

Written Questions of Senator Grassley for Judiciary Committee Hearing on Oversight of the Office of the Intellectual Property Enforcement Coordinator

Questions for Victoria Espinel

1. What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the United States?

There are a number of challenges with enforcement of intellectual property infringement. Advancement in technology has created a more complex environment. Infringement has become more sophisticated, further complicating the job of enforcement officials. Further, a large percentage of infringement originates beyond the jurisdictional reach of U.S. law and the distribution chain for infringing goods is becoming increasingly global, thereby making enforcement more difficult here in the United States as well as overseas.

However, the Strategic Plan is our strategy to increase the effectiveness of enforcement. The development of the Strategic Plan occurred with robust interagency collaboration, input, and review. My office, working with the relevant agencies will continue to identify ways to improve coordination, to place a greater focus on enforcement, and to ensure strong laws.

2. What do you see as the greatest impediment to effective enforcement of intellectual property laws abroad?

There are a number of challenges with respect to intellectual property enforcement abroad, including infringement originating beyond the jurisdictional reach of U.S. law, the distribution chain for infringing goods becoming increasingly global, infringement occurring over foreign-based websites, and countries where lack of intellectual property enforcement creates a competitive disadvantage for U.S. businesses abroad.

In order to overcome these impediments, the Strategic Plan lays out several action items aimed at strengthening enforcement abroad. That includes the development of a plan to combat foreign-based and foreign-controlled websites that infringe American intellectual property rights, working with foreign authorities to increase criminal enforcement actions against intellectual property infringers in foreign countries, and promoting enforcement through all available trade policy tools such as bilateral trade dialogues, the Special 301 Report, trade agreements, and where necessary the World Trade Organization dispute settlement process. With regard to the Special 301 process, the United States Trade Representative (USTR) will work with relevant U.S. agencies to ensure that related action plans and similar documents are as effective as possible.

3. How have you ensured that limited resources are not wasted or efforts duplicated in the Joint Strategic Plan on Intellectual Property Enforcement ("the Plan")?

Ensuring greater efficiency and coordination is a significant focus of the Strategic Plan. There are a number of action items that are designed to minimize duplication and waste. Those action items include: (1) coordinating our national law enforcement effort, including establishing a shared database(s) for law enforcement use and requiring the development of protocols for agencies to de-conflict cases (i.e., protocol for agencies to check to see whether another agency is already investigating the same case); (2) establishing local/regional working groups of federal, state, and local law enforcement and prosecutors; (3) improving the placement, direction, and coordination of personnel stationed overseas; (4) providing and coordinating training (both overseas and to state and local law enforcement). In addition, we have announced that we are creating four interagency working groups on government procurement, counterfeit pharmaceuticals, international capacity building and training, and the economic impact of intellectual property-intensive industries.

4. Do you believe that the government agencies involved in this effort to enhance intellectual property enforcement are doing all they can to make this strategy successful? Are they really coordinating with each other, or are there jurisdictional squabbles? What can be improved?

Federal agencies that are responsible for enforcing intellectual property rights have made significant progress on coordination and prioritization in recent months. For instance, the Department of Justice has re-launched their Intellectual Property Enforcement Task Force which is being chaired by the Deputy Attorney General and is coordinating intellectual property efforts within the Department. Also within the Department of Homeland Security, Immigration and Customs Enforcement (ICE) continues to host the National Intellectual Property Rights Coordination Center (IPR Center) which coordinates intellectual property theft investigations across 11 different agencies and with two international partners (INTERPOL and the Government of Mexico). ICE has also created 22 state and local partnerships nationwide, to more effectively investigate these crimes at the local level.

With that said, my office will constantly assess ways to improve coordination and prioritization of intellectual property enforcement across the U.S. Government. Ensuring greater efficiency and coordination is a significant focus of the Strategic Plan. There are a number of action items which are designed to increase efficiency and coordination. Those action items include: (1) coordinating our national law enforcement effort, including establishing a shared database(s) for law enforcement use and requiring the development of protocols for agencies to de-conflict cases (i.e., protocol for agencies to check to see whether another agency is already investigating the same case); (2) establishing local/regional working groups of federal, state, and local law enforcement and prosecutors; (3) improving

the placement, direction, and coordination of personnel stationed overseas; (4) providing and coordinating training (both overseas and to state and local law enforcement).

We have already begun the process of implementing these action items. In addition, we have set up an interagency process that will serve to bring all of the expertise in the federal government to bear. We are establishing four new interagency working groups to address the following: (1) counterfeit pharmaceuticals, (2) capacity building and training, (3) economic contribution of intellectual property-related industries, and (4) U.S. Government procurement of counterfeits.

I believe that all of the relevant agencies support and are firmly committed to implementing the Strategic Plan. I will report back to you in December about the progress we've made. In the meantime, the Administration is committed to implementing this Strategic Plan and we have already started that work.

5. How are you utilizing the resources at the National Intellectual Property Rights Coordination Center ("IPR Center")? Are those resources adequate? Or do you believe that they could be improved?

The IPR Center is a commendable effort to help increase the efficiency and effectiveness of the U.S. Government's intellectual property efforts, specifically the U.S. Government's law enforcement efforts. By coordinating the efforts of many agencies, the IPR Center is able to leverage existing resources to pursue its mission. The U.S. Government will, however, on an ongoing basis assess its resource needs.

6. Is the current legal process capable of handling the high-volume, fluid infringement occurring online, including on social networking, locker or linking sites? Is it practical or reasonable to require copyright owners to respond to every incidence of infringement on these sites, or do you believe is it appropriate to require more proactive responsibility on the part of the sites, particularly to prevent repeat infringements of the same work and by the same users?

We agree that online infringement is a significant threat to industries that create works in digital form or that may be digitized, and it does appear that infringers are turning to new technologies to continue their illicit and aggressive infringement activities, including using cyber lockers and linking sites. As stated in the Strategic Plan under "Facilitating Cooperation to Reduce Intellectual Property Infringement Occurring Over the Internet," we believe it is essential that rightholders, Internet service providers, advertising brokers, payment processors, search engines and others work cooperatively to address high volume illegal activity. In addition to encouraging cooperation among stakeholders, the Administration will continue to pursue additional solutions to these problems, including vigorously investigating

and prosecuting such criminal activity. In that regard, we note the recent enforcement activity by the Department of Homeland Security (DHS)/ICE and the Southern District of New York against seven websites engaged in illegal infringing activity.

In addition, to assess whether our existing intellectual property laws continue to be effective in combating infringement, particularly in light of such changes in technology and the increasing sophistication of mechanisms to infringe, we have committed to review our existing laws to ensure they are effective to combat infringement.

7. How does the Plan enhance and raise the profile of U.S. government efforts to combat intellectual property crime abroad?

The Strategic Plan includes a number of recommendations to enhance U.S. Government efforts to combat intellectual property crimes overseas.

For example, the Administration has committed to use the tools of trade policy to seek strong intellectual property enforcement. We have also committed to focus on the threat posed by foreign-based websites or web services that provide or provide access to products or works that infringe U.S. intellectual property rights.

We are establishing a working group to strengthen interagency coordination of international capacity building and training. The working group will create a forum in which agencies will share plans, information and best practices, focus efforts in those countries in which enforcement is a high priority, develop agency strategic plans based on need assessments, establish mechanisms to evaluate effectiveness of these efforts, establish a shared database for storing training materials, ensure materials are consistent with U.S. intellectual property laws and policy goals and explain the relevant balance between a creator's right in a work and legal limitations on that right, and coordinate efforts with international organizations and the business community.

The Strategic Plan also highlights the important role U.S. personnel stationed abroad play in combating intellectual property crimes overseas and commits to improving their effectiveness. In addition, we, in coordination with the Department of Commerce and other agencies, will review the existing efforts of the U.S. Government to support U.S. businesses in certain overseas markets, including China.

8. What is the status of the state and local law enforcement grants for training, prevention, enforcement and prosecution of intellectual property theft and infringement cases? Have any grants been issued, and if so, are these programs working?

While no funding has been appropriated under the PRO-IP Act for state and local law enforcement task forces, the Department of Justice's Bureau of Justice Assistance (BJA) has

leveraged Byrne and Judge Advocate General (JAG) funding to support state and local intellectual property task force efforts. In FY 2009, BJA made 10 grant awards for a total of \$2,005,692. In FY 2010, DOJ increased this amount to \$4 million. BJA released a second Intellectual Property Enforcement Solicitation, providing funding for state and local law entities to enforce intellectual property violations. Seventeen applications were received and are currently being reviewed.

Overview of 2009 Grants

Eight grants were awarded to state and local agencies (\$1,105,692):

- *North Carolina Department of the Secretary of State*
- *Mississippi Attorney General's Office*
- *Los Angeles County Sheriff's Department (CA)*
- *City of Los Angeles Police Department (CA)*
- *Chesterfield County Police Department (VA)*
- *Bronx County District Attorney (NY)*
- *New York City Mayor's Office*
- *Virginia Office of the Attorney General*

Two grants were awarded to provide national training and technical assistance (\$900,000):

- *National White Collar Crime Center (NW3C)*
- *National Association of Attorneys General (NAAG)*

State and Local Agency Grantees

The following bullet points represent a summary of FY09 grant-related activity:

- *The North Carolina Department of State is using grant funds to purchase equipment to assist task force members in developing investigative leads concerning interrelationships among suspects selling counterfeit trademark goods. One objective is to gather data from cell phones and hand-held electronic devices recovered or surrendered by suspects at the time of interdiction. Data analysis can then uncover commonalities and reveal patterns among suspects.*
- *The Mississippi Attorney General's Office (AGO) used grant funds to establish its intellectual property Task Force with members from all over the state. Local law enforcement in conjunction with the AGO have made significant arrests. These arrests have resulted in the forfeiture of substantial amounts of counterfeit goods. Additionally, the community outreach has generated tips that have lead to meaningful*

arrests and seizures.

- *Utilizing grant funds, the Los Angeles County Sheriff's Department took down a multistate counterfeit purse ring with the assistance of the Beaverton, Oregon Police Department and Los Angeles Police Department. In addition, the Sheriff's Department developed a close working relationship with brand owners and their representatives. To date, it has seized in excess of \$80 million worth of counterfeit items and arrested and prosecuted over 40 individuals.*
- *The Los Angeles Police Department used grant funding to support its Anti-Piracy unit with the intention of coordinating and involving themselves in a multi-agency, multi-area response to the enforcement of intellectual property crimes.*
- *The Chesterfield County (Virginia) Police Department had great success in arresting and dismantling numerous criminal groups operating in the county along with connecting several investigations with an overseas nexus. The Police Department has seized millions of dollars worth of counterfeit clothing, arrested over 20 top targets, and identified cases now being worked by the local Joint Terrorism Task Force.*
- *The Virginia Office of the Attorney General has used grant funds to educate over sixty Virginia law enforcement officers and prosecutors about the serious and widespread nature of intellectual property crimes and has taught them how to investigate and prosecute these cases. The program has received extremely positive reviews and has been an eye-opening experience for many attendees. Attendees suggested this training program be included in the annual training for all Virginia prosecutors, hosted by the Virginia Association of Commonwealth's Attorneys.*
- *With the assistance of grant funds, the New York Bronx District Attorney's Office used funding to address counterfeiting of Underwriters Laboratory trademark items as well as prescription drugs. They have forged a strong alliance with Underwriters Laboratories, and intend to target stores suspected of selling counterfeit goods. Success will be measured not merely by prosecutions, but by getting dangerous products off shelves and identifying warehouses (whether in Bronx County or elsewhere). This effort includes creation of a working group with the U.S. Food and Drug Administration and the U.S. Postal Inspection Service.*

The New York City's Mayor Office IP Enforcement Grant program focuses on a specific facet of intellectual property crime: use of mini-storage facilities in New York City as distribution and point-of-sale centers for counterfeit merchandise. The Office of Special Enforcement, which is

managing the mini-storage investigation, is responsible for much of the intellectual property enforcement in the City of New York; it has been highly successful in general in investigating, pursuing, and assisting with the prosecution of offenders.

National Training and Technical Assistance Grantees

Also under the "Intellectual Property Enforcement, Training, and Technical Assistance Program" two training and technical assistance (TTA) grants were awarded. The recipients, as stated above, are:

- *NW3C*
- *NAAG*

BJA encouraged NW3C and NAAG to form a partnership and collaborate to (1) raise the awareness level and (2) improve the quantity and quality of enforcement of intellectual property laws and prosecution of intellectual property crimes. This approach resulted in jointly developing and delivering TTA to state and local officials. The primary goal of this partnership is to develop an intellectual property curriculum to be presented to federal, state, local, and tribal law enforcement and prosecutors at 10 regional locations throughout the United States.

- *On January 26, 2010, a subject matter expert (SME) meeting was held in Washington, D.C. Top individuals from corporate America representing a large portion of America's innovative sectors were brought together to explore how to increase law enforcement effectiveness dealing with intellectual property crime. Groups represented included the entertainment, software, pharmaceutical, transportation manufacturing industries, and others including electrical manufacturers as well as representatives of the United States Chamber of Commerce.*
- *On April 14, 2010, the second SME focus group meeting was held with the addition of local, state, and federal law enforcement representatives. Federal representatives included the FBI, the Computer Crimes and Intellectual Property Section (DOJ), and ICE (DHS).*
- *Based on the information received from the two SME focus groups, the one-day training curriculum has been developed and the first delivery is expected to be presented in the Baltimore City area in mid-September. The remaining nine trainings will be scheduled within the next 30–60 days with the intention to augment locations*

receiving grant funds under the Intellectual Property Enforcement Program or regions with high reported incidence of intellectual property Crime.

- *With grant funds, NW3C in partnership with NAAG and BJA, will be hosting an Intellectual Property Enforcement Summit to be held in Pasadena, CA, on September 30, 2010. This will be a full day awareness session for federal, state, local, and tribal law enforcement focusing on intellectual property as a violation of the law, elements of intellectual property crimes, and what communities can do to enforce and prosecute intellectual property crimes.*
9. The PRO-IP Act increased FBI and U.S. Attorney resources to investigate and prosecute intellectual property theft and infringement cases. Could you provide me a status of their activities?

FBI

The FBI initiated and leads the Intelligence Fusion Group (IFG) at the National Intellectual Property Rights Coordination Center (IPR Center). The IFG consists of members of FBI, ICE, Customs and Border Protection (CBP) and other IPR Center agencies and its mission is to define and prioritize the most significant threats to our intellectual property.

The FBI collaborated on a baseline intelligence assessment, established Health and Safety field threat prioritizations and will deploy teams of analysts and agents to Delhi, India and Beijing, China for in-country intellectual property domain assessments.

To complete the National/International Domain Threat Assessment, the IFG will collect and analyze information from a variety of sources such as the IPR Center investigative and seizure data, field threat tasking packages, Delhi and Beijing in-country threat information, open source reporting, industry input, existing data base information, intelligence products, and previous intellectual property related studies. The current target for completion of this assessment is November 30, 2010.

Following the increase in resources to address intellectual property crimes, the FBI conducted extensive analysis of the intellectual property caseload, and threat information from its partners in industry associations, international and domestic law enforcement, and the intelligence community. This analysis provided the foundation for the strategic placement of these resources to support Computer Hacking and Intellectual Property units at US Attorney's Offices around the country and the consolidation of certain intellectual property investigative capacity into four enhanced squads in Los Angeles, New York, San Francisco, and Washington

D.C. The enhanced squads will facilitate the development of subject matter experts in priority intellectual property areas, allow for the surging of resources and greater use of complex investigative techniques in penetrating, disrupting, and dismantling criminal organizations which thrive from the counterfeiting of goods.

The staffing and training of these resources was executed as follows:

FY 2009 IPR Enhancement

Through funding received in the FY 2009 Appropriation, and in accordance with the PRO-IP Act, the FBI designated 31 agents to work intellectual property investigations:

- *26 Field Office agents were placed in 20 Field Offices with CHIPs units as follows:*
 - *Atlanta (2)*
 - *Baltimore (1)*
 - *Boston (1)*
 - *Chicago (1)*
 - *Dallas (1)*
 - *Detroit (1)*
 - *Kansas City (1)*
 - *Los Angeles (2)*
 - *Memphis (1)*
 - *Miami (2)*
 - *New York (2)*
 - *Newark (1)*
 - *Philadelphia (1)*
 - *Pittsburgh (1)*
 - *Sacramento (1)*
 - *San Antonio (1)*
 - *San Diego (1)*
 - *San Francisco (2)*
 - *Seattle (1)*
 - *Washington D.C. (2)*
- *5 FBI Headquarters (FBIHQ) Agents:*
 - *Three FBIHQ agents were assigned to the IPR Center to conduct investigations and de-conflict matters with partner agencies.*
 - *Two FBIHQ agents were designated as HQ Program Managers to provide strategic guidance, develop intelligence, and oversee the field office intellectual property programs, agents, and investigations.*

The 31 intellectual property agents received three days of intellectual property training in September 2009, which included strategic programmatic briefings, DOJ-CCIPS prosecutorial guidance, briefings from the following IPR Center partner agencies: CBP, the U.S. Food and Drug Administration, ICE, the U.S. Postal Inspection Service, and the U.S. Patent and Trademark Office. The training included current and historical case studies and presentations from industry representatives.

FY 2010 IPR Enhancement

In the FY 2010 Appropriation, the FBI received funding for 20 additional investigators dedicated to intellectual property matters:

- *Additional intellectual property Agents to enhance intellectual property Squads in four field offices:*
 - *Los Angeles (2)*
 - *New York (4)*
 - *San Francisco (4)*
 - *Washington D.C. (4)*
- *Additional intellectual property Agents to five field offices:*
 - *Chicago (1)*
 - *Detroit (1)*
 - *Houston (2)*
 - *Miami (1)*
 - *Sacramento (1)*

In September 2010, the FBI will conduct advanced training for agents working intellectual property matters in all field offices with DOJ CHIPs units, and will provide intellectual property basic training to agents designated as intellectual property coordinators in the remaining field offices.

Non-personnel related funding is also being utilized for undercover purchases of evidence, destruction of seized counterfeit goods, equipment purchases, and advanced training to develop Subject Matter Experts in intellectual property investigations.

With these additional intellectual property resources, the FBI is able to address intellectual property crimes, to include its highest intellectual property priorities of theft of trade secrets and counterfeit health and safety products. The FBI's strategic objective is to disrupt and dismantle international and domestic manufacturers, distributors, and organizations engaged in intellectual property crime. The FBI aggressively pursues intellectual property enforcement through liaison with industry, domestic and foreign law enforcement partners, and its partnership with the IPR Center.

Investigative Accomplishments

During the first eight months of FY 2010 (October 1, 2009 – May 31, 2010), the following statistical accomplishments were recorded for FBI resources investigating intellectual property cases:

150 Investigations initiated

50 Arrests

56 Information/Indictments

U.S. Attorney's Offices

The PRO-IP Act did not include an appropriation of resources to the United States Attorneys.

Recently, however, the United States Attorneys did receive an appropriation of \$2 million as part of the Fiscal Year 2010 appropriation. Specifically, in the December 2009 supplemental appropriations, Congress provided funding for 15 new CHIP positions. In April 2010, the Department announced that these positions will be located in U.S. Attorney's Offices in California, the District of Columbia, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Texas, Virginia and Washington. The respective U.S. Attorney's Offices are currently filling those positions. The additional CHIP attorneys will be specially trained to work on the entire range of intellectual property and cybercrime issues that the CHIP program was created to combat.

10. In your letter transmitting the Plan, you mention six areas for improvement. One was "We will improve coordination and thereby increase the efficiency and effectiveness of law enforcement at the Federal, state and local level, of personnel stationed overseas and of the U.S. Government's international training efforts."

A) Could you discuss the Department of Justice's program that places individuals with U.S. law enforcement experience in foreign countries to assist foreign law enforcement in the prosecution of IPR cases? I understand that this program has proven to be very effective and that the IP Law Enforcement Coordinators (IPLECs) play a complementary role to the State Department/PTO IPR attaches.

Effective international criminal intellectual property enforcement requires cooperation between U.S. law enforcement and their foreign counterparts. The Intellectual Property Law Enforcement Coordinator (IPLEC) program is one of the cornerstones of DOJ's overseas efforts to build law enforcement capacity and foster key relationships in the area of IP enforcement.

The IPLECs are experienced federal prosecutors who provide training and assistance on intellectual property cases to prosecutors and investigators in their respective regions. The IPLECs' ability to provide targeted instruction on specific enforcement issues has yielded concrete results, including improvements in the number and quality of cases brought in each region. Their presence has also created more opportunities to share evidence informally between countries.

Currently, there are two IPLECs, one stationed in Bangkok, Thailand, who is responsible for all of Southeast Asia, and the other is stationed in Sofia, Bulgaria, covering all of Eastern Europe.

B) If the Justice Department program has been successful in assisting foreign law enforcement on IPR cases abroad, do you believe that it should be expanded?

The IPLEC program has been effective and I believe it would be beneficial to expand it, resources permitting. For example, the IPLEC stationed in Eastern Europe helped Ukrainian investigators and prosecutors build criminal cases against groups selling counterfeit goods and against administrators of major online piracy sites, including one Ukrainian internet piracy site with approximately 100,000 registered users. The IPLEC in Bangkok has, over the past four years, participated in well over 50 regional training programs, spearheaded the creation of an Intellectual Property Crimes Enforcement Network (IPCEN) in Asia, and was integral to U.S. efforts to extradite an individual later convicted and sentenced in the Southern District of Texas to 20 months in prison for his role in importing and distributing more than three-quarters of a million dollars worth of counterfeit pharmaceuticals in the U.S.