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INTELLECTUAL PROPERTY

Leadership and Accountability Needed to Strengthen Federal Protection and Enforcement

Statement of Loren Yager
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Highlights of [GAO-08-921T](#), a testimony before the Committee on the Judiciary, U.S. Senate

Why GAO Did This Study

U.S. government efforts to protect and enforce intellectual property (IP) rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners. The illegal importation and distribution of IP-infringing goods also poses a threat to the health and safety of U.S. citizens. However, the challenges involved in IP protection are significant and require effective coordination among a wide range of policy and law enforcement agencies. Multiple agencies work to protect IP rights, and they coordinate their efforts through certain coordination bodies as well as an executive-branch strategy called the Strategy Targeting Organized Piracy (STOP).

This testimony addresses two topics: the need for (1) greater leadership and permanence in the national IP enforcement strategy and coordination structure; and (2) improvement in key agencies' criminal IP enforcement data collection and analysis. It is based on prior GAO work conducted from 2003 to 2008.

What GAO Recommends

Previous GAO reports recommended, among other things, improvements in the strategic planning and coordination of IP enforcement efforts and in agency collection and analysis of IP enforcement data. The affected agencies generally agreed with our recommendations and some have begun taking steps in response.

To view the full product, including the scope and methodology, click on [GAO-08-921T](#). For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

INTELLECTUAL PROPERTY

Leadership and Accountability Needed to Strengthen Federal Protection and Enforcement

What GAO Found

The coordinating structure that has evolved for protecting U.S. intellectual property rights lacks leadership and permanence, presenting challenges for effective long-term coordination. The National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, serves to coordinate IP protection and enforcement across agencies; and STOP, initiated by the White House in 2004, is the strategy that guides the council. NIPLECC has struggled to define its purpose and has an image of inactivity within the private sector. It continues to have leadership problems despite enhancements made by Congress in 2004 to strengthen its role. STOP, which is led by the National Security Council, has a more positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current administration. While NIPLECC adopted STOP in 2006 as its strategy for protecting IP overseas, its commitment to implementing STOP as a national strategy remains unclear, creating challenges for accountability and long-term viability.

Agencies within the Departments of Justice, Homeland Security, and Health and Human Services that play a role in fighting IP crimes through seizures, investigations, and prosecutions need to improve their collection and analysis of IP enforcement data. IP enforcement is generally not the highest priority for these agencies, given their broad missions, but addressing IP crimes with a public health and safety risk, such as counterfeit pharmaceuticals, is an important activity at each agency. Federal IP enforcement actions generally increased during fiscal years 2001–2006, but the agencies have not taken steps to assess their achievements. For example, despite the importance assigned to targeting IP crimes that affect public health and safety, most agencies lack data on their efforts to address these types of crimes. Also, most have not systematically analyzed their IP enforcement statistics to inform management and resource allocation decisions or established IP-related performance measures or targets. In addition, the National Intellectual Property Rights Coordination Center, created to coordinate federal IP investigative efforts, has not achieved its mission. Participating agencies have lacked a common understanding of the center's purpose and their roles in relation to it, and staff levels have declined.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today before the Judiciary Committee to discuss our work on U.S. efforts to protect and enforce intellectual property (IP) rights. U.S. government efforts to protect and enforce intellectual property rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners. Along with the costs to the U.S. economy, the illegal importation and distribution of counterfeit and pirated goods poses a threat to the health and safety of U.S. citizens. However, the challenges involved in IP protection are significant, and include the technological advances that facilitate piracy as well as the need for effective coordination among a wide range of policy and law enforcement agencies.

In my statement today, I will address two topics: the need for (1) greater leadership and permanence in our national IP enforcement coordination structure and strategy; and (2) improvement in key agencies' criminal IP enforcement data collection and analysis.

My remarks are based on a variety of assignments that GAO has conducted on intellectual property protection over the past 5 years.¹ In this research, we performed work at multiple U.S. agency headquarters in Washington, D.C., agency field offices, and U.S. ports across the country. We reviewed key U.S. government IP reports and relevant agency documents, including IP enforcement data. In addition, we met with representatives from multiple industry associations and companies that are affected by IP violations. We conducted our work from June 2003 through March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

The current U.S. government coordinating structure that has evolved for protecting and enforcing U.S. intellectual property rights lacks leadership and permanence, presenting challenges for effective and viable

¹See Related GAO Products at the end of this statement for a list of GAO reports and testimonies on intellectual property protection since 2004.

coordination for the long term. The National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, serves to coordinate IP protection and enforcement across multiple agencies; and the Strategy for Targeting Organized Piracy (STOP), initiated by the White House in 2004, is the strategy that guides the council. NIPLECC has struggled to define its purpose and retains an image of inactivity within the private sector. It continues to have leadership problems despite enhancements made by Congress in December 2004 to strengthen its role. In contrast, STOP, which is led by the National Security Council, has a more positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current administration. While NIPLECC adopted STOP in February 2006 as its strategy for protecting IP overseas, its commitment to implementing STOP as a national strategy remains unclear, creating challenges for accountability and long-term viability.

Agencies within the Departments of Justice (DOJ), Homeland Security (DHS), and Health and Human Services (HHS) that play a role in fighting IP crimes need to improve their collection and analysis of IP enforcement data. Federal IP enforcement functions include seizures, investigations, and prosecutions. IP enforcement is generally not the highest priority for these agencies, given their broad missions, but addressing IP crimes with a public health and safety risk, such as counterfeit pharmaceuticals, is an important enforcement activity at each agency. Federal IP enforcement actions generally increased during fiscal years 2001–2006, but the agencies have not taken steps to assess their achievements. For example, despite the importance assigned to targeting IP crimes that affect public health and safety, we found that most agencies lack data to report on or analyze their efforts to address these types of crimes. Also, most have not systematically analyzed their IP enforcement statistics to inform management and resource allocation decisions or established IP-related performance measures or targets to assess their achievements. We also found that the National Intellectual Property Rights Coordination Center, an interagency mechanism created to coordinate federal investigative efforts related to IP crimes, has not achieved its mission, in part because participating agencies have lacked a common understanding of the center's purpose and their roles in relation to it, and staff levels have declined.

Background

Intellectual property, for which the U.S. government provides broad protection through means such as copyrights, patents, and trademarks, plays a significant role in the U.S. economy, and the United States is an

acknowledged leader in its creation. According to the U.S. Coordinator for International Intellectual Property Enforcement, industries that relied on IP protection were estimated to account for over half of all U.S. exports, represented 40 percent of U.S. economic growth, and employed about 18 million Americans in 2006. These industries must compete with the global illicit market that is being spurred by economic incentives such as low barriers to entry into counterfeiting and piracy, high profits, and limited legal sanctions if caught. In addition, technology has made reproduction and distribution of some products more accessible, and some countries, particularly China, continue to have weak IP enforcement despite U.S. efforts.

Multiple federal agencies undertake a wide range of activities to protect and enforce IP rights. The Departments of Commerce and State, the U.S. Trade Representative (USTR), the Copyright Office, the U.S. International Trade Commission, and the U.S. Patent and Trademark Office play a role in IP protection. Key federal law enforcement agencies that play a role are DHS's Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), and DOJ's Criminal Division, U.S. Attorneys Offices, and the Federal Bureau of Investigation (FBI). HHS's Food and Drug Administration (FDA) and the U.S. International Trade Commission also help enforce IP rights.

U.S. IP Enforcement Structure and Strategy Need Stronger Leadership and Permanence

The current coordinating structure for U.S. protection and enforcement of intellectual property rights lacks clear leadership, hampering the effectiveness and long-term viability of such coordination. Created in 1999 to serve as the central coordinating structure for IP enforcement across federal agencies, NIPLECC has struggled to define its purpose, retains an image of inactivity within the private sector, and continues to have leadership problems despite enhancements made by Congress in December 2004 to strengthen its role. In addition, in July 2006, Senate appropriators expressed concern about the lack of information provided by NIPLECC on its progress.

In contrast, the presidential initiative called STOP, which is led by the National Security Council, has a positive image compared to NIPLECC, but lacks permanence, since its authority and influence could disappear after the current administration leaves office. Many agency officials said that STOP has increased attention to IP issues within their agencies, in the private sector, and abroad; they attributed this to the fact that STOP came out of the White House, thereby lending it more authority and influence. While NIPLECC adopted STOP as its strategy for protecting IP overseas in

February 2006, its commitment to implementing STOP remains unclear, creating challenges for accountability and long-term viability. For instance, neither NIPLECC's September 2006 annual report nor its most recent January 2008 report explain how the NIPLECC principals plan to carry out their oversight responsibilities mandated by Congress to help ensure a successful implementation of the strategy. In addition, the STOP strategy document has not been revised to mention NIPLECC's oversight role.

STOP is a first step toward an integrated national strategy to protect and enforce U.S. intellectual property rights, and it has energized agency efforts. However, we found that STOP's potential as a national strategy is limited because it does not fully address important characteristics of an effective national strategy. For example, its performance measures lack baselines and targets that would allow policymakers to better assess how well the activities are being implemented. In addition, the strategy lacks a risk management framework and a discussion of current or future costs—important elements for policymakers to effectively balance the threats from counterfeit products with the resources available. STOP does not specify who will provide oversight and accountability among the agencies carrying out the strategy, but it does identify organizational roles and responsibilities with respect to individual agencies' STOP activities. We found individual agency documents that include some key elements of an effective national strategy, but they have not been incorporated into the STOP documents. This lack of integration underscores the strategy's limited usefulness as a management tool for effective oversight and accountability by Congress as well as the private sector and consumers whom STOP aims to protect. In our November 2006 report on this subject, we made two recommendations to clarify NIPLECC's oversight role with regard to STOP and to improve STOP's effectiveness as a planning tool and its usefulness to Congress. The U.S. IP Coordinator, who heads NIPLECC, concurred with our recommendations and said NIPLECC has taken some steps to address them.

Key Agencies Need Better Data Collection and Analysis to Strengthen IP Enforcement Efforts

The five key federal agencies that play a role in fighting IP crimes—DOJ's U.S. Attorney's Offices and the FBI; DHS's CBP and ICE; and HHS's FDA—need to improve their collection and analysis of IP enforcement data. IP enforcement activities are generally a small part of these agencies' much broader missions, and IP enforcement is not the agencies' top priority. However, within their IP enforcement activities, these agencies have given enforcement priority to IP crimes that pose risks to public health and safety, such as counterfeit pharmaceuticals, batteries, and car parts. The

key agencies have various IP enforcement functions: CBP is responsible for seizing counterfeit goods at U.S. ports of entry; ICE, the FBI, and FDA share responsibility for investigating crimes, with FDA focusing solely on IP crimes that present public health and safety risks; DOJ is responsible for prosecuting alleged violations. CBP and ICE address IP enforcement as part of their legacy efforts to combat commercial fraud, but their top mission is securing the homeland. DOJ identifies IP enforcement as one of its top priorities, but the FBI does not. FDA's role is driven by its public health and safety mission, not IP enforcement per se.

Our review of agencies' enforcement statistics from fiscal year 2001 through 2006 found that many IP enforcement activities generally increased (with some fluctuations across fiscal years and type of enforcement action), but some did not. For example, the number of CBP seizure actions and the value of seizures have increased steadily between 2001 and 2006, with the estimated value of goods seized reaching about \$155 million in 2006. However, CBP collected less than 1 percent of IP-related penalties assessed during those years. The number of arrests, indictments, and convictions by ICE, the FBI, and FDA also generally increased during that time. Finally, the number of DOJ IP prosecutions was around 150 per year before increasing to 200 in 2006. Of the approximately 1,500 defendants that DOJ charged with IP crimes from fiscal year 2001 and through 2006, 373 were imprisoned.

Despite the general increases in IP enforcement activity, agencies have taken little initiative to improve their data or evaluate their enforcement activity in ways that would enable them to identify and track certain trends or enforcement outcomes. For example, despite the importance agencies assign to targeting IP crimes that affect public health and safety, we were surprised to learn that most of these agencies lacked data to track their efforts in this area. Naturally, this is not true for FDA—by virtue of its mission, all its IP-related investigations affect public health and safety. Collecting better data, analyzing them, and reporting on progress toward goals could help make the IP enforcement agencies more accountable to the public and Congress, particularly regarding public health and safety. To address these issues, we made a number of recommendations to the IP enforcement agencies to improve analysis and reporting on their enforcement activities. In response, DOJ has said that it will take steps to routinely and systematically analyze IP enforcement statistics within fiscal year 2008. It also has directed the U.S. Attorneys Offices and the FBI to collect information on investigations and prosecutions related to IP crimes that affect public health and safety. DHS

and HHS also generally agreed with these recommendations but have not yet indicated the specific steps they will take in response.

The need for improved coordination of federal law enforcement efforts has long been recognized. Around the same time Congress created NIPLECC, the executive branch created the National Intellectual Property Rights Coordination Center to improve federal IP enforcement and coordinate investigative efforts between ICE and FBI, but the center has not achieved its mission, and staff levels have declined. The center, which began operations in 2000, was set up to be a hub for the collection, analysis, and dissemination to investigative agencies of IP-related complaints from the private sector. However, the envisioned flow of private sector complaint information never materialized, agencies never reached agreement on their roles and responsibilities, and the center has gradually shifted its focus from investigative coordination to private sector outreach. We recommended that the responsible agencies reassess the mission of the center and communicate with the Congress regarding its purpose and required resources. In response, DHS indicated it concurred with this recommendation, and DOJ said it has directed FBI to coordinate with ICE to address this recommendation.

Concluding Observations

Mr. Chairman, we appreciate the opportunity to summarize our work on federal IP enforcement efforts. The challenges of IP piracy are enormous and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry representatives to be successful. As the title of the hearing suggests, the issue of IP protection is not only important for U.S. producers, but also for the health and safety of U.S. consumers.

Our key findings show that the current coordinating structure comprised of NIPLECC and STOP has weaknesses related to leadership, permanence, and accountability. They also show that improved data collection, analysis, and reporting among the key enforcement agencies could help them better manage resources and performance and improve their accountability to Congress and affected parties. These findings were particularly important concerning IP crimes related to public health and safety, given that most agencies lack data to analyze or demonstrate the effect of their efforts in this area. The affected agencies generally agreed with our recommendations and some have begun taking steps in response.

A number of legislative proposals are before Congress that would modify the federal IP enforcement structure.² As the committee continues to consider this issue and these proposals, we would be happy to provide additional information on where we believe the proposals address the weaknesses that our work has identified.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions that you or the other members of the Committee may have.

If you have any questions on matters discussed in this testimony, please contact Loren Yager at (202) 512-4347 or by email at YagerL@gao.gov. Other key contributors to this testimony include Adam Cowles (Assistant Director), Shirley Brothwell, Nina Pfeiffer, Jason Bair, and Adrienne Spahr.

²Intellectual Property Rights Enforcement Act, S.522, 110th Congress; Prioritizing Resources and Organization for Intellectual Property Act, H.R. 4279, 110th Congress.

Related GAO Products

Intellectual Property: Federal Enforcement Has Generally Increased, but Assessing Performance Could Strengthen Law Enforcement Efforts. [GAO-08-157](#). Washington, D.C.: March 11, 2008.

Intellectual Property: Risk and Enforcement Challenges. [GAO-08-177T](#). Washington, D.C.: October 18, 2007.

Intellectual Property: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts. [GAO-07-735](#). Washington, D.C.: April 26, 2007.

Intellectual Property: National Enforcement Strategy Needs Stronger Leadership and More Accountability. [GAO-07-710T](#). Washington, D.C.: April 12, 2007.

Intellectual Property: Strategy Targeting Organized Piracy (STOP) Requires Changes for Long-term Success. [GAO-07-74](#). Washington, D.C.: November 8, 2006.

Intellectual Property: Initial Observations on the STOP Initiative and U.S. Border Efforts to Reduce Piracy. [GAO-06-1004T](#). Washington, D.C.: July 26, 2006.

Intellectual Property: U.S. Efforts have Contributed to Strengthened Laws Overseas, but Significant Enforcement Challenges Remain. [GAO-05-788T](#). Washington, D.C.: June 14, 2005.

Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain. [GAO-04-912](#). Washington, D.C.: September 8, 2004.

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