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Nominee, Intellectual Property Enforcement Coordinator
Senate Judiciary Committee
Hearing on Executive Nominations
December 10, 2014

Questions for the Record

Senator Chuck Grassley

- 1. What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the U.S. and abroad?**

My impression is that the rapidly evolving technology environment presents a substantial challenge with respect to the effective and efficient protection of intellectual property, as does the overall global nature (e.g., foreign manufacturing of counterfeit products and hosting of pirated content) and the scale or volume of such IP infringement. At the same time, rapidly evolving technology can also provide effective and efficient tools for enhancing and strengthening the protection of intellectual property. If confirmed, I look forward to working with other Federal agencies, the private sector, and our trading partners to address these and other challenges.

- 2. If you're confirmed, how will you enhance and raise the profile of U.S. government efforts to combat intellectual property crime?**

America is the world's leader for creativity and ingenuity. If confirmed, I will work with other Federal agencies and the private sector to increase public awareness of the importance of intellectual property and of the harm that intellectual property crime poses to the Nation's economy, to American jobs, and the risks it can pose to public health and safety. In addition, if confirmed, I will work with the U.S. Trade Representative and other Federal agencies in pressing other countries, as appropriate, to strengthen their intellectual property protection and enforcement.

- 3. The IP industries bring billions of dollars into the US economy, and are critical to the long-term health of the US and global economies. With the US generating some of the most prolific and successful artists and inventors, it's only natural that the world would pay attention to what American policy makers say about intellectual property – in particular as we negotiate trade agreements.**
 - a. Given its place in the Executive Office of the President at OMB, how will you, if confirmed, use the bully pulpit that comes with this post both here and abroad?**
 - b. What message would you send to our trading partners?**

As the world's most innovative economy, strong and effective protection of intellectual property rights is critical to continued U.S. economic growth and American jobs. If confirmed, I will work vigorously to make clear the high priority which the U.S. Government places on intellectual property. Further, I would draw upon the key role OMB plays in coordination with the Federal agencies and in coordinating Administration's policy.

Internationally, if confirmed, I will work with all stakeholders to address intellectual property challenges faced abroad, to ensure that this Nation advances a thoughtful, strong, and effective approach to the promotion and protection of intellectual property. It is important to build high standards of intellectual property protection and enforcement in our trade agreements under negotiation. If confirmed, I stand ready to work with the U.S. Trade Representative and the rest of the Administration to advocate for thoughtful and effective protection of intellectual property rights by our trading partners.

4. If confirmed, how do you intend to work with the various existing agencies that investigate and prosecute intellectual property crimes?

Pursuant to the PRO-IP Act of 2008, IPEC was established within the Executive Office of the President to lead the Federal Government's intellectual property policy and enforcement efforts. This role includes interagency coordination of criminal and civil intellectual property protection, however, IPEC does not direct agencies in the exercise of their investigative or prosecutorial authority.

If confirmed, I look forward to building strong relationships with all Federal agencies, including law enforcement, to coordinate IP enforcement efforts and facilitate appropriate sharing of information and prevent duplication of efforts or inefficient use of resources. These efforts would include working with the agencies on the continued implementation of the Joint Strategic Plan on Intellectual Property Enforcement, which includes five action items for ensuring efficiency and coordination, as well as working with the agencies through the IPEC-chaired interagency advisory committees that were established by the IPEC statute and by Executive Order 13565.

5. Fostering a lawful online ecosystem across the globe is critical to protecting all types of intellectual property. What role do you see ICANN playing to ensure a lawful marketplace?

ICANN plays an important role in administering the efficient functioning of the Internet's domain name system. As ICANN oversees the largest expansion of generic Top-Level Domains (gTLDs), it is essential that ICANN provide for meaningful intellectual property safeguards necessary to support the type of innovation and competition that has led to the success of the modern Internet. If confirmed, I intend to advocate for strong intellectual property protections, and specifically, I look forward to working with relevant stakeholders to assess, for example, the existing rights protection mechanisms (RPMs) at the gTLD registry and registrar levels, the need for enhanced RPMs, and the overarching accountability mechanisms in place for, and proposed by, ICANN.

- 6. In your opinion, does online piracy continue to be a major problem for U.S. creators and copyright owners? If so, is there anything you see yourself as IPEC doing to address online piracy, particularly when it originates overseas?**

Piracy hurts some of the Nation's most creative artists and innovative entrepreneurs and companies, and if left unchecked, runs the risk of negatively impacting the economy and American jobs. If confirmed, I am committed to working with Federal agencies, and with Congress, to ensure that the Federal Government has the right approach—one that is strong yet thoughtful, dedicated and effective, and that makes good and efficient use of our resources. These efforts would include the continued implementation of the 2013 Joint Strategic Plan on Intellectual Property Enforcement and to further our efforts to combat foreign controlled websites that facilitate the infringement of American intellectual property.

- 7. Part of the previous IPEC's Strategic Plan involved educating consumers about responsible purchasing practices - both in the physical world and online. What role would education initiatives play during your tenure, and what types of initiatives will you aim to advance?**

Predictable and effective enforcement of intellectual property rights provides a legal and trading environment critical to furthering our global economic competitiveness and job creation. As such, one significant component of an effective intellectual property enforcement strategy is to shape public discussion of intellectual property issues, particularly those norms associated with intellectual property infringement and the far-reaching impact such activities have on our Nation's innovation and creative economy, as well as to consumer health and safety (where counterfeit products may be involved, for example) and consumer privacy and security (where financial information may be provided via rogue websites, or pirated content is otherwise downloaded subject to malware). If confirmed, I will continue the office's efforts and look for opportunities to raise awareness and increase understanding of the risks from intellectual property infringement.

Questions for the Record

Senator Patrick Leahy

- 1. The IPEC position was created to provide high-level coordination across the many agencies of the Federal Government that handle intellectual property enforcement. The IPEC works with offices in the Departments of Justice, Commerce, Homeland Security, the State Department, the Copyright Office, the U.S. Trade Representative and others within the Executive Office of the President.**

If confirmed, how would you approach these inter-agency efforts? Are there ways to make the IPEC office even more effective, in terms of resources, for example?

If confirmed, I look forward to building strong relationships across Federal agencies responsible for intellectual property policy and enforcement. I would work to continue IPEC's efforts to: coordinate intellectual property policy and enforcement efforts; facilitate appropriate sharing of information across Federal agencies to enhance existing U.S. Government efforts; and, reduce duplication or inefficient use of resources. Further, if confirmed, I look forward to identifying ways to make the office even more effective. This would include first ensuring that existing resources are being appropriately allocated and then assessing whether future resources are necessary.

- 2. In 2013, the IPEC released its second three-year Joint Strategic Plan, detailing 26 different action items that the Office would undertake. One of the specific action items was to protect intellectual property at ICANN, which governs the use of domain names on the Internet. I have long cared about this issue because of the potential harm to consumers from misleading Internet domain names used to promote and sell counterfeits.**

In your view, is ICANN adequately ensuring the protection of intellectual property? What more can be done by ICANN to promote transparency and good practices by Internet domain name registries and registrars?

ICANN plays an important role in administrating the efficient functioning of the Internet's domain name system. As ICANN oversees the largest expansion of generic Top-Level Domains (gTLDs), it is essential that ICANN provide for meaningful intellectual property safeguards necessary to support the type of innovation and competition that has led to the success of the modern Internet. If confirmed, I intend to advocate for strong intellectual property protections, and specifically, I look forward to working with relevant stakeholders to assess, for example, the existing rights protection mechanisms (RPMs) at the gTLD registry and registrar levels, the need for enhanced RPMs, and the overarching accountability mechanisms in place for, and proposed by, ICANN.

3. **News articles have recently reported on a new technology that looks at search engines' lists of infringing content that has been taken down pursuant to the DMCA, and then restores those infringing files at a new address. This perpetuates the problem of "whack-a-mole" faced by many rights holders.**

What strategies should be considered to address this problem?

I share your resolve in the need to do more to address intellectual property infringement in the digital environment. The issue your question raises is an example of how the rapidly evolving online environment presents not only incredible opportunity for innovation and creativity, but also a set of unique challenges with respect to the effective and efficient protection of intellectual property. At the same time, while it poses this challenge, rapidly evolving technology can also provide effective and efficient tools for enhancing and strengthening the protection of intellectual property and new opportunities for the creation and distribution of legitimate content. If confirmed, I look forward to working with other Federal agencies, external stakeholders – particularly through the successful model of facilitating private sector voluntary initiatives – and the Nation's trading partners to address this and other methods intellectual property misappropriators may use to avoid enforcement of the law.

4. **Keeping our government's computer systems safe and secure is of the utmost importance to me. That is why I am concerned that U.S. government agencies do not have systems in place to ensure they are using legal software. Not using legal software puts U.S. computer systems at higher risk for security breaches and sets a bad example internationally.**

Will you continue the IPEC's work to ensure that federal agencies have effective tools and policies in place to ensure they are using legal software? Is there more that can be done to ensure that the U.S. government sets a good example internationally?

If confirmed, I look forward to working with my colleagues in the Office of Management and Budget and with other Federal agencies to ensure that the Federal Government has in place effective tools and policies for preventing the acquisition and use of unlicensed software. Use of unlicensed software is not only illegal, but brings with it a number of challenges to cybersecurity efforts of the Federal Government. If confirmed, I will work to ensure the continued improvements to licensing practices of Federal agencies as a model for our foreign trading partners.

5. **Earlier this year, I led a bipartisan Congressional Delegation to China to discuss stronger protections for American companies' intellectual property rights. I and other members of this Committee have long worked to support the PTO's IP attaché program, which places experts at U.S. embassies around the world to advocate for more effective IP protections in other nations. Despite these efforts, U.S. businesses and innovators face ongoing challenges in numerous important markets, including China, Brazil, India, and Russia.**

Is there more the Administration can do to support the IP attachés or otherwise enhance its efforts to strengthen IP enforcement in other countries?

If confirmed, I will work to ensure U.S. Government resources are aligned with intellectual property priorities and areas of greatest need both domestically and abroad. I will also work with the other Federal agencies to collectively press the governments of countries with weak intellectual property systems to strengthen intellectual property protection and enforcement. Moreover, I will work with all stakeholders to address intellectual property challenges we face abroad, to ensure that we advance a thoughtful, strong, and effective approach to the promotion and protection of intellectual property. As part of these efforts, I look forward to evaluating whether there are ways in which we can further support the IP attachés and enhance their efforts internationally on behalf of American businesses and intellectual property rights holders.

Questions for the Record

Senator Dick Durbin

- 1. I recently met with Christian Surtz, a 16-year-old from Batavia, Illinois. Christian was a national winner of a contest sponsored by the Intellectual Property Owners Education Foundation. The contest invited students to make a video explaining the importance of the patent system and how a patented invention has positively affected their lives. Christian is a cross-country runner at his school, Marmion Academy in Aurora, IL, and he made a video about an invention called “Knuckle Lights” that allows him to safely run before sunrise. Christian is a great young man with a bright future.**

The purpose of this contest was to educate young Americans on the importance of our patent system and to inspire them to become innovators. I think this is a critically important message to send to Americans and to the world. We need to let inventors know that America is the best place to invent, and we need to send a strong message to foreign competitors who try to steal our ideas and inventions that we will fight to protect America’s intellectual property.

Do you agree it is important to send a strong message around the world that America will fight to protect its intellectual property? Will you carry that message if you are confirmed as the IP Enforcement Coordinator?

In establishing the position of U.S. Intellectual Property Enforcement Coordinator within the Executive Office of the President, Congress reaffirmed the critical role intellectual property plays in driving our global economic competitiveness. If confirmed, I will work to maintain the leadership role of the U.S. in setting the global standard for intellectual property protection.

Internationally, I will work with the other Federal agencies to collectively press the governments of countries with weak intellectual property systems to strengthen intellectual property protection and enforcement. Moreover, I will work with all stakeholders to address intellectual property challenges we face abroad, to ensure that we advance a thoughtful, strong, and effective approach to the promotion and protection of intellectual property.

Finally, I will work to build on the IPEC's achievements and continue to advance our government's strong commitment to intellectual property rights.

- 2. If you are confirmed as the IP Enforcement Coordinator, what steps would you recommend the Administration take to affirmatively protect intellectual property rights, both in the U.S. and around the world?**

If confirmed, I will work with Federal agencies and with all stakeholders to address intellectual property challenges we face abroad, to ensure that we advance a thoughtful, strong, and effective approach to the promotion and protection of intellectual property. Further, I would look to build on the successes and the momentum of the IPEC office and continue to implement the 2013 Joint Strategic Plan on Intellectual Property Enforcement. I look forward to having the opportunity to assess the areas of greatest success achieved during implementation of the 2013 Joint Strategic Plan on Intellectual Property Enforcement, as well as to identify approaches to enhance intellectual property policy and enforcement as part of the development of the Administration's priorities in this area for 2016 and beyond.

- 3. If you are confirmed as the IP Enforcement Coordinator, will you issue reports that identify and call out countries that violate IP enforcement standards and that fail to provide for effective IP protections?**

If confirmed, I look forward to hearing from and working with all relevant Federal agencies and stakeholders to devise and implement approaches to promoting a strong domestic intellectual property environment and to ensuring the coordinated and effective deployment of Federal resources and enforcement efforts directed at protecting U.S. intellectual property against infringement. In carrying out the office's coordination mandate, I would work with departments and agencies engaged in intellectual property policy and protection—including the U.S. Trade Representative and the Departments of Commerce, State, Treasury, Homeland Security and Justice—to press governments of countries with weak intellectual property systems to improve their intellectual property protections and enforcement efforts.

- 4. The IPEC website says that “Infringement of intellectual property can damage our economy and undermine American jobs. Infringement shrinks markets and opportunity, hurts export prospects, threatens health and safety, and funds criminal syndicates around the world.”**

a. Do you agree with this statement?

b. In light of the harms caused by infringement, do you agree that any proposals to reform U.S. intellectual property rights should carefully consider whether such proposals would increase or decrease the incentive to infringe on such rights?

c. As a general principle, should the United States avoid reforming its system of intellectual property rights in ways that make it more difficult or costly for IP owners to protect their property against infringement?

Our Nation rightly prides itself on the innovation and creativity that has been the engine of our economy throughout our history. America's great spirit of innovation and creativity, as reflected in the breadth of our Nation's intellectual property-intensive industries, represents one of the key drivers of our gross domestic product and helps support millions of jobs.

As we undertake efforts to build on and improve the functioning of United States' intellectual property system, it is essential that we advance a thoughtful, strong and effective approach to the promotion and protection of intellectual property that accounts for the variety of stakeholder perspectives and multi-dimensional nature of intellectual property issues. I deeply believe in the benefit that a diverse set of views offers to the policy development process and, if confirmed, I will ensure IPEC continues to engage with and hear from a broad set of stakeholders. Further, if confirmed, I would welcome the opportunity to work with Congress, and this Committee in particular, to examine and advance measures to improve our intellectual property system.

Questions for the Record

Senator Christopher A. Coons

1. Antitrust and intellectual property

Both the Department of Justice and the Federal Trade Commission have been active in shaping the legal landscape that balances antitrust and intellectual property rights. Their activities have included proposals to standard-setting organizations (see <http://www.justice.gov/atr/public/speeches/287855.pdf>) and advocacy for “patent reform” legislation.

a. What is the role of IPEC in working with the FTC and DOJ on issues affecting intellectual property rights?

IPEC was established within the Executive Office of the President to lead the Federal government’s intellectual property policy and enforcement efforts. If confirmed, I look forward to working with all Federal agencies to coordinate intellectual property policy and enforcement efforts and to facilitate collaboration across the Federal government, including, as appropriate, with relevant independent agencies such as the Federal Trade Commission. Further, I would draw upon the key role the Executive Office of the President plays in coordinating interagency policy to ensure a whole government response to cross-cutting, complex intellectual property issues, such as those presented by Standards-Essential Patents and standard setting organizations.

2. Abuse of the patent system

- a. Do you believe the U.S. patent system should distinguish between patent-holders who manufacture products and those who do not? If not, why not?**
- b. If “trolling” is an activity, how do you distinguish it from valid enforcement activity?**
- c. Would legislative proposals that make it more difficult to enforce a patent right potentially disadvantage U.S. manufacturers attempting to challenge foreign infringing goods?**
 - i. If so, is that an important consideration when changing the rules of the patent system or patent enforcement?**

A strong and well-functioning patent system is an objective I think we can all agree upon. If confirmed, I stand ready to work with offices within the Executive Office of the President and agencies across the Federal Government, particularly the U.S. Patent and Trademark Office, in support of efforts designed to curb abusive patent litigation and to ensure the highest-quality patents in our system. If confirmed, I also look forward to working with Congress to consider possible legislation, as part of a multifaceted approach to addressing abuses of the patent system.

3. Misappropriation of U.S. trade secrets

- a. Do you believe that existing federal criminal and state civil law remedies adequately protect U.S. trade secrets from misappropriation?**
- b. Would enacting a federal private right of action for trade secret misappropriation, such as that contained in S. 2467, the Defend Trade Secrets Act, help trade secret owners protect their trade secrets from theft and misappropriation?**
 - i. If so, how?**

Intellectual property, including trade secrets, plays a crucial role in driving the U.S. economy. Trade secret theft can cripple a company's competitive advantage at home and in foreign markets, diminish export prospects around the globe, jeopardize American jobs, and threaten our national security. The threat posed to U.S. businesses by economic espionage carried out or directed by foreign governments, is of particular concern.

If confirmed, I will work tirelessly to promote efforts to strengthen domestic and international trade secret protection as well as to continue IPEC's leadership across the U.S. Government to combat the theft of trade secrets. More specifically, if confirmed, a top priority will be advancing implementation of the Administration's Strategy on Mitigating the Theft of U.S. Trade Secrets.

As a part of the effort to combat the theft of U.S. trade secrets, I believe we should explore multiple avenues including, if confirmed, working with you and other members of Congress on legislation directed at protecting U.S. trade secrets at home and abroad and combating trade secret theft.

4. International protection of trade secrets

As you know, the U.S. Government has advocated in trade negotiations that Trans-Pacific Partnership member countries (and also Transatlantic Trade and Investment Partnership adopt provisions to criminalize the intentional theft of trade secrets. This is tremendously important to United States companies operating abroad. It is vital that foreign markets strengthen protections for trade secrets so that the valuable know-how underpinning the technological advances of our companies is not stolen.

- a. Please explain your commitment to the principle of criminal penalties as a way to deter trade secret theft and the steps you propose to take to ensure strong provisions are adopted internationally.**
- b. Please explain the actions you propose to take to work within the U.S. government and the international community to strengthen trade secret protection, both civil and criminal.**

As the world's most innovative economy, strong and effective protection and enforcement of intellectual property rights is critical to U.S. economic growth and American jobs. It is important to build high standards of intellectual property protection and enforcement in the Trans-Pacific Partnership that will stand alongside those of prior U.S. Free Trade

Agreements in the Asia Pacific region. Moreover, the United States and the European Union have among the highest levels of intellectual property protection and enforcement in the world, and the Transatlantic Trade and Investment Partnership offers an important opportunity to advance our shared commitment to intellectual property and to strengthen U.S. and EU global leadership in its protection and enforcement.

If confirmed, I stand ready to work with the U.S. Trade Representative, the Departments of Commerce, State, Treasury, Homeland Security, and Justice, and the rest of the Administration to advocate for thoughtful and effective protection of intellectual property rights by our trading partners.