



# U.S. Customs and Border Protection

---

**STATEMENT**

**OF**

**ALLEN GINA  
ASSISTANT COMMISSIONER  
OFFICE OF INTERNATIONAL TRADE**

**U.S. CUSTOMS AND BORDER PROTECTION  
DEPARTMENT OF HOMELAND SECURITY**

**REGARDING A HEARING ON**

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

**BEFORE THE**

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**Wednesday, June 22, 2011 - 10:00 a.m.  
226 Dirksen Senate Office Building**

## **INTRODUCTION**

Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Judiciary Committee, I am pleased to appear before you today alongside witnesses from several government agencies, including Assistant Deputy Director Erik Barnett from our Department of Homeland Security sister agency U.S. Immigration and Customs Enforcement (ICE), to discuss the actions we are taking at U.S. Customs and Border Protection (CBP) to ensure that the laws governing intellectual property rights (IPR) are properly enforced for goods imported to and exported from the United States.

My name is Allen Gina and I am the Assistant Commissioner for the Office of International Trade at CBP. My office is responsible for formulating CBP's policies on commercial trade, developing trade programs, and enforcing U.S. import laws.

CBP has the dual mission of securing our nation's borders, while at the same time facilitating the flow of legitimate trade and travel that is so important to our nation's economy. As an agency, we protect more than 100,000 miles of shoreline and land border. We operate 330 ports of entry, and process almost 106 million cars, buses, trucks, trains, vessels and aircraft arriving at our borders each year. We screen more than 28 million commercial shipments arriving in air and maritime cargo, and 250 million more arriving in small parcels via express carriers and mail.

As America's frontline border agency, CBP plays a key role in safeguarding one of America's most valuable assets, its intellectual property (IP). According to the U.S. Chamber of Commerce, "IP-intensive industries employ nearly 18 million workers, account for more than 50% of all U.S. exports, and represent 40% of the country's growth." Thus, the theft of intellectual property poses a serious threat to America's economic vitality. But counterfeit and pirated products do more than harm the competitiveness of our industries and the employment of U.S. workers. Fake goods are capable of injuring and killing consumers and can jeopardize public safety.

In protecting America from these threats, CBP recently announced its Five-Year IPR Strategy, which was delivered to Congress in July 2010 and provides a comprehensive enforcement strategy to reduce IPR violations, including recommendations for strengthening penalties, as well as timelines for developing improved targeting models, expanding training for all enforcement personnel and expanding post-audit reviews for IPR. In addition, CBP works closely with Victoria Espinel, the U.S. Intellectual Property Enforcement Coordinator (IPEC) at the Office of Management and Budget to coordinate the U.S. government response to IPR theft, as outlined in the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (P.L. 110-403). For example, CBP collaborated with the IPEC in drafting the Joint Strategic Plan on Intellectual Property Enforcement. Moreover, CBP led an interagency working group on combating counterfeit pharmaceuticals that developed actions for the Counterfeit Pharmaceutical Interagency Working Group Report to the Vice President and Congress issued by the IPEC in March 2011. We also conducted a comprehensive review of our legal authorities

for the IPEC's White Paper on Intellectual Property Enforcement Legislative Recommendations issued in March of this year.

## **FIVE-YEAR IPR ENFORCEMENT STRATEGY**

CBP envisions an effective IPR enforcement process in which legitimate cargo is released without delay, infringing goods are intercepted, and future violators are deterred. To achieve this vision, CBP developed the comprehensive Five-Year IPR Strategy that is underpinned by partnerships with the private sector, other agencies and foreign governments; modernized laws, technologies and processes; and a budget initiative to support investments in human capital, outreach, and technology.

CBP's IPR Strategy furthers the competitiveness of U.S. industry; supports investment in IP research and development and employment of U.S. workers; and protects American consumers, companies and national security from harm by counterfeiting and piracy. Our four-part strategy breaks down the international trade process into four main areas: 1) facilitation of the release of legitimate cargo into commerce prior to its arrival at our borders; 2) enforcement against suspect shipments when they arrive at our borders; 3) deterrence of future IP theft by counterfeiters and pirates; and 4) modernization of trade practices.

To facilitate trade and ensure compliance with IPR laws, CBP will develop partnership programs with the trade community to manage supply and distribution chains, thus enhancing IPR targeting and facilitating the clearance of compliant cargo. To strengthen

enforcement of IPR laws, CBP is developing better targeting models, expanding training for personnel involved in IPR enforcement and strengthening penalties. To advance national and economic security, CBP is engaging in cooperative efforts with other federal agencies and foreign governments to reduce international trade in counterfeit and pirated goods and to prioritize enforcement against IPR infringements with health and safety concerns, also modernizing IPR trade processes by streamlining processes and leveraging technology to more effectively enforce IPR.

### ***FACILITATION***

Prior to the arrival of goods at our borders, CBP's objective is to identify trusted importers and legitimate shipments, allowing CBP to focus its enforcement efforts on known IPR violators and on imports for which we have less information. To accomplish this, CBP is partnering with the private sector on supply and distribution chain management programs. These programs will provide information to help us be more effective in deciding which shipments to inspect, and which to release without delay.

CBP is using risk modeling to enhance IPR targeting systems to improve the selection of shipments with a high risk of containing IPR-infringing goods for examination.

Ultimately, CBP's goal is to more effectively focus our IPR enforcement resources on those imports with a higher risk for IPR infringement, thereby increasing interdictions of IPR infringing imports and facilitating the release of low risk imports.

To do this, CBP has implemented the Center for Excellence and Expertise (CEE), a pilot program within the pharmaceutical industry that is focused on ensuring a greater degree of uniformity across ports of entry so as to remove unnecessary transactional hurdles. Through the CEE, we are collaborating with the pharmaceutical industry and gaining intelligence to segment low-risk, trusted importers from those that present higher risk for IPR violations. This allows us to facilitate entry of low-risk shipments and focus IPR enforcement resources on inspecting higher-risk shipments. CBP is also working with the pharmaceutical industry on a public awareness campaign to educate the public on the dangers posed by counterfeit drugs, including those purchased overseas and online.

Expanding trust between the private sector and CBP through trusted partner programs – supply and distribution chain management – will prove advantageous to right holders, importers and CBP. Right holders will benefit from increased protection resulting from CBP's increased targeting efficacy, and importers will experience a reduction in costs associated with unnecessary inspections and greater predictability in the processing of their shipments at the border. The additional information that will become available to CBP will improve IPR enforcement by enabling greater targeting efficacy and a corresponding increase in seizures. Lastly, improved infringement determination tools and processes will expedite the release of legitimate goods into the commerce and avoid the release of infringing goods.

## ***ENFORCEMENT***

When suspect goods arrive at our borders, CBP targets and inspects the goods, and seizes, forfeits and destroys counterfeit and pirated goods. CBP also enforces International Trade Commission exclusion orders, which are usually sought by patent owners. Exclusion orders enable CBP to provide protection for patented products. CBP is taking a number of steps to improve its efforts in these areas. This includes expanding IPR training for enforcement personnel and cooperating with other federal agencies and foreign governments to improve targeting and enforcement efforts.

To better equip officers in our ports of entry to enforce IPR, CBP is implementing Integrated IPR Field Training. This full-day, live, instructor-led course covers IPR policies, laws and operations. Furthermore, CBP launched a new program last year that encourages right holders to provide their product identification guides electronically to CBP. CBP makes the guides, which help us identify counterfeit and pirated products, readily available to our frontline officers in ports throughout the country. To date, CBP has received nearly 100 guides, helping us to better safeguard 1,300 trademarks and copyrights from counterfeiting and piracy.

In Fiscal Year (FY) 2010, cooperative efforts by CBP and ICE, including joint operations such as Operation Safe Summer, resulted in 19,959 seizures, an all time high and a 34 percent increase (from 14,841) in FY 2009. Included in these totals are seizures of counterfeit goods that put consumer safety and critical technology at risk, which rose dramatically due to our increased emphasis on enforcement in this area. The total

number of consumer safety and critical technology IPR seizures increased 97 percent. The estimated manufacturer's suggested retail price (MSRP), which represents the value the seized goods would have had if they were genuine, is \$1.4 billion.

CBP is aggressively pursuing new, and strengthening existing, bilateral and multilateral engagements with foreign counterparts in order to conduct joint customs IPR enforcement operations; share effective enforcement practices; and exchange information on IPR violations to better target and interdict counterfeit and pirated goods. For example, as part of its ongoing partnership with the European Union (EU) to enforce IPR, CBP and EU customs authorities conducted the first joint customs IPR enforcement operation, Operation Infrastructure, in 2008 to target counterfeit semiconductors and computer network hardware, primarily from China. The three-week operation resulted in the seizure of more than 360,000 counterfeit components involving 40 different trademarks, most of them belonging to U.S. companies. CBP and the EU also published joint guidance for rights holders on how to work with customs authorities to protect their intellectual property.

In addition, CBP leadership currently chairs sub-committees in both the Asia-Pacific Economic Cooperation (APEC) and the World Customs Organization (WCO) and actively participates in such forums such as the U.S.-China Joint Committee on Commerce and Trade IPR Working Group. As a result of this engagement, earlier this year CBP proposed the first ever joint IPR enforcement operation among APEC customs authorities, including China, to engage in a joint operation targeting IPR violations later



this summer. Moreover, in conjunction with the U.S.-China Strategic and Economic Dialogue (S&ED), CBP has increased collaboration with China Customs on IPR enforcement to combat the prolific trade in counterfeit goods coming from China. CBP also signed a Memorandum of Understanding (MOU) with China's Ministry of Public Security during the S&ED to expand intelligence and information-sharing and increase coordinated enforcement efforts with China's enforcement agencies.

CBP also works with other federal agencies to build IPR enforcement capacity in countries around the world. We train foreign officials to increase their IPR enforcement skills and promote better IPR border enforcement to combat global trade in IPR-infringing goods.

### ***DETERRENCE***

In conjunction with our IPR enforcement efforts directed at goods entering and exiting the United States, CBP is working proactively to deter future violations. Such initiatives include strengthening the deterrent effect of fines and penalties by appropriately levying them and increasing collections; expanding and increasing the effectiveness of IPR audits to deprive counterfeiters and pirates of their illicit profits; and promoting criminal enforcement against counterfeiting and piracy by collaborating with ICE and supporting the IPR Center.

Between FY 2006 and FY 2010, CBP increased the number of IPR penalties it assessed by 8 percent and the amount it collected by 3 percent. Cumulatively, from FY 2006 to

FY 2010, CBP assessed 514 IPR penalties and collected \$2,114,519 in fines. When collecting civil penalties, CBP is challenged by the fact that businesses who knowingly import counterfeit and pirated goods operate with minimal assets. It is often more efficient for these businesses to shut down their operations and re-open under a new name rather than to pay a fine or penalty. CBP has implemented a number of actions to address this challenge and ensure that the expenses that CBP must incur in order to collect the penalties do not exceed the amount collected.

To enhance deterrence of IPR theft, CBP is implementing new procedures for issuing civil penalties under 19 U.S.C. 1526(f). Currently, these penalties are usually issued to the U.S. importer or consignee. Under new guidelines, we will penalize persons who direct, assist financially or otherwise, or who aid and abet the importation of merchandise seized for bearing a counterfeit mark to the full extent allowed under the law.

In addition, CBP is changing its IPR penalty process so that we issue the penalties concurrently with the seizure of the counterfeit goods rather than waiting for the forfeiture proceeding to be complete, which can delay the issuance of penalties for up to two years.

In a corresponding effort, CBP is collaborating with the Department of Justice (DOJ) to identify ways to enhance the quality of IPR penalty cases and to ensure that CBP's IPR penalty cases are referred to DOJ for judicial action.

From FY 2005 through FY 2011 to date, CBP has completed 85 audits of importers at high risk for IPR violations, primarily known IPR violators. These audits have resulted in penalties, which are assessed under 19 U.S.C. § 1595a(b) and based on domestic value, of \$12.3 million for IPR infringements. Of the 85 importers audited for IPR violations, only 16 importers, or 19 percent, subsequently imported shipments of counterfeit goods. Thus, the IPR Audit Program has had the positive impact of deterring 81 percent of these importers from committing IPR violations.

CBP is a leading source of referrals to ICE for possible criminal investigation of IPR infringement. As a participating agency in the National IPR Coordination Center (IPR Center), CBP leverages our targeting and interdiction successes to contribute to special operations. For example, CBP, in conjunction with FBI and ICE, initiated Operation Network Raider in May 2010, which targets the illegal distribution of counterfeit network hardware manufactured in China. To date, referrals from this operation to ICE for criminal investigation have resulted in 30 felony convictions and 700 seizures of counterfeit Cisco network hardware. CBP is also participating in the recently announced IPR Center Operation Chain Reaction, a multi-agency effort to protect the military's supply chain from being infiltrated by counterfeit goods.

### ***MODERNIZATION***

Increasing CBP's IPR enforcement capabilities will lead to increased interdiction of infringing goods, and deterring future violations will positively impact the economy and protect the safety and security of Americans.

As I previously noted, in June 2010, the IPEC issued the Administration's first Joint Strategic Plan on Intellectual Property Enforcement (JSP), which was developed in coordination with many federal agencies, including the Departments of Homeland Security, Justice, State, Commerce, Health and Human Services, and the U.S. Trade Representative. As part of the JSP, the Administration reviewed existing laws to ensure that they were effective and did not hinder enforcement. Based on that review, in March 2011 the Administration issued a white paper identifying specific legislative recommendations to increase the effectiveness of IPR enforcement efforts. One of these recommendations is to give DHS the authority to share information with right holders prior to the seizure of goods to help determine whether products are infringing.

This recommendation recognizes that right holders know their products better than anyone and can provide valuable information to assist CBP in determining the authenticity of suspect goods. However, CBP also has an obligation and long-standing history of providing appropriate safeguards for importers importing legitimate products. In this regard, CBP strongly supports policies providing us with the ability to share information and samples of suspected counterfeit and piratical goods with right holders in order to assist with making such a determination.

## **CONCLUSION**

Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Judiciary Committee, as you know the trade in counterfeit and pirated goods threatens America's

innovation-based economy, the competitiveness of our businesses, the livelihoods of U.S. workers, our national security, and the health and safety of our consumers.

I thank you again for the opportunity to appear before you today to present an overview of CBP's actions to ensure that American intellectual property is protected and that imports comply with our nation's laws. We recognize that we have an important obligation to prevent any abuse of our open marketplace, and we take our role in this process very seriously.

I look forward to answering any questions you may have.