. (I would note that the U.S. International Trade Commission has quantified the economic impact of infringement occurring in China specifically in a report issued in May 2011, available at http://www.usitc.gov/publications/332/pub4226.pdf.) The volume and economic effect of domestic infringement versus foreign infringement also varies depending on the type of infringement. For example, we believe that most manufacture of counterfeit product occurs overseas and is consumed globally (both in the United States and overseas). Trade secret theft occurs both on US soil and overseas, although we are particularly concerned with trade secrets that are being stolen and transferred overseas to foreign government or foreign private competitors. Online infringement occurs both domestically and overseas; there are a number of sites that have a nexus to the United States in various ways (such as having servers located here or having a domain name registered here), and there are many sites that do not. Both sites based here or overseas avail themselves of services provided by U.S. companies (domain name registrars, ad brokers, payment processors, etc.) to distribute goods. And sites that are set up in the United States to market or accept orders for physical counterfeit goods, are often distributing goods that are manufactured overseas.

As described above, while our ability to directly enforce against infringement overseas is relatively more limited, we cannot rely exclusively on foreign law enforcement to act when we can take action on our own initiative to stop dangerous products from entering the United States. For example, DOJ and DHS launched Operation "In Our Sites" to target websites distributing infringing goods. Most of those actions have been against sites distributing physical counterfeit

goods manufactured overseas. Further, U.S. Customs and Border Protection, working with Special Agents from ICE Homeland Security Investigations, have significantly increased seizures at the border – from FY 2009 to FY 2011 seizures of counterfeit consumer safety and critical technology goods has increased nearly 200% and seizures of counterfeit drugs has increased nearly 600%.

3. A portion of the funding for IP enforcement goes to public awareness programs. Can you explain what role public awareness plays in IP enforcement?

Public awareness plays an important role in combating intellectual property rights violations and in working to shape norms. In November 2011, I was joined by Attorney General Holder and other Administration officials at the White House to announce progress we've made cracking down on intellectual property theft crimes, and announce a new public awareness campaign to combat the purchase and sale of counterfeit and pirated products. The new intellectual property theft public campaign was developed through a partnership between DOJ's Bureau of Justice Assistance and the National Crime Prevention Council. This campaign will educate the public about the full range of intellectual property crimes we confront, from counterfeit consumer goods and counterfeit pharmaceuticals laced with potentially dangerous substances to illegal downloads, while highlighting the potential threat these crimes pose to economic prosperity and public safety. The campaign includes a television public service announcement, materials delivered through social media, and radio, web, and print ads.

At the event, Attorney General Holder and I were joined by Acting Deputy Secretary of Commerce Rebecca Blank, who discussed the ways in which counterfeit goods impact the everyday lives of American families. Director of U.S. Immigration and Customs Enforcement John Morton was also in attendance to discuss ongoing Administration law enforcement efforts concerning counterfeit goods and intellectual property crimes. And Ann Harkins, National Crime Prevention Council President and CEO, was on hand to unveil the products of the campaign that will help build awareness about the harm caused by counterfeit goods and engage the public in stopping intellectual property theft.

Additionally, I would note that training of other countries' customs authorities, law enforcement, prosecutorial, and judicial personnel in intellectual property enforcement matters has been complemented in some instances by funding provided by State Department for public diplomacy initiatives conducted by U.S. embassies in 26 countries. These embassy efforts, leveraged through partnerships with host governments, NGO's, and the private sector, have educated foreign public opinion on the importance of IPR generally and, where appropriate, have emphasized the threat posed by counterfeit medicines and Internet piracy. Notable examples include 1) public service announcements in Guatemala, Venezuela, and Cambodia publicizing the importance of consumers purchasing medicines through secure pharmaceutical supply chains; 2) workshops in Brazil, Chile, Estonia and the Ukraine seeking to build empathy among youth aged 12-18 for local artists whose livelihoods depend on protecting and enforcing IPR; and 3) distribution of a free digital phone application in China which encourages job seekers to understand protection of IPR as a core value of global companies.

4. Law enforcement had a huge victory last year in its successful shutdown of Megaupload, one of the most well-known piracy sites in the world. Although many details of the ongoing investigation may not be shared, please give as complete an answer as you are permitted. What role did IPEC play in this endeavor? Has there been any noticeable effect on the incidence of piracy from the shutdown of this site?

In accordance with Title 15, Section 8111(b) (2), IPEC may not control or direct any law enforcement agency in the exercise of its investigative authority. We are vigilant in maintaining strict compliance with this legislative directive. My office does not take or direct enforcement or investigative action against websites. At no time have I directed law enforcement agencies to conduct operations against websites suspected of distributing counterfeit or pirated goods. This hands-off approach includes not participating in or providing input on the recent investigation and prosecution of Megaupload and its owners and operators.

However, according to news reports, as a result of the recent indictment and pending extradition of the owners and operators of the file sharing site Megaupload, competitor sites operating with a business model similar to Megaupload have made changes. For example, several other file sharing sites and cyberlockers have voluntarily changed their model so that illegally obtained versions of copyrighted material are not posted on their sites. Furthermore, some of the sites also discontinued rewards programs for users who uploaded popular content.

5. During the hearing, you discussed your efforts to encourage private sector entities to adopt best practices.

a. What effect have these efforts had on piracy and counterfeiting?

The Administration continues to facilitate and encourage dialogue among the different private sector entities that make the Internet function, as these companies can act as checkpoints for infringing activity and reduce the distribution of infringing goods in a manner that is consistent with our commitment to due process, free speech, fair use, privacy, competition, and other important public policy concerns.

Specifically, my office has worked closely with Internet service providers (ISPs), advertisers, credit card companies, payment processors, search engines, and domain name registrars and registries to take action to reduce online infringement.

In May 2012, the Association of National Advertisers and the American Association of Advertising Agencies issued a leadership pledge to address online piracy and counterfeiting. In their joint statement, they recognized that Internet advertising may unintentionally provide financial support to or otherwise legitimize Internet sites whose primary and apparent purpose is to infringe intellectual property. To combat this complex problem, the associations encouraged their members to voluntarily avoid placement of their ads on such sites. This statement was also supported by the Interactive Advertising Bureau which represents ad networks.

In June 2011, American Express, Discover, MasterCard, PayPal, and Visa – major credit card companies and payment processors – developed voluntary best practices to withdraw payment services for sites selling counterfeit and pirated goods.

In July 2011, a voluntary agreement was finalized among several ISPs – AT&T, Comcast, Cablevision, Verizon, and Time Warner Cable – and major and independent music labels and movie studios to reduce online piracy. Under the agreement, ISPs will notify subscribers, through a series of alerts, when their Internet service account appears to be misused for infringement on peer-to-peer networks. The Center for Copyright Information (CCI) was formed as a part of that collaborative effort. CCI hired an executive director and announced its Board of Directors in April 2012.

Finally, in December 2010, spurred by the Administration's strategy to combat illegal online pharmacies, several prominent payment processors and Internet intermediaries announced that they would form a non-profit group to combat counterfeit online "pharmacies" – criminals masquerading as legitimate pharmacies. In 2011, the Center for Safe Internet Pharmacies (CSIP) successfully filed for non-profit status and established leadership positions. CSIP announced its launch on July 23 of this year.

Some of the voluntary agreements are currently operational, such as the agreement between payment processors and CSIP. Other agreements have been concluded, but are not yet operational, for example CCI. Consequently, we are still in the early stages for voluntary practices, and we remain optimistic that voluntary agreements will be an effective tool in our multi-faceted approach to fight infringement. We will be vigilant and revisit them to make sure that they are working and that they are effective.

b. What can you tell us about the next steps you'll be taking to encourage private sector solutions?

We look forward to continued work with other parts of the Internet economy, including ad networks and search engines, as well as interested stakeholders, to explore whether there are appropriate and effective steps that can be taken on a voluntary basis to reduce online infringement.

Further, we believe that this voluntary non-regulatory approach to combating online infringement can serve as a positive example to other countries as they contemplate their own Internet policies. The G8 Leaders Statement included a strong expression of support for voluntary practices, and my office has met with officials from countries interested in this area. We want to encourage our trading partners to pursue voluntary best practices and have begun outreach to them. Finally, we are also exploring the expansion of voluntary best practices into the physical supply chain to help combat theft of trade secrets.

The Honorable Senator John Cornyn
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator
Questions for the Record Following the Hearing on the
Oversight of the Office of the U.S. Intellectual Property Enforcement Coordinator

1. I understand that the Treasury Department and Customs and Border Patrol recently issued a interim rule to address whether and how to share samples and images of suspected counterfeit goods with rights holders as required by the NDAA, one that gives the importer a role in the authentication process. What is the legal basis for relying on the importer in this way?

The Interim Final Rule issued by U.S. Customs and Border Protection (CBP) and the Department of the Treasury (Treasury) does not establish new or additional rights for importers. Rather, the Interim Final Rule, pursuant to the National Defense Authorization Act for FY 2012, is focused on providing CBP with explicit authority to share information such as samples and unredacted photos of suspect goods with right holders for the purpose of assisting CBP Officers in making an infringement determination. Importers, right holders, and other members of the trade community provide CBP with information in numerous contexts throughout the importation process, including information that CBP uses as part of CBP's admissibility determination when goods are detained for suspected intellectual property violations.

The legal basis for CBP's recognition of the importer's role in supplying information when suspect merchandise is detained is set forth in 19 U.S.C. § 1499(c)(2). Further, as a general matter, CBP's authority to enforce intellectual property laws includes the following statutory provisions: 15 U.S.C. § 1124-25, 15 U.S.C. § 1127, 19 U.S.C. § 1526(e); 19 U.S.C. § 1595a; and 19 U.S.C. § 1624.

2. The interim rulemaking states: "This procedural safeguard is intended to achieve the policy goals of the NDAA in a manner consistent with maintaining the flow of information to the government, fostering competition, keeping prices low, and maintaining consumer choice." Please identify the statutory delegation of authority to CBP to police competition, pricing and consumer choice.

As the primary all-threats border agency, CBP is charged with ensuring our nation's economic competitiveness and homeland security. CBP works to achieve this objective by facilitating the flow of legitimate trade while securing the border against threats to our nation's economic and national security. CBP, through its legacy relationship with Treasury has long performed a trade enforcement and facilitation function. The primary statutory authority under which CBP performs these functions is Title 19, and more recently Title 6 following the establishment of the Department of Homeland Security.

In addition to the Agency's statutory authorities listed above, Executive Order 13563 provides that the regulatory system must promote economic growth, innovation, competitiveness, and job creation. We believe that maintaining the flow of information to the government, fostering

competition, keeping prices low, and maintaining consumer choice promotes the goals set out by the President's Executive Order.

3. How does your office plan to identify, categorize and address counterfeits that endanger public health and safety?

Counterfeits that endanger public health and safety are a top priority for IPEC. Significant work is underway to address counterfeits that pose a significant risk to public health and safety by my office and agencies such as CBP, U.S. Immigration and Customs Enforcement (ICE), U.S. Food and Drug Administration, the Department of Justice, and the U.S. Consumer Product Safety Commission. These efforts have focused agency resources around commodities where the danger to public health and safety resulting from counterfeit products is especially high.

For example, in 2011 CBP established two Centers of Excellence and Expertise focused on pharmaceuticals and electronics to allow ports of entry to more effectively process imports and segment high-risk shipments and importers.

In March 2011, I sent Vice President Biden and Congress a counterfeit pharmaceutical strategy that set out concrete steps the Administration plans to take to fight counterfeit drugs. A detailed description of ongoing efforts and policy recommendations directed at combating the global flow of counterfeit drugs in order to implement the counterfeit pharmaceutical strategy can be found on page 42 of IPEC's 2011 Annual Report on Intellectual Property Enforcement.

During summer 2011, National Intellectual Property Rights Coordination Center (IPR Center) member agencies in coordination with the World Customs Organization carried out Operation Short Circuit, a multilateral international operation across 43 countries directed at disrupting the importation and distribution of dangerous consumer goods. The operation resulted in the seizure of 388 shipments containing, among other things, 791,936 counterfeit batteries, 75,301 counterfeit power supplies and adaptors, 115,117 counterfeit chargers, and 4,760 boxes of counterfeit holiday lights.

The results of these efforts are clear. According to CBP/ICE annual seizure statistics, consumer safety and critical technology IPR seizures increased by 183 percent from FY 2009 to FY 2011. Top among seizures in this category were commodities such as pharmaceuticals, health/personal care, critical technology, and electrical articles for consumer purchase.

4. Should your office have additional programs dedicated to counterfeits that threaten public health and safety, beyond pharmaceuticals and military counterfeits? Why or why not?

IPEC and its Federal agency partners consider counterfeits that endanger public health and safety a top priority and considerable efforts are directed at addressing this issue. As described in response to Question 3 above, the IPR Center, along with its international partners and the Department of Justice, has undertaken major law enforcement operations targeting a wide range of goods that can endanger public health. In addition, counterfeit goods of all types pose a serious problem for the U.S. Government due to the adverse impact on its ability to accomplish

its stated mission, national security implications and the substantial waste of resources and tax-payer money. In addition to direct impact on U.S. Government, counterfeits impact the economy and jeopardize the safety of the public and businesses our government works to protect.

Recognizing the need for a coordinated and robust Federal response to the threat posed by counterfeits entering the U.S. Government supply chain, IPEC established a government-wide working group responsible for developing a framework for procurement that is flexible enough to accommodate the wide variety of missions across the U.S. Government and their different supply chains and associated systems of procurement. The focus of this work is to improve our procurement practices to prevent counterfeits from entering the U.S. Government supply chain, mitigate the risk of counterfeits that do infiltrate the U.S. Government supply chain, and develop comprehensive remedies available to the U.S. Government when counterfeit goods are purchased and delivered in the supply chain.

IPEC is in the process of working with the Federal agencies to develop a new intellectual property enforcement strategy for submission to the President and Congress. I appreciate Senator Cornyn's support in addressing the threats posed to public health and safety by counterfeits and would further welcome opportunities to collaborate on identifying additional areas in which such efforts may be directed.

5. Customs and Border Patrol recently highlighted the rapid growth in seizures of deliveries via international mail and courier facilities. Would you discuss this issue in your annual report?

IPEC recently called attention to this issue and a number of ongoing law enforcement efforts in its 2011 Annual Report. The challenge posed by counterfeiters who use small packages delivered through international mail and express carrier facilities is one of the reasons we need to have, in addition to increased law enforcement, increased cooperation with the private sectors. Packages shipped to the United States international mail and courier facilities contain counterfeit drugs and consumer goods that are purchased online. I believe that working cooperatively with credit card companies, advertisers, ad networks, domain name registrars and other companies that interact with and provide services to sites engaged in distribution of counterfeit goods can be immensely helpful in addressing the problem we face.

6. Can you provide an assessment of the scope of this problem today and address whether it should be a priority for IPEC?

The threat posed by counterfeit and pirated goods shipped through international mail and express carriers is an important priority and one which IPEC and the Federal agencies charged with enforcing intellectual property rights are working to combat. Law enforcement efforts directed at interdicting infringing goods shipped in the express and international mail environments have resulted in significant increases to seizure levels of infringing goods shipped through these modes of transit. For FY 2011, seizures in the international mail and express carrier environment reached 18,442.

One example of the law enforcement efforts leading to increased seizures is the CBP-led initiative with the Asia Pacific Economic Cooperation (APEC) targeting counterfeit pharmaceuticals shipped via international mail and express carriers. The initiative resulted in enforcement actions against over 1,200 shipments of counterfeit pharmaceuticals in the Asia Pacific region. In addition to the CBP initiative, Operation Apothecary was developed whereby 12 special operation enforcement surges were carried out by ICE Homeland Security Investigations, CBP, the FDA Office of Criminal Investigations (OCI), and the U.S. Postal Inspection Service (USPIS) at international mail facilities and express consignment facilities across the country. This operation targeted potential vulnerabilities in the importation process that might allow for the smuggling of commercial quantities of counterfeit, unapproved and/or adulterated drugs through the Internet, international mail facilities, express carrier hubs, and land borders. During FY 2011, Operation Apothecary surges also resulted in 22 criminal arrests, 10 indictments, 10 convictions, and 177 seizure incidents with a domestic value of more than $22 million.

7. If it is a priority, can you provide the Committee with a description of how you intend to address it?

In addition to ongoing law enforcement activities, my office is collaborating with the private sector in a number of ways to address this, and a variety of other intellectual property enforcement issues. For example, on June 25, 2012, IPEC issued a *Federal Register* Notice as part of its development of the new intellectual property enforcement strategy previously mentioned. As part of the *Federal Register* Notice, IPEC and CBP have solicited recommendations regarding steps that could be undertaken by CBP, its partner U.S. Government agencies, and the private sector to further improve detection of express carrier and international mail shipments containing infringing goods.

8. What are the measures you have in place to assess the effectiveness of the various programs run by your office?

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, in February 2011, 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 and effectiveness 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 eliminating 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 the IPEC interagency working group's effort, the U.S. Patent and Trademark Office launched the Global Intellectual Property Training Database which serves as 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.

- In March 2011, 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 drugs from illegal online pharmacies. The group is now working on implementation of that strategy.

The IPR Center is another excellent example of law enforcement and regulatory agencies 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 these 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 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 increased its foreign law enforcement relationships, with the addition of EUROPOL.

- 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.

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 2011 and March of this year.

9. Please describe how you have acted based on your assessments. For instance, how have the measures you have put in place resulted in the improvement of less effective programs and/or the discontinuation of ineffective ones?

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, and is implementing, many of those changes. The Administration also adopted a new and innovative approach to combat infringement online, which focuses on combining voluntary private sector cooperation, and increased education to the public about the risks of and damage done by infringement.

U.S. law enforcement authorities continue to maximize their limited resources in a coordinated and efficient manner to fight the tide of infringing and potentially dangerous products entering the U.S. and the global market.

To ensure that precious investigative resources are not expended on duplicative efforts, the IPR Center brings together 20 partner agencies in a de-confliction process. The agencies work cooperatively on investigations using their agency-specific expertise to develop cases with one another. In FY 2011, the IPR Center vetted 178 leads directly referred to it and de-conflicted

2,877 investigations opened by field offices of partner agencies—an increase of 429% from FY 2010.

Another example that demonstrates how my office had responded to improve less effective efforts pertains to the comprehensive review of existing intellectual property laws to determine needed legislative changes. In March 2011, 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. In December, the President signed into law the National Defense Authorization Act for FY 2012 (NDAA). Section 819 of the NDAA includes provisions that (1) increase penalties for sales of counterfeit goods sold to, or for use by, the military or national security applications, and (2) provide CBP with explicit authority to give right holders more information to assist CBP with its infringement determination. These specific portions of the NDAA achieve key objectives set out in the Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations.

Three additional legislative recommendations became law on July 9, 2012, when President Obama signed the Food and Drug Administration Innovation and Safety Act (FDAISA), which contained a number of provisions directed at combating counterfeit drugs. Specifically, FDAISA provides for enhanced penalties under Title 18 for trafficking in counterfeit drugs and directs the U.S. Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements related to offenses that involve counterfeit drugs. It allows the FDA to require that companies notify the Agency if their drug has been counterfeited or stolen. In addition, the Act allows the FDA to destroy, without the opportunity to export, counterfeit drugs distributed in small packages (valued at $2,500 or less).

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

10. Do you weigh the effectiveness of DOJ grants against other uses of the granted money? If so, how?

DOJ's Bureau of Justice Assistance (BJA) continues to provide grant funding to state and local law enforcement agencies, as well as nonprofit organizations, to establish or maintain ongoing IP task forces and to support efforts to educate the public to prevent, deter, and identify intellectual

property crimes. The BJA program has been very successful and has bolstered the efforts of state and local authorities to combat intellectual property crime on a local level. In 2011, there were a number of notable and successful cases resulting from BJA grants, including the seizure of $1.1 million dollars in counterfeit UL-labeled stereo and audiovisual equipment by North Carolina state law enforcement authorities. In that case, the items seized posed a shock and fire hazard to users and would have endangered consumers had these products reached their intended markets.

Taken together, as of June 2012, the BJA program grantees have seized approximately $200 million worth of infringing merchandise, currency, and other assets since October of 2009—over 18 times the amount invested in the program ($10.9 million). In 2011 alone, program grantees seized nearly $64 million worth of infringing merchandise..

The BJA does utilize benchmarks to assess grantees' effectiveness. I would refer you to the staff of the BJA as to the exact criteria utilized to weigh the effectiveness of DOJ grants.

11. How have you assessed which grant recipients are the most effective?

Please see response above.