



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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DEPARTMENT OF HOMELAND SECURITY**

REGARDING A HEARING ON

**“OVERSIGHT OF INTELLECTUAL
PROPERTY LAW ENFORCEMENT EFFORTS”**

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

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226 Dirksen Senate Office Building**

INTRODUCTION

Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Committee:

On behalf of Secretary Napolitano and Director Morton, I would like to thank you for the opportunity to highlight the important role U.S. Immigration and Customs Enforcement (ICE) plays in combating intellectual property (IP) theft in today's global economy.

Simply put, American business is threatened by those who pirate copyrighted material and produce counterfeit trademarked goods. Criminals are attempting to steal American ideas and products and sell them over the Internet, in flea markets, in legitimate retail outlets and elsewhere. From counterfeit pharmaceuticals and electronics to pirated movies, music, and software, IP thieves undermine the U.S. economy and jeopardize public safety. American jobs are being lost, American innovation is being diluted and the public health and safety of Americans is at risk – and organized criminal enterprises are profiting from their increasing involvement in IP theft.

One of the ways the Administration is responding to this organized criminal activity is through a first-of-its-kind, coordinated, and strategic offensive that targets counterfeiters and those who pirate copyrighted material. This offensive involves multiple departments and agencies within government coming together in an ICE-led task force, the National Intellectual Property Rights Coordination Center (IPR Center). IP enforcement policy across many different federal agencies is being coordinated by the first presidentially appointed, Senate-confirmed Intellectual Property Enforcement Coordinator (IPEC), Victoria Espinel, with whom ICE has the great privilege to work.

ICE and the IPR Center contributed and consulted frequently with the IPEC on the creation of the first-ever Joint Strategic Plan on Intellectual Property Enforcement, released in June 2010. Additionally, we contributed to the IPEC's 2010 Annual Report to Congress, released in February 2011, and a variety of other reports to Congress and the Vice President.

BACKGROUND

America's entrepreneurial spirit and integrity are embodied by the creativity and resourcefulness of our workforce. New inventions, innovations, works of art, and discoveries create jobs and industries and add to our country's heritage. Innovation drives commerce and enables the United States to compete in the global marketplace. Intellectual property rights and the ability to protect those rights encourage American companies to continue the tradition of American innovation by developing products, ideas and merchandise.

Intellectual property rights laws protect this tradition of innovation by thwarting thieves from selling cheap imitations of products that are often far less reliable than the original products. Moreover, enforcement of intellectual property laws can support efforts to protect public safety with respect to materials that are potentially harmful. They protect our military members by preventing the spread of untested and ineffective knockoff components. Intellectual property laws also protect the actor, director, writer, musician, artist, and countless others who labor in and around America's entertainment industry from having a movie, manuscript, song or design illegally sold by someone who had no part in the artistry of creating it. Violators of laws on intellectual property rights

unfairly devalue American products and ideas, hinder our ability to grow our economy, compromise American jobs, and put consumers, families, and communities at risk.

As the members of this Subcommittee well know, globalization provides boundless opportunities for commerce, but it also brings a growing set of challenges including combating the theft of intellectual property. In a global economy, enforcement of intellectual property rights laws is crucial to ensuring that legitimate manufacturers and companies can expend capital developing overseas markets, exporting goods and creating jobs.

ICE'S ROLE

ICE has a legacy of engagement in enforcement against IP theft that spans our past as U.S. Customs Service investigators to our present role as Homeland Security Investigators. ICE is a leading agency in the investigation of criminal intellectual property violations involving the illegal production, smuggling, and distribution of counterfeit and pirated products, as well as associated money laundering violations. We target pirated and counterfeit goods entering the United States through our ports from various countries overseas. We seize the counterfeit goods that infringe trademarks, and pirated goods that infringe copyrights. In addition, we investigate the criminals engaged in IP theft. ICE has become increasingly innovative in how we combat counterfeiting and piracy. Our goal is to disrupt the manufacturing, distribution, and financing segments of criminal organizations.

ICE recognizes that no single U.S. law enforcement agency alone can succeed in the fight against IP theft. Rather, it is essential that all relevant federal agencies work

together and with industry to confront this challenge. ICE formed the IPR Center to leverage government resources to combat IP theft.

THE IPR CENTER

The mission of the IPR Center is to address the theft of innovation that threatens U.S. economic stability and national security, undermines the competitiveness of U.S. industry in world markets, and places the public's health and safety at risk. The IPR Center promotes coordination and communication across the many U.S. government agencies with roles in enforcing IP laws. The IPR Center brings together key domestic and foreign investigative agencies to efficiently and effectively leverage resources, skills and authorities to provide a comprehensive response to IP theft.

The IPR Center, located in Arlington, Virginia, is an ICE-led task force of 18 relevant federal and international partners. The IPR Center includes embedded team members from, among others: U.S. Customs and Border Protection (CBP), the Food and Drug Administration Office of Criminal Investigations (FDA OCI), the Federal Bureau of Investigation (FBI), the U.S. Postal Inspection Service (USPIS), the Department of Commerce International Trade Administration, the U.S. Patent and Trademark Office, the Defense Criminal Investigative Service, the Naval Criminal Investigative Service, the Army Criminal Investigative Command Major Procurement Fraud Unit and the Inspector General's Office from the General Services Administration. In 2010, the Government of Mexico and INTERPOL joined the IPR Center as our first international partners.

Thus far in 2011, the IPR Center has welcomed the following new partners: the U.S. Consumer Product Safety Commission; the Defense Logistics Agency Office of

Inspector General; the U.S. Department of State Office of International Intellectual Property Enforcement; the U.S. Air Force Office of Special Investigations and our third international partner, the Royal Canadian Mounted Police. While the U.S. Department of Justice (DOJ) is not an official partner at the IPR Center, trial attorneys from the Computer Crime and Intellectual Property Section (CCIPS) regularly provide counsel on ongoing enforcement operations and policy. Together, the partners at the IPR Center and DOJ have created a one-stop shop for industry and victims of IP theft, reducing duplication and allowing us to leverage and benefit from our different areas of expertise.

ICE’S INTERNATIONAL EFFORTS

ICE’s Homeland Security Investigations International Affairs (HSI-IA) represents the largest investigative law enforcement presence abroad for the Department of Homeland Security (DHS).

ICE attachés work with international organizations and foreign law enforcement counterparts to build capacity, strengthen relationships, and conduct joint enforcement activities. ICE is recognized as a worldwide subject matter expert on criminal customs matters, and holds the following positions at the World Customs Organization (WCO): Vice Chair for the Enforcement Committee and Chair of the Commercial Fraud Working Group. In addition, ICE and the IPR Center have repeatedly teamed with the WCO and its member countries in several multilateral enforcement operations targeting counterfeit goods.

ICE's work in China

The primary source country for the manufacture and distribution of counterfeit merchandise exported to the United States is China. In FY 2010, ICE and CBP seized IPR violative goods from China with a domestic value (as opposed to manufacturer's suggested retail value) of more than \$124.6 million. These seizures accounted for approximately 66 percent of the total domestic value of counterfeit merchandise seized by DHS.

ICE has a presence in central and southern coastal China with offices in Beijing and Guangzhou. These two offices have significant commercial fraud and IP portfolios. Our Assistant Attaché in Guangzhou is designated as ICE's first "IP Attaché" and is ICE's point of contact for all IP matters involving China. Moreover, the ICE office in Guangzhou is working on a U.S. Consulate project to help make Shenzhen a model IP enforcement city. ICE has made a commitment to work with the Consulate on this project and to provide training to the Chinese Public Security Bureau on IP investigation and enforcement.

On May 5, Director Morton signed a Memorandum of Understanding on Law Enforcement Cooperation in Criminal Matters with the China General Administration of Customs (GACC) Minister Yu Guangzhou. This MOU facilitates law enforcement cooperation and information sharing between ICE and the GACC, including on IP theft. This agreement follows Director Morton's trip to China last September for meetings with our Chinese law enforcement counterparts. During that trip, Director Morton signed an agreement with the Ministry of Public Security (MPS) to cooperate on joint

investigations of IP theft. The IPR Center also regularly liaises with MPS representatives from the Chinese Embassy in Washington.

These new agreements build on our previous work with China. In September 2003, ICE collaborated with Chinese authorities on Operation Spring, a joint IPR investigation that resulted in the extradition and conviction of DVD pirate Randolph Guthrie, who was sentenced to 48 months incarceration and ordered to repay \$878,793 in restitution to the Motion Picture Association of America. Another joint ICE-Chinese investigation resulted in four arrests in the United States and the seizure of more than \$100 million in counterfeit computer software and approximately \$4 million in counterfeit cigarettes.

ICE's work in other countries

ICE works with our Korean partners in Seoul to combat IP violations occurring in that country. In September, ICE signed a Memorandum of Understanding with the Korean Supreme Prosecutor's Office to work collaboratively on IP investigations. Since FY 2008, seizures in Korea involving our attaché in Seoul have increased dramatically: in FY 2010, 22 individuals were arrested, and merchandise valued at approximately \$18.7 million was seized. So far in FY 2011, 51 persons have been arrested and ICE has assisted in seizures valued at approximately \$16.5 million.

In July 2009, ICE opened an office in Brussels to work directly with the WCO on multilateral operations addressing bulk cash smuggling and explosives precursor chemicals. ICE also works with INTERPOL, the Asia-Pacific Economic Cooperation Forum, and the Departments of State, Commerce, and Justice on a variety of initiatives,

including providing training on IPR enforcement to our international law enforcement partners.

ICE'S contributions to foreign training and capacity building

The IPR Center works closely with its partner agencies, international attaché networks, and U.S. embassies to deliver training and support capacity building bilaterally and through international organizations such as the WCO and INTERPOL.

ICE provides training on IP theft enforcement and interacts with foreign officials worldwide through our participation in the Department of State International Law Enforcement Academy (ILEA) program. The mission of the ILEAs — located in Budapest, Gaborone, San Salvador, Bangkok and Lima — is to help protect U.S. interests through international cooperation and the promotion of stability by combating crime. The IPR Center recently conducted an IPR Symposium funded by the Department of State, with participation from DOJ, USPTO, and CBP, in Hong Kong for representatives from Chinese, Hong Kong, Macanese, and Malaysian law enforcement and has future Department of State-funded training planned in the Philippines.

In addition, the IPR Center supports the USPTO international training events at their Global IP Academy, and hosts visits by international law enforcement and customs officers participating in various International Visitor Programs. Through these efforts, the IPR Center is enhancing cooperation, increasing skill sets, and facilitating relationships with international partners that are critical to addressing IP theft overseas.

STATE AND LOCAL LAW ENFORCEMENT TRAINING AND OUTREACH

ICE and the IPR Center believe that an effective enforcement strategy must include the participation of our state, local, and tribal law enforcement partners. On World IP Day in 2010, ICE announced the creation of local IP Theft Enforcement Teams (IPTETs). The IPTETs are partnerships with state and local law enforcement built on the best practices identified by the IPR Center. They use an informal task force approach to enhance coordination of intellectual property investigations at the state, local and tribal level. There are currently 26 IPTETs across the country that include federal, state, local and tribal law enforcement partners, including sworn personnel from police and sheriff departments and local prosecutors. The IPR Center has been conducting training for the IPTETs around the country since their creation.

PUBLIC OUTREACH

ICE has recently taken additional steps to warn the public about the dangers and the economic impact of IP theft. To coincide with World IP Day in April, ICE teamed up with the film industry to launch a new public service announcement. The announcement highlights the effects of IP theft on American jobs, specifically focusing on the entertainment industry and its rights holders – the musician, the songwriter, the actor, the director and the countless others who labor in the entertainment industry. In just the few months since it was launched, there have been more than 115,000 views of the PSA. ICE is working to develop additional PSAs that will focus on other industries prone to IP theft.

ICE has also signed agreements with four major movie studios to place an anti-piracy warning with the IPR Center logo and ICE HSI badge on works streamed in various pay-per-view and on-demand formats. These new warnings will demonstrate ICE's role in combating IP theft and will educate the public that IP theft is a crime, not only in traditional media, but also when done through digital media.

RECENT ENFORCEMENT SUCCESSES

Operation In Our Sites

Last year, the IPR Center launched Operation In Our Sites, a new initiative targeting websites being used to sell counterfeit goods and distribute pirated merchandise and copyrighted digital materials. During the first enforcement action as part of this initiative, ICE agents, working with the U.S. Attorney's Office for the Southern District of New York, obtained judicially authorized seizure warrants and seized seven illegal domain names providing access to more than 500 movies and television programs.

On November 29, 2010, Director Morton joined the Attorney General to announce the results of Operation In Our Sites v. 2.0. Timed to coincide with "Cyber Monday," reportedly the largest online shopping day of the year, the operation targeted online retailers of counterfeit goods, including sports equipment, shoes, handbags, athletic apparel and sunglasses, as well as illegal copies of copyrighted DVD boxed sets, music and software. ICE and DOJ obtained federal court orders to seize the domain names of 77 internet sites selling counterfeit goods, five websites selling pirated movies, music and software, and one server. The operation was spearheaded by the IPR Center,

in coordination with DOJ Computer Crime and Intellectual Property Section, nine ICE field offices, and ten U.S. Attorneys' Offices.

In 2011, ICE HSI has conducted three additional rounds of Operation In Our Sites. On February 4, which coincided with the Super Bowl, ICE seized 10 domain names of websites that provided access to pirated telecasts of the National Football League (NFL), the National Basketball Association (NBA), the National Hockey League (NHL), World Wrestling Entertainment (WWE), and the Ultimate Fighting Championship (UFC). On March 3, ICE and DOJ announced the arrest of the operator of one of these websites on charges of federal copyright violation.

The domains seized pursuant to court order display a banner announcing the seizure of the site by the government and an explanation of the federal crime and punishment for copyright theft and distribution of pirated content or trademark violations. Since the initial seizures in June 2010, there have been more than 60 million hits to the banner that notifies viewers that a federal court order has been issued for the domain name and educates them that willful copyright infringement is a federal crime. After the seized domain names are forfeited to the U.S. government, a new banner is placed on the sites notifying the public that the sites have been forfeited and linking the viewers to the ICE PSA. To date, 75 of the 125 seized domain names have been forfeited. The resulting public education about IP theft is a significant benefit of this enforcement operation, and can help to deter future crimes and raise awareness.

The Operation In Our Sites initiative will continue through 2011 and beyond. ICE's efforts through this operation successfully disrupt the ability of criminals to purvey copyrighted materials illegally over the internet. In addition to the domain names that are

seized through this operation, evidence suggests that the operation has a deterrent effect. In fact, following Operation In Our Sites v. 1.0, ICE was notified that 81 of the most active websites that had been offering pirated material voluntarily shut down.

Other notable investigative successes against IP theft

ICE's IP theft enforcement efforts have continued to increase under this Administration. In FY 2010, ICE initiated 1,033 intellectual property infringement cases—a 42 percent increase over FY 2009—and achieved 365 arrests, 216 indictments and 170 convictions. In FY 2010, indictments flowing from ICE-initiated intellectual property investigations increased by 86 percent over the previous year. These figures include both federal and state prosecutions. The following cases illustrate some of our notable IP enforcement successes.

In the past year, ICE agents continued to seize millions of dollars in counterfeit items as a result of significant criminal investigations including an investigation into a criminal organization smuggling counterfeit shoes and luxury goods through the Port of Baltimore, with an estimated manufacturer's suggested retail price (MSRP) of more than \$219 million (had the products been legitimate goods). This investigation resulted in eight federal arrests. ICE was able to develop evidence on a parallel operation in the United Kingdom, and our ICE Attaché in London passed the information on to relevant UK law enforcement. This resulted in six arrests, seizures of 50,000 counterfeit luxury items and approximately \$617,000 in U.S. equivalent currency, making it one of the largest IP theft enforcement cases in UK history.

We have broadened our reach by partnering with foreign counterparts, such as the Mexican Tax Administration Service, which seized 306 tons of counterfeit merchandise at mail facilities and land, air and sea ports of entry during just one joint operation.

Earlier this year, the IPR Center partnered with the NFL, NBA, NHL, the National Collegiate Athletic Association (NCAA), industry and local law enforcement to conduct operations targeting counterfeit sports merchandise sold during the Super Bowl, the NBA All-Star Game, the Stanley Cup championship, and the NCAA Final Four and Frozen Four tournaments. These operations resulted in seizures of more than 21,000 counterfeit items valued at more than \$1.1 million.

In June 2010, ICE and CBP completed the U.S. portion of Operation Global Hoax, a three-month multilateral enforcement action proposed by the IPR Center and coordinated with the WCO. Global Hoax is the first-ever worldwide enforcement action targeting counterfeit DVDs and CDs as they are shipped around the world. The five-day surge operation at mail and express courier facilities resulted in the seizure of more than 140,000 pirated DVDs, 28,000 CDs, and more than 270,000 other counterfeit items worldwide. Domestically, ICE HSI and CBP seized 22,371 pirated DVDs, 2,658 pirated DVD box sets, 133 pirated CDs and 8,556 other counterfeit items worth a total MSRP of approximately \$5.3 million.

In October 2010, the IPR Center coordinated U.S. efforts in Operation Pangea III, a global operation targeting illegal pharmaceutical sales over the Internet that involved the participation of ICE, CBP, Food and Drug Administration (FDA), U.S. Postal Inspection Service (USPIS), Drug Enforcement Administration (DEA), authorities in 45 other countries, the WCO, INTERPOL, international organizations, and industry. The

U.S. operation was conducted at mail facilities in several U.S. cities. Internet monitoring revealed more than 820 websites engaged in illegal activity, including those offering controlled substances or prescription-only drugs. Nearly 300 of these websites have been taken down and investigations continue. Participants inspected approximately 278,000 packages, seizing more than 11,000 packages containing more than 2.3 million illicit and counterfeit pills worth \$6.77 million. Globally, 130 search warrants were executed and 87 individuals were arrested or are under investigation for a range of offenses.

ICE remains steadfast in its efforts to prevent IP theft from supporting those who would harm the United States or our interests abroad. In November 2009, ICE and the FBI worked with the New Jersey State Police and the Philadelphia FBI Joint Terrorism Task Force on a case that identified: a three-cell criminal organization; a U.S.-based stolen property and counterfeit goods group; an overseas procurement group; and an international group tied to Hezbollah procuring weapons, counterfeit money, stolen property, and counterfeit goods. Ultimately, the investigation resulted in 25 indictments, 16 criminal arrests, 15 administrative arrests, and 10 INTERPOL Red Notices.

ICE'S PARTNERSHIP WITH THE PRIVATE SECTOR

In addition to our investigative efforts, we are working with the IPEC and other agencies to support efforts to establish voluntary agreements with payment processors, ad networks, and other intermediaries to do the right thing. When combined with our law enforcement efforts, the private sector's voluntary action against infringers can have a tremendous effect on online crime. No one has a greater incentive for protecting intellectual property rights than private industry. Companies want to protect their

investments in research, development, manufacturing, sales, marketing and product distribution.

To help enhance and facilitate productive partnerships within both the public and private sectors, the IPR Center provides industry with valuable information about ICE's efforts to combat the importation of hazardous and counterfeit and pirated products, and it provides points of contact in ICE field offices that industry can use to provide ICE with leads and tips. For fiscal year 2009 through April 2011, the IPR Center and ICE agents have conducted approximately 604 outreach efforts, formal presentations, and meetings, in total speaking with more than 33,000 industry representatives.

BUILDING PUBLIC AWARENESS ABOUT IP THEFT

ICE believes that we can only be truly successful in our efforts against IP theft if there is a broad change in public perception regarding IP crimes. Too many individuals believe buying knock-off goods or downloading films or songs from piratical sites is a victimless crime. The public must recognize that counterfeiting and piracy is theft -- theft of innovation, jobs, and revenue that sustains jobs, advances American business and supports industrial growth and economic stability.

The IPR Center is leading an effort to educate the public and other audiences about IP theft and its connection with international organized crime. In June 2010, the IPR Center hosted a Symposium titled "IP Theft and International Organized Crime and Terrorism: The Emerging Threat." Panels of academics, industry leaders and domestic and international government officials discussed links between international organized crime, terrorism and IP theft. Attendees included congressional staff, domestic law

enforcement officials, media and others. A similar symposium on the impact of cyber crime on IP theft will be held this September.

CHALLENGES AHEAD

As noted previously, ICE is working closely with international law enforcement partners to facilitate global investigations and crack down on transnational criminal organizations. However, there are more criminals engaged in IP theft than ever before, and they are counterfeiting materials and items that can affect public health and safety. As international criminal organizations have yielded huge profits through trafficking in counterfeit and pirated goods, they have extended their existing criminal infrastructures and smuggling routes to include the flow of counterfeit and pirated merchandise. Criminal penalties for commercial fraud violations as imposed are less severe than traditional drug or weapons trafficking offenses, which may contribute to the perception that IP theft is a relatively “low risk” endeavor for criminal enterprises planning to expand their operations.

Moreover, over the last 10 years, the growth of the Internet as a global commerce medium has caused it to develop into a key means for facilitating IP theft. The 2010 Cisco Visual Networking Index forecasts that global IP traffic will quadruple by 2014. In addition, Cisco notes that download speeds of DVD quality movies have been reduced from three days 10 years ago to just around two hours this year; an MP3 audio download time has been reduced from three minutes to approximately five seconds. This increase in access to the Internet, while of great benefit for global communication and commerce, presents challenges with regard to IP enforcement.

IP theft cases have also grown in both magnitude and complexity. A crime previously viewed as limited to luxury goods (such as high-priced handbags, apparel, and watches) has quickly grown to include all types of products and consumer goods at every price point, driving more challenging and involved investigations. In addition, while ocean-crossing shipping containers are necessary to move bulk quantities of counterfeit items such as handbags, shoes, batteries or holiday lights, other items including counterfeit pharmaceuticals, mobile phones, computer network components, microchips, MP3/4 Players, pirated DVDs/CDs are being smuggled in smaller and smaller quantities through mail and/or express courier parcels. ICE and CBP, using our authorities to inspect imported goods for customs violations, has engaged in successful surge operations at mail and courier facilities to generate seizures, controlled deliveries, intelligence and investigative leads.

Another challenge we face is that criminals are willing to counterfeit and pirate and market any product if it will sell, regardless of whether such sale could result in serious and significant injury to consumers or the public. ICE has investigated cases involving counterfeit toothpaste that contained a component found in antifreeze. Likewise, in 2007, ICE and the FDA arrested Kevin Xu, one of the world's most prolific counterfeiters of pharmaceuticals. Xu has been linked to distribution of counterfeit medications such as Plavix, Zyprexa, and Casodex that are used to treat blood clots, schizophrenia, and prostate cancer, respectively. In 2009, Xu was sentenced to six and a half years in prison. This April, Xu's conspirator in the United Kingdom, British citizen Peter Gillespie, was sentenced to eight years in prison for his role in this international scheme. Earlier this month, following a joint ICE HSI, FDA and USPIS case, a Chinese

national was sentenced to seven years in prison for trafficking in a counterfeit version of Alli, a weight loss drug. The drugs he trafficked contained undeclared active pharmaceutical ingredients, including Sibutramine, a non-narcotic controlled substance. One victim suffered a stroke after taking the counterfeit medication.

ICE and the FBI, along with DOJ, have also investigated the potential sale of counterfeit Cisco Gigabit Interface Converters to the U.S. Department of Defense for use by U.S. Marine Corps personnel operating in Iraq. Failure of these counterfeit devices on the battlefield would have endangered the lives of American service members. The defendant's profit would have been only approximately \$120,000, showing the callousness with which many counterfeiters treat human life. I am pleased to report one defendant in this case investigated by ICE was recently sentenced to more than four years in prison.

These cases are troubling and demand continued attention from criminal investigators and regulatory agencies. On June 14, ICE announced the beginning of Operation Chain Reaction, a joint operation between ICE, the Department of Defense, FBI, CBP, GSA and DOJ to target counterfeit parts in the Defense Department and U.S. Government supply chain. Through this operation, we will work together with our partners to protect the members of the Armed Forces, enabling them to conduct their missions without the fear that the equipment they rely on may be counterfeit. At ICE, we are prioritizing our investigative resources to focus on IP theft enforcement that protects health and safety, including the safety of our soldiers serving abroad, and supports U.S. innovation and creativity.

CONCLUSION

Thank you for the opportunity to appear before you today to discuss the work of ICE in enforcing U.S. intellectual property rights. I would be pleased to answer any questions that you may have at this time.