

Statement of

The Honorable Evan Bayh

United States Senator
Indiana
November 7, 2007

Testimony of Senator Evan Bayh
Senate Judiciary Committee
"Examining U.S. Government Enforcement of Intellectual Property Rights"
November 7, 2007
(as prepared for delivery)

Thank you, Mr. Chairman. I want to express my appreciation for this opportunity to speak with you on a matter of great urgency for American workers and businesses, including many in my home state of Indiana.

Since the founding of our republic, innovation has been a driving force behind our national prosperity. The responsibility of government to foster American ingenuity is so fundamental that the Constitution's framers listed intellectual property protection as the eighth enumerated power of Congress in Article I, Section 8. It is listed even before governing imperatives like forming a court system, declaring war, or raising an army and navy.

Consistent with our historic responsibility, members of this body have over time crafted a system of intellectual property rights protection that has become a successful catalyst for economic growth and job creation. A recent study traced 30 to 40 percent of all U.S. productivity gains in the 20th century to economic innovation in its various forms. Further studies have found that IP-intensive industries pay wages almost 50 percent higher than firms that are not IP-focused.

However, today many of our innovators are being undermined by countries that refuse to play by the rules of the global marketplace. Since intellectual property protection is a core focus of this committee, I know you are aware of the damage being inflicted on America as a result of rampant product piracy and counterfeiting of American products.

Estimates are that American businesses lose \$250 billion annually because of intellectual property theft. These resources could be going to profits, wages, investment, and tax revenues so government can meet the long-term costs of Social Security, Medicare, and other critical priorities.

Additionally, American companies have lost 750,000 jobs because of intellectual property theft, making it a major impediment to employment growth.

Consumer safety concerns are also very real. Counterfeit pharmaceuticals and auto and aviation parts have caused serious injuries and deaths. An estimated 2% of the 26 million airline parts installed each year are counterfeit. Fake drugs account for 10% of all pharmaceuticals. Fake auto parts are being manufactured around the world with faulty materials, including brake linings made of sawdust, cardboard, and compressed grass. The U.S. auto industry estimates that it could hire another 200,000 workers if counterfeit auto parts were eliminated.

Finally, there is a serious national security dimension to this problem. I serve on the Intelligence Committee and the Armed Services Committee, where we frequently hear about the role that counterfeiting activities play in the funding of terrorist groups. The United States seized an Al Qaeda training manual in Afghanistan that recommended the sale of counterfeit goods as a source of terrorist financing. A 2003 investigation revealed that the 1993 World Trade Center bombing was partially financed through the sale of counterfeit goods. We also know that North Korea engages

in illicit sales of counterfeit goods. So we have a compelling national security interest in redoubling efforts to cut off funding sources for terrorist organizations.

Earlier this year I was joined by Senator Voinovich of Ohio in introducing S. 522, the Intellectual Property Rights Enforcement Act, to improve the government response to this problem. The Administration has taken some good first steps with its STOP Initiative, but we are still lacking the kind of high-level coordination and accountability needed to deal effectively with this problem.

The Bayh-Voinovich legislation was crafted after extensive consultations with private industry groups to identify the flaws with our domestic and international IP enforcement regime. What emerged from these consultations was a consensus that interagency coordination is lacking in a number of areas, and international cooperation on enforcement is weak.

Under our current fragmented approach, we see a "stove-piping" effect, in which communication occurs vertically within agencies but not horizontally throughout the government. We must aggressively combat this stove-piping, because we know that inter-agency coordination is critical to the success of any large-scale, federal effort.

There are other significant problems with the current federal approach:

- There is no plan for how agencies should work together on this problem.
- Current reporting requirements to Congress merely show what agencies are doing individually, not collectively as part of a united force.
- Our government has no clearly stated objectives on IP enforcement, and no means for measuring progress.
- There is no indication of which organizations will provide the overall framework for oversight and accountability.
- Lastly, there is no process for how conflicts should be resolved, and no cost estimation for resources needed to carry out a national strategy for IP enforcement.

Last November the GAO released a study that echoes this critique of the shortcomings of our current approach. With the Chairman's permission, I would like to enter this GAO report into the record with my statement.

I hope members of the Committee will review this report and promptly move our legislation to the floor, because there are many systemic problems in our government's approach to IP rights enforcement that require immediate corrective action to be taken.

Our legislation articulates a permanent strategy that addresses some of these flaws. It requires U.S. government agencies to unify as part of an Intellectual Property Enforcement Network. This network would detail the goals, objectives and priorities of the U.S. government and how each agency's work fits within an overall plan.

It would vest responsibility for IP enforcement with a Senate-confirmed government official: the Deputy Director for Management of the OMB. The Deputy Director would be responsible for submitting to Congress a Strategic Plan that includes objectives on IP enforcement, means to measure results, and how agencies will work together.

Every Senator would have the right to ask questions and cast an up-or-down vote on the leader of this critical issue. Each Senator could also make demands on priorities, including the contents of the Strategic Plan. Currently, Congress plays no meaningful role in IP enforcement other than appropriating funds and asking for briefings from administration officials. American workers, businesses and taxpayers have the right to expect that we will take more of a leadership role in the face of a serious problem affecting our national economy and so many of our constituents.

The OMB is uniquely situated to address the flaws in our current approach. Curbing global IP theft involves criminal prosecutions, border enforcement, trade policy, and international relations. Setting priorities and budgets for such a broad, multi-agency effort is outside the scope of the Justice Department, Homeland Security, or the U.S. Trade Representative alone. Furthermore, asking individual agencies with such broad coordination responsibilities would only subject the process to the rivalries and turf battles endemic in the federal bureaucracy.

Mr. Chairman, we have an abundance of IP experts in each federal agency. What we lack is a management presence to ensure that separate agencies are part of a single mission, thereby increasing overall efficiency and effectiveness. Without such oversight and accountability, the problems identified by the GAO will continue.

The OMB Deputy Director for Management position is charged with overseeing government-wide coordination efforts on a broad array of issues. This official routinely develops inter-agency coordination plans, establishes objectives and performance measurements, provides oversight and ensures accountability.

The Bayh-Voinovich bill also would require the United States to begin setting high standards of enforcement with foreign governments, with the goal of establishing an international task force of concerned countries to track and identify IP criminals. The task force would be modeled on a similar international team that fights money laundering and other black-market crimes.

The task force will grant membership solely to countries with adequate IP protection laws and a track record of enforcing those laws. Today, international cooperation in many organizations is hampered because the worst global actors are members. Our legislation envisions the United States sharing information on criminal activity, and even engaging in joint enforcement operations. Such a close-knit arrangement can only flourish among trusted allies.

Recently, the administration unveiled a draft "Anti-Counterfeiting Trade Agreement" that includes many of the standards of international cooperation that we have been advocating. I have reviewed the text of this proposal, and believe it includes many good provisions. But my overriding concern is that accession to this agreement would be granted for reasons unrelated to a country's commitment to IP protection.

A broad coalition of interest groups dissatisfied with our government's current approach supports our legislation. Groups as diverse as the U.S. Chamber of Commerce, the AFL-CIO, the National Association of Manufacturers, and the United Auto Workers have all endorsed our strategy. Business and labor are united behind our bill.

Last month, the Coalition Against Counterfeiting and Piracy--a group of more than 500 companies concerned with IP theft--identified our legislation as a top priority for their members. Additional endorsements have come from key labor organizations that recognize the threats posed to American workers.

Mr. Chairman, time is of the essence on this issue. The STOP program expires when the President leaves office. The Bayh-Voinovich legislation would set in stone a comprehensive blueprint the new President will have to follow immediately after inauguration.

In closing, Mr. Chairman, I would simply say this: The heart of America's competitive advantage lies in the economy of tomorrow. We invest in research and development to create new goods, new services, and new cures.

Until we take more aggressive action to curtail IP theft, we will continue to be robbed of profits, jobs, and legal protection of our brightest ideas.

America will not be able to lead the global economy if we buy from our trading partners when they have a comparative advantage, while they steal from us when we have a comparative advantage.

A stronger and more effective approach is needed to prevent the United States from losing its most valuable asset in the global marketplace: our innovators and entrepreneurs.

I urge this committee to give Intellectual Property Rights Enforcement Act swift consideration so it can move to the floor without delay. Thank you.