

Senator Orrin G. Hatch
Oversight of the Office of the Intellectual Property Enforcement Coordinator
Wednesday, June 23, 2010

Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

Last Congress, I introduced with Finance Chairman Max Baucus the International Intellectual Property Protection and Enforcement Act of 2008.

We hope to re-introduce this bill in the near future.

Among other things, the bill would provide funds to increase USTR's capability to work with developing countries to improve IP protection and enforcement and give the President additional enforcement tools to deal with countries that refuse to fight widespread theft of U.S. IP.

I read with great interest the section of your report regarding the improvement of overseas personnel assigned to combat IP infringement.

How are things going with the current IP specialists overseas?

Our existing U.S. intellectual property specialists stationed overseas have contributed to the effort to combat intellectual property infringement including supporting enforcement activities, building contact with foreign counterparts, and aiding in capacity building and training efforts.

For example, the Department of Commerce's Intellectual Property Rights Attaché stationed in Brazil (a USPTO attorney posted under the International Trade Administration's authority) organized the first-ever intellectual property enforcement training for Brazilian judges in Parana, a Brazilian State bordering the notorious Tri-Border Area shared with Paraguay and Argentina, and spoke before a Brazilian Senate Committee on the consequences of weak intellectual property enforcement. Additional intellectual property Attaches, stationed in China, Russia, Thailand and India, have conducted and supported a wide variety of enforcement-related activities in their host countries. The Department of Justice's Intellectual Property Law Enforcement Coordinator (IPLEC) stationed in Eastern Europe (and funded by the State Department) helped Ukrainian investigators and prosecutors build criminal cases against groups operating counterfeit hard goods rings and against administrators of major online piracy sites, including one Ukrainian internet piracy site with approximately 100,000 registered users. In the past four years, the IPLEC in Bangkok has 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.

What do we need to be doing to improve their effectiveness?

Recognizing their importance to successful enforcement both here and abroad, the Administration will assess and prioritize stationing of these personnel in countries where they are most needed. We have, in the Administration's Strategic Plan, committed to a plan of action to increase effectiveness that involves a number of steps including developing embassy work plans, establishing working groups to carry out those plans and improving coordination of our efforts in those embassies. In addition, we will improve communication with overseas personnel and implement procedures to measure the effectiveness of USG personnel working overseas on intellectual property issues.

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Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

I commend you for spearheading an ambitious Strategic Plan.

You are going to need a lot of support from the many Federal agencies involved, Congress, and industry stakeholders in order to implement the Plan successfully.

What are your first steps in implementing your Plan?

In order to implement the Strategic Plan, we have set up an interagency process that will leverage the resources and expertise of the federal government on all aspects of intellectual property enforcement. In addition, we have established four new interagency committees on specific issues: (1) counterfeit pharmaceuticals, (2) capacity building and training, (3) economic contribution of intellectual property-related industries, and (4) U.S. Government procurement of counterfeits.

We will continue to seek input from the public as we move forward on implementation, and have already begun the process of meeting with relevant stakeholders on implementation. We will continue to build a process that is open, transparent and takes into account the views and concerns of a wide range of participants in our economy.

Lastly, we welcome and look forward to working cooperatively with you and your staff as we implement the Strategic Plan.

Does your office have the tools necessary to achieve this plan?

One of the benefits of my office is that we can leverage the resources and expertise of agencies across the U.S. Government. The development of the Strategic Plan was a very collaborative process and I am confident that the agencies support and are committed to implementing the Strategic Plan. Furthermore, the Departments of Justice, Homeland Security, and Commerce were generous to provide temporary detailees to assist with the development and implementation of the Strategic Plan. That said we have an ambitious task at hand. As a new office, we will re-assess our needs on an ongoing basis.

How will you ensure that the many stakeholders are effectively working toward the end goal?

During the development of the Strategic Plan, we received numerous comments and recommendations from the public in response to the Federal Register Notice we published. Further, we met with many organizations and industry groups to hear their concerns and ideas.

Similar to the way in which we developed the Strategic Plan, we will work to implement the Strategic Plan in a transparent way, including through public outreach.

Further, as outlined in the Strategic Plan, we are encouraging cooperation among private sector interests. For example, the Administration believes it is essential for the private sector to work together cooperatively to seek practical and efficient solutions to address infringement occurring over the internet.

With regard to physical goods, the Strategic Plan also includes several items which call for public-private cooperation. For example, we will act to encourage importers to voluntarily come forward if they find that counterfeit goods have infiltrated their supply chains.

As noted in the Strategic Plan, effectively addressing intellectual property infringement will require strong and decisive government action, transparency, and cooperation from rightholders, importers, exporters and entities that currently benefit from infringement.

I want you to be successful.

What can we as Members of Congress do to help you in your role?

I very much appreciate the support that I have received from Members of Congress in my new role. Your continued efforts to bring attention to the issue of intellectual property enforcement is very helpful.

I look forward to working with you as we implement the Strategic Plan. If you have suggestions or concerns as we move forward, please let me know. Effectively improving our enforcement of intellectual property will take some time to accomplish, and I look forward to working together cooperatively in the future.

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Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

Senator Whitehouse and I, along with Representatives Schiff and Goodlatte, serve as co-chairmen of the Congressional International Anti-Piracy Caucus.

Just last month our Caucus unveiled the 2010 International Piracy Watch List, which listed Canada, China, Mexico, Russia, and Spain as countries of concern due to the scope and depth of their piracy problems.

For the first time, we also released a list of the most notorious piracy websites whose business models are premised on the illegal exchange of movies, music, and other copyrighted works.

Six illegal websites were identified by the Caucus, including China's *Baidu*, Canada's *isoHunt*, Ukraine's *mp3fiesta*, Sweden's *Pirate Bay*, Germany's *RapidShare*, and Luxembourg's *RMX4U.com*.

These websites are making hundreds of millions of dollars off of American IP.

It is troubling that many of these websites are providing direct profit to organized crime groups and narcotics traffickers.

It seems that we need a coordinated effort across the sectors ranging from content owners, payment processors, advertising networks, and Internet service providers to work together to take down sites that are profiting from illegal content.

What are your thoughts?

We agree that private sector cooperation is essential to reduce acts of intellectual property theft now occurring on the Internet. 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. Additionally, USTR will continue to identify foreign pirate websites as part of its annual Special 301 process and will, in coordination with my office, initiate an interagency process to determine how that can be made more effective. We look forward to working with you to address this and other developing issues related to intellectual property enforcement.

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Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

As you are aware, a number of countries have enacted legislation requiring cooperation between copyright owners and Internet service providers.

Ideally, it would be best to have industry stakeholders resolve these matters.

It seems that our foreign counterparts believe that doing nothing is not an option.

Do you think that such legislation enacted overseas has been an effective deterrent?

As demonstrated in the Strategic Plan, the Administration is committed to protecting American intellectual property rights. We encourage cooperation among private sector parties to address online infringement, while we continue to explore the many options available to the U.S. Government, including vigorously investigating and prosecuting criminal activity. With respect to legislation passed abroad, for example in the United Kingdom and France, our understanding is that that legislation has not yet been tested. The Administration has been and will continue to monitor legislation, policies and practices in other countries related to online infringement of intellectual property rights.