

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
February 16, 2011

Statement Of Senator Patrick Leahy (D-Vt.)  
Chairman, Senate Judiciary Committee,  
Hearing On "Targeting Websites Dedicated To  
Stealing American Intellectual Property"  
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I thank the witnesses who are here today to testify about how we can make some progress in the fight against online copyright infringement and the sale of counterfeit goods. Last Congress, I introduced legislation, cosponsored by 12 other Senators on this Committee, to combat "rogue websites" which do nothing but traffic in infringing material. I thank those Senators, including Senator Hatch who was the lead cosponsor and a long time leader on intellectual property issues, and our new Ranking Member, Senator Grassley.

That legislation was approved unanimously by the Senate Judiciary Committee, 19-0. I understand, however, that there are still some concerns on both sides of this issue. Some intellectual property owners argue that the legislation did not go far enough; others are concerned it may go too far. I expect that is why Senator Coburn requested we hold this hearing - to give all sides an opportunity to address the issue.

While we work to address concerns, let us also be clear that the problem of online infringement is real; it is substantial; and it is a drain on our economy, which costs American jobs. Copyright piracy and the sale of counterfeit goods are reported to cost the American economy billions of dollars annually and hundreds of thousands of lost jobs. A January study found that nearly 24 percent of all Internet traffic worldwide is infringing. That is a staggering number, and the problem is growing. That is why inaction is not an option, and we must pass online infringement legislation in this Congress before rogue websites harm more businesses, and result in more lost jobs.

What these rogue websites do is theft, pure and simple. They are no more than digital stores selling stolen, and in the case of counterfeits, often dangerous products. If they existed in the physical world, everyone would agree that they should be shuttered and their proprietors arrested. We cannot excuse the behavior because it happens on the Internet and the owners operate overseas. The Internet needs to be free and open - not lawless.

Every one of the witnesses here today has an interest in an Internet marketplace that remains vibrant and continues to expand. I suspect no one here condones rogue websites. After all, we all

have an interest in keeping Internet activity lawful. If we lose confidence that the products we are purchasing online are the real thing, rather than counterfeit, it hurts the entire Internet ecosystem.

I know some market participants have become more aggressive on their own initiative since we began consideration of a legislative approach to this problem last June. I want to commend them; after all, legislative action alone cannot possibly achieve the effects of self-policing in the private sector. MasterCard, for instance, has been working closely and productively with the intellectual property (IP) community to make sure they are not processing payments from sites that are trafficking in illegal goods. I know Visa has begun discussions with the IP community as well, and I appreciate that.

In some cases, voluntary conduct is not enough, and court orders are necessary to ensure appropriate action. AT&T first suggested in written comments an approach that allows law enforcement to seek a court order that could be used by AT&T and other Internet service providers (ISPs) to prevent rogue websites based overseas from reaching the U.S. market with stolen goods. I applaud their leadership. That model not only became the basis of our legislation last year, but is also consistent with the work law enforcement has done recently in seizing domain names from rogue websites pursuant to court orders. The seizure approach has its limits, which is why legislation is needed.

I am confident that we will pass legislation to target rogue websites this year. I want to hear from all sides as we move forward, but I refuse to accept that addressing the problem is too difficult because people who want to steal will always find a way. That is like saying that we should not prosecute drug crimes or child pornography because bad people will find a way to do bad things anyway. I am a former prosecutor, and that line of argument is unacceptable.

I look forward to working closely with Chairman Smith and other Members of the House who have been leaders on this issue and share a concern about the magnitude of the problem and its effect on our economy and job creation. And I look forward to continuing to work with Senator Grassley and the members of this Committee. This is one of those issues - like patent reform - in which we can work on a truly bipartisan and bicameral basis. After all, if the Chamber of Commerce and organized labor can come together in support of legislation to address this problem, then so can Democrats and Republicans in both the House and Senate.

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