

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

**Testimony of Victoria A. Espinel
Intellectual Property Enforcement Coordinator, Office of Management and Budget
Before the Committee on the Judiciary
United States Senate
June 22, 2011**

Chairman Leahy, Ranking Member Grassley, members of the Committee on the Judiciary: Thank you for your continued leadership on this important issue. I also want to thank you for the support that this Committee has provided to my new office and the Administration's overall efforts. Although my new office is very small and operates with extremely limited resources, your support and the attention you bring to this issue has helped us to be more effective.

One year ago today we sent to you the Administration's Inaugural Joint Strategic Plan on Intellectual Property Enforcement. That Strategy was developed with significant public input -- including more than 1,600 comments from the public -- and the coordinated efforts of the Federal agencies, including the U.S. Departments of Commerce (DOC), Health and Human Services (HHS), Homeland Security (DHS), Justice (DOJ), State and the Office of the U.S. Trade Representative (USTR). The overarching goal of the Strategy is to protect U.S. jobs, to increase exports of innovative technology and creative works and to support and protect our innovation, thereby allowing America's innovation to continue to drive our economic growth. A second principal goal is to protect the health and safety of the public. One year ago, we set out six broad principles that we would follow to meet our goals and 33 specific actions that we would take to improve enforcement. We knew the Strategy would take far more time than a year to fully implement, but we are making progress and I want to highlight some of the concrete steps that we have taken to support those principles and to improve enforcement since we issued the Strategy a year ago.

I. Lead by Example

First, we will lead by example and work to ensure that the U.S. Government does not purchase or use infringing products. On January 7, the U.S. Chief Information Officer, the Administrator for Federal Procurement Policy and I issued a statement to Federal procurement officials reminding them of the Administration's policy to be "technology neutral" in procurement, and that all

technology must be properly licensed. We are also reviewing our policies with respect to use of software by our Federal contractors.

We must prevent counterfeit and pirated products from coming in to the U.S. Government supply chain and take aggressive action against those who sell them to our military and other critical infrastructure. We are working closely with the Department of Defense, National Aeronautics and Space Administration, DOJ, DHS and other federal agencies on stopping counterfeit and pirated products from entering the U.S. government's supply chain, particularly our military and critical infrastructure, and taking aggressive action against those who are selling such products. *Operation Network Raider* is a collaborative interagency law enforcement initiative that aims to end the illegal distribution of counterfeit network hardware manufactured in China. The results are compelling: 30 felony convictions and over 700 seizures of counterfeit Cisco network hardware valued at more than \$143 million. In addition, U.S. Immigration and Customs Enforcement (ICE) has recently initiated – in coordination with nine of its National Intellectual Property Rights Coordination Center (IPR Center) partners – *Operation Chain Reaction* to prevent counterfeits from entering the U.S. government's supply chain.

II. Transparency

Second, we will be transparent in our policymaking and enforcement. We have and will continue to meet with a wide range of stakeholders as we implement the Strategy. Federal Bureau of Investigations (FBI) and ICE have also increased the transparency of government efforts to protect intellectual property by conducting outreach and developing education programs for industry representatives with a stake in intellectual property enforcement.

III. Improve Coordination

Third, we will improve coordination, including coordination of our law enforcement, the men and women stationed in our embassies overseas and our international training. On February 8, President Obama signed Executive Order 13565 establishing a Cabinet-level intellectual property advisory committee chaired by the Intellectual Property Enforcement Coordinator (IPEC) to further focus our efforts. We now have 30 law enforcement teams across the country, led by ICE or the FBI, that include federal law enforcement and state and local law enforcement to fight intellectual property crime. The FBI has enhanced the coordination of intelligence of global IP threats through its Intelligence Fusion Group, as well as avoiding conflicts of agencies working on IP cases through its Intellectual Property Rights Unit stationed at the IPR Center. Overseas, we identified 17 countries in which improving intellectual property enforcement is a priority. The embassies in each of those countries have each established senior-level intellectual property working groups and have completed detailed plans setting out the actions each embassy will take to address the specific challenges in those countries. We established interagency working groups to better coordinate our training efforts and make sure that our limited resources are used wisely.

As part of this effort, last month, the U.S. Patent and Trademark Office (USPTO) launched a new searchable database (www.usipr.gov) for U.S. Government intellectual property enforcement training programs conducted around the world. The database will increase transparency, by allowing the public to see how the U.S. Government is allocating resources on intellectual property training; increase public participation, by identifying upcoming training events that are open to the public; use resources more efficiently, by sharing training materials between U.S. Government agencies; and avoiding duplicative programs and improve results, by building on past programs and targeting U.S. Government efforts on countries and topics where more training is needed.

IV. Increase enforcement overseas

Fourth, we will increase enforcement overseas, including pressing foreign governments to do more to protect American right holders. As of last September, ICE has a full time agent in China dedicated to IP issues. The FBI is also preparing to assign a person to China later this year who will work exclusively on IP issues. Moreover, in the President's 2012 budget, DOJ is requesting funds to place six International Computer Hacking and Intellectual Property Coordinators, or "ICHIPs", in strategic global locations to strengthen international intellectual property efforts. The ICHIP program would also support the DOJ's international organized crime strategy as related to IP, online fraud, and data breaches that threaten U.S. economic security in targeted regions around the world.

We are pressing our foreign counterparts to do more. President Obama, Vice President Biden, Attorney General Holder, Secretaries Geithner and Locke, U.S. Trade Representative Ron Kirk and Department of Homeland Security ICE Director John Morton, U.S. Customs and Border Protection (CBP) Commissioner Alan Bersin, Under Secretary of State Robert Hormats and other senior Administration officials have directly and repeatedly pressed China and other countries to do much more to combat intellectual property theft.

Both Attorney General Holder and DHS ICE Director Morton traveled to China within the last year to press their counterparts for increased cooperation to fight intellectual property crime. This was the first time an ICE director has traveled to mainland China and Director Morton made IP enforcement a major focus of his trip, signing a Letter of Intent with the Ministry of Public Safety on law enforcement cooperation. On May 5, 2011, Director Morton signed a Memorandum of Understanding on law enforcement cooperation with the China General Administration of Customs (GACC). In May, CBP worked with the GACC to increase opportunities for information-sharing for both sides. CBP also signed a Memorandum of Understanding with the Ministry of Public Safety (MPS), which will lay the groundwork for information-sharing and collaboration between the two agencies.

We are also seeing greater cooperation from some foreign governments.

In June, in association with Operation In Our Sites, several U.S. law enforcement agencies worked cooperatively with Dutch law enforcement authorities to seize an image server in the Netherlands being used to facilitate the unauthorized reproduction and distribution of copyrighted material. That same month, the FBI worked with Latvian authorities to arrest and to extradite a trafficker of counterfeit gaming machines and in August, the trafficker and his partner were each sentenced to two years in prison, and ordered to pay \$151,800 in restitution.

On February 24, pursuant to an extradition agreement, U.S. Marshals took a defendant into custody in Paraguay to return him to the United States to face charges, including of the sale of counterfeit goods. The defendant is alleged to have committed his crimes to raise money for the terrorist group Hezbollah.

On January 21, a citizen of Belgium who was arrested in Costa Rica and extradited to the United States, pled guilty to operating an illegal Internet pharmacy that sold \$1.4 million worth of counterfeit and misbranded drugs (along with controlled substances). The defendant used multiple websites to sell more than 40 prescription drugs. He operated a customer call center in the Philippines, received payments from customers using a credit card processor in the Netherlands, and paid employees using Western Union in the Philippines, Costa Rica, and the United States. Earlier this month, he was sentenced to 48 months' imprisonment.

With cooperation from the Mexican Tax Administration Service – one of the IPR Center's foreign law enforcement partners – ICE and CPB were able to help bring about the seizure of 306 tons of counterfeit merchandise at mail facilities and land, air and sea ports of entry in one joint operation, seizing over \$23 million worth of goods.

Under Operation Pangea III the United States targeted online sale of counterfeit and illegal medicines in coordination with 45 countries, resulting in worldwide arrests and seizures of thousands of potentially harmful medications. This is one of three global law enforcement sweeps that the United States has led and participated in since June of 2010, coordinated with the World Customs Organization, INTERPOL, and others, each involving more than 30 countries, targeting counterfeit drugs and online piracy.

And in November, the U.S. Trade Representative concluded negotiations on the Anti-Counterfeiting Trade Agreement with 37 other countries, who together with the United States represent over 50 percent of global trade. That agreement will be the first international agreement focused exclusively on intellectual property enforcement and we hope that the agreement will increase cooperative cross-border activity.

China is clearly a priority focus because of the scope and volume of its problems there. In January, President Obama and President Hu issued a joint statement, agreeing that China will strengthen its efforts to protect intellectual property rights, including by conducting audits to ensure that government agencies at all levels use legitimate software, and that it will not link its

innovation policies to the provision of government procurement preferences. The two countries made further progress in May during the Economic Track of the U.S.-China Strategic and Economic Dialogue (S&ED) led by Treasury Secretary Geithner, including China's commitment to eliminate all of its government procurement indigenous innovation product catalogues and revise its draft Government Procurement Law Implementing Regulations to eliminate the requirement to link indigenous innovation products to the provision of government procurement preferences, as part of its implementation of President Hu's January 2011 commitment. Last October, China launched a nation-wide "Special Campaign Against Piracy and Counterfeiting" (Special Campaign). This campaign has had high-level attention by China's State Council and was led by a Chinese Vice Premier, who coordinated IPR enforcement efforts across China. At the May S&ED, China pledged to improve its high-level, long-term intellectual property rights protection and enforcement mechanism, building on the Special Campaign, and we are working with USTR, USPTO and other federal agencies and with our industry to assess the impact of the Special Campaign and to press China to do more.

On February 28, the U.S. Trade Representative issued a report identifying 30 online and physical markets – including China's search engine, Baidu, and e-commerce platform, Taobao – as "notorious markets," in which pirated and counterfeit goods are reportedly available. The report will help guide the Administration's trade-related enforcement efforts. We have already seen voluntary action from sites listed in the special report, such as Taobao's announcement that it will increase efforts to crack down on counterfeit and pirated products being sold through its system. The Government of Hong Kong has already taken action against a market listed in the report, heightening surveillance and bringing criminal prosecutions at the notorious "Ladies' Market".

Through its Trade Agreements and Compliance Program, ITA's Office of Intellectual Property Rights (OIPR) continued to work with other U.S. Government agencies to help U.S. businesses by suggesting strategies they can take to evaluate IPR problems encountered abroad. Since June 2010, 60 cases were initiated on behalf of U.S. rights holders. Of those, 20 cases were on behalf of U.S. small and medium-sized businesses. Fifteen barriers in 14 countries were removed. OIPR also launched a number of additional tools and services to help U.S. businesses protect and enforce their IPR abroad which are now available through www.stopfakes.gov, including a new Transatlantic Intellectual Property Rights Resource Portal launched in December 2010.

And on May 14th as the result of close work with France and other European allies, the Group of Eight (G8), released a final declaration that includes strong statements on the importance of enforcement and a joint commitment to protect intellectual property rights, including to take "effective action against violations of intellectual property rights in the digital arena, including action that addresses present and future infringements". The G8 declaration highlighted "the importance of enforcement in order to incentivize innovation and protect innovation once

developed,” and recognized “the need to have national laws and frameworks for improved enforcement.” (emphasis supplied)

V. Secure our supply chain

Fifth, we will secure our supply chain. That includes securing the physical border, working to minimize infringing products coming into the U.S. and innovative technology from being illegally transferred out of the U.S.

In Fiscal Year 2010, ICE intellectual property investigations opened are up more than 41 percent and arrests are up more than 37 percent, DHS intellectual property seizures are up more than 34 percent, and FBI intellectual property investigations opened are up more than 44 percent.

DOJ has bolstered state and local law enforcement efforts by providing over \$6.5 million in grants, which the program grantees have used to seize over \$195 million worth of infringing merchandise since October of 2009. These seizures are in addition to the increased training, arrests, warrant executions, and other activities that the DOJ grants fund. Specifically, a portion of the funding provides critical training and outreach to law enforcement on effective strategies for intellectual property enforcement efforts. DOJ and the FBI have increased their investigation and prosecution of trade secret cases. Among the examples of cases charged or prosecuted by DOJ last year are two cases involving the theft of technology developed by our automobile industry, including a case involving trade secrets to build hybrid cars. DOJ also prosecuted trade secret cases involving the trafficking of sensitive business practice information belonging to Apple, as well as highly valuable trading software belonging to major financial companies such as Societe Generale and Goldman Sachs. These significant cases are representative of our overall increased enforcement.

Because of serious risks to health and safety, combating counterfeit drugs is a major priority. In March, we sent to Congress a strategy which laid out how we will combat counterfeit drugs sold on the Internet, smuggled into the U.S., and sold in cities throughout the United States. We also have recommended to Congress that it request the Sentencing Commission to increase the guidelines for crimes that pose a serious risk to health and safety. Just last month, for example, an individual was indicted in Pennsylvania for attempting to sell approximately 6,000 boxes of counterfeit LifeScan One Touch diabetic test strips. That same month, a husband and a wife in California were sentenced to over three years in prison for selling counterfeit jewelry that contained nearly 20 times the amount of lead deemed safe for children by the Consumer Product Safety Commission.

Securing our supply chain includes not only the physical border, but also combating infringement in the digital world. In the past year, we have advanced a coordinated approach to combat online infringement: increased law enforcement action, voluntary efforts by the private sector and consumer education.

Last June, DOJ and ICE announced the first coordinated effort to target websites engaged in distributing or providing access to pirate or counterfeit goods. Under Operation In Our Sites, American law enforcement has conducted five operations seizing 125 domain names. Over 50 million visitors to these sites were redirected to a banner informing them of the domain name's seizure and of the criminal penalties for infringement.

Effective enforcement against online infringement also requires strong laws that keep up with technology. In March, we made 20 recommendations for legislative changes to Congress to strengthen enforcement. Those recommendations are up on the White House website. Since the release of the legislative recommendations, we have been working with Congress on legislative proposals that reflect the White Paper recommendations. One of those is to make sure that illegal streaming - a form of "distribution" online - is a felony, in the same way that more traditional forms of distribution are.

We know that there is a great deal of interest in Congress in giving our law enforcement additional tools to stop websites engaged in substantial criminal infringing activity. My office has convened a process to develop the Administration's position on this legislation. This is a priority issue for us and we look forward to working closely with Congress to develop effective solutions.

On engagement with the private sector, we know that effective enforcement must involve the private sector stakeholders. We are working with private sector companies that facilitate or benefit from e-commerce to encourage practical and effective voluntary actions to address repeated acts of infringement, that respect privacy and fair process and protect legitimate uses of the Internet. Over the last several months, my office has been working closely with Internet Service Providers, advertisers, industry associations, credit card companies, payment processors, search engines, domain name registrars and registries to take action against illegal activity. In January, Vice President Biden held a meeting with Verizon Chief Executive Officer (CEO) Ivan Seidenberg, CEOs from movie, music, software and pharmaceutical companies and representatives of labor and public interest advocacy groups to encourage rapid progress on these types of voluntary agreements.

In December, we announced that American Express, Discover, eNom, GoDaddy, Google, MasterCard Microsoft, PayPal, Visa and Yahoo! had agreed to start a new non-profit to get illegal fake "pharmacies" - actually criminals masquerading as pharmacies- out of their systems and to choke off the revenue that fake "pharmacies" make by preying on the public. The nonprofit will also work on educating consumers on the dangers of buying from fake "pharmacies". In January, the group adopted a name for the nonprofit- the Center for Safe Internet Pharmacies ("CSIP") - and began working on the initial corporate structure and governance documents. By July, CSIP plans to confirm those companies who will serve as

founding members, hire staff to manage the day-to-day operations of the organization, and establish a website.

We need similar efforts on other Internet enforcement issues, including copyright infringement.

Voluntary cooperative solutions are a priority focus and we believe that, in combination with law enforcement action, voluntary actions by the private sector have the potential to significantly reduce online infringement. We are working closely now with credit card companies and advertisers- who do not want to be inadvertently supporting criminal activity- to ensure that infringement will no longer be a profitable business and to cut off revenue for illegal sites. This is illegal activity that legitimate companies do not want be associated with.

The third piece of our online enforcement approach is to make sure the public is aware of the risks of counterfeiting and piracy online. To give just two examples, DOJ is funding public awareness campaigns on the risks to the public of purchasing counterfeit goods and CSIP includes education and public awareness as one of its four guiding principles.

VI. Data

Finally, we will want to ensure that our policies are built on the best data possible. We are working with the Department of Commerce, the chief economists of the Federal agencies and the President's Council of Economic Advisers on an empirical analysis to identify the industries that most intensively produce intellectual property, and to measure the importance of those industries to the U.S. economy. This is the first time the U.S. Government has ever attempted such a broad analysis across all the sectors of our economy.

As the Joint Strategic Plan described a year ago, the U.S. Government is committed to utilizing the resources at our disposal to improve intellectual property enforcement to grow the U.S. economy; create jobs for American workers and support for U.S. exports; promote innovation and the security of America's comparative advantage in the global economy; protect consumer trust and safety; protect national and economic security; and enforce rights as set out in our Constitution.

I commend this Committee's leadership on intellectual property enforcement and I look forward to working closely with this Committee on improving our protection of American intellectual property.