



U.S. Immigration and Customs Enforcement

STATEMENT

OF

MATTHEW C. ALLEN
ACTING ASSISTANT DIRECTOR

NATIONAL INTELLECTUAL PROPERTY RIGHTS
COORDINATION CENTER

HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

REGARDING A HEARING ON

*"INTELLECTUAL PROPERTY – DRIVER OF INNOVATION: MAKING OUR LIVES
HEALTHIER, SAFER, AND MORE PRODUCTIVE"*

BEFORE THE

U.S. SENATE
COMMITTEE ON THE JUDICIARY

Tuesday, April 25, 2017
226 Dirksen Senate Office Building

Introduction

Chairman Grassley, Ranking Member Feinstein, and distinguished members of the Committee:

On behalf of the Department of Homeland Security (DHS), thank you for the opportunity to testify before you today to discuss how enforcement of intellectual property rights by U.S. Immigration and Customs Enforcement (ICE) and the National Intellectual Property Rights Coordination Center (IPR Center) has strengthened the spirit of innovation, economic growth, and the health and safety of our country.

Tomorrow is World Intellectual Property Day, a time to celebrate the role that intellectual property rights play in encouraging innovation and creativity. This year's theme is how innovation is making our lives healthier, safer, and more comfortable by turning problems into progress. We have much to celebrate. The United States is a country of knowledge and innovation, built on the strength of our intellectual property and our protection of an individual's right to reap the full benefits of his or her inventions.

Investment in ideas requires confidence that industrial, scientific, literary, and artistic innovations will be protected from theft; that consumers can trust that the products they buy are genuine; and that those who seek to profit by stealing the genius of others will be held responsible. ICE works closely with our interagency counterparts, industry, and the public to achieve these goals.

ICE is the largest investigative DHS Component with an extensive portfolio of enforcement authorities. ICE Homeland Security Investigations (HSI), often in coordination

with other federal agencies, is responsible for domestic and international criminal investigations arising from the illegal movement of people and goods into, within, and out of the United States. ICE investigates intellectual property rights violations involving the illegal importation and exportation of counterfeit merchandise and pirated works, as well as associated money laundering violations. In coordination with our partners, including U.S. Customs and Border Protection (CBP), we target and investigate counterfeit merchandise and pirated works, and we seize illicit goods associated with these investigations, including those that infringe on trademarks, trade names, and copyrights.

ICE works closely to protect legitimate trade by keeping illegal goods from being sold to U.S. consumers and to deter, disrupt, and dismantle criminal organizations engaged in intellectual property theft. In fiscal year (FY) 2016, ICE and CBP made 31,560 seizures of counterfeit goods, with a manufacturer's suggested retail price (MSRP) of approximately \$1.4 billion. ICE HSI arrested 451 people, resulting in 304 indictments and 272 convictions for intellectual property related crimes.

In one case, a Missouri woman was sentenced to two years in prison and ordered to pay more than \$8 million in restitution following her conviction for an \$80 million online counterfeit cellphone scheme. Despite being notified by CBP that products she was importing from China were being seized as counterfeit, she continued to sell the cellphones and component parts online and tell consumers they were legitimate products from well-known American companies. When law enforcement searched her residence and business, they seized more than 100,000 cellphone and component parts with a retail value of \$5.5 million.

Protecting intellectual property requires a whole-of-government approach that includes educating the public, reducing demand, collaborating with industry, enforcing laws, prosecuting criminals, and increasing cooperation with international partners. To focus government efforts and enhance efficiency, the ICE-led, multi-agency IPR Center was founded in 1999. Section 305 of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA) (Pub. L. No. 114-125), codified and cemented the IPR Center's role as the lead office within the U.S. Government for coordinating with other Federal agencies on intellectual property infringement investigations, law enforcement training, and private sector and public outreach, as well as ICE's role as the leader of this Center.

The IPR Center's mission is to ensure national security by protecting the public's health and safety, the U.S. economy, and our war fighters, and to stop predatory and unfair trade practices that threaten the U.S. and global economies. The IPR Center efficiently and effectively leverages the resources, expertise, and authorities of its members to provide a comprehensive response to intellectual property crime.

The IPR Center operates on a task force model and is comprised of 23 federal and international partners. While ICE holds the directorship, the IPR Center includes U.S. Government team members from: ICE; CBP; the Federal Bureau of Investigation (FBI); the Food and Drug Administration (FDA) Office of Criminal Investigations (OCI); the U.S. Postal Inspection Service (USPIS); the U.S. Department of Commerce's International Trade Administration (ITA) and U.S. Patent and Trademark Office (USPTO); the Defense Criminal Investigative Service (DCIS); the U.S. Consumer Product Safety Commission (CPSC); the National Aeronautics and Space Administration Office of the Inspector General; the Naval Criminal Investigative Service; the Army Criminal Investigative Command Major Procurement

Fraud Unit; the U.S. Air Force Office of Special Investigations (AF-OSI); the Nuclear Regulatory Commission; the U.S. Department of State's Office of International Intellectual Property Enforcement; the Defense Logistics Agency; the U.S. Postal Service Office of the Inspector General; the Inspector General's Office from the General Services Administration; and the Federal Maritime Commission. In addition, Department of Justice (DOJ) attorneys from the Computer Crime and Intellectual Property Section (CCIPS) regularly provide input and support for ongoing enforcement operations and policy. The Governments of Mexico and Canada, and INTERPOL and Europol, are also IPR Center members.

Criminals have much to gain by stealing intellectual property. The independent Commission on the Theft of Intellectual Property estimated earlier this year that the annual cost to the U.S. economy of counterfeit goods, pirated software, and theft of trade secrets exceeds \$225 billion, and could be as high as \$600 billion. Copying, piracy, and theft are free from the burden of up-front investment and risk associated with genuine innovation. Accordingly, intellectual property rights violators' profit margins can be enormous. Given that, it is perhaps not surprising that the Organization for Economic Co-operation and Development (OECD) reported in 2016 that international trade in counterfeit and pirated products represented as much as 2.5 percent of total world trade in 2013 and these findings are "significantly higher" than the studies they conducted in 2008 and 2009.. With the vast potential for illicit profits through the sale of counterfeit goods, transnational criminal organizations and gangs have incorporated the theft and sale of intellectual property into their criminal enterprises. These organizations use the sale of counterfeit goods to fund their other criminal activities such as arms purchases, human smuggling, and drug trafficking. Because the penalties for IP crimes are relatively light, criminal organizations have found that these crimes are a very lucrative, low-risk way to profit. The

extent of IP crimes, and their impacts, are also discussed in the Fiscal Year 2017-2019 U.S. Joint Strategic Plan on Intellectual Property Enforcement, which was developed by an interagency committee and submitted to Congress in December pursuant to Title III of the PRO IP Act of 2008 (15 U.S.C. 8111 and 8113); the discussion is in Section 1 (“The Global Scale of Intellectual Property Theft and Its Unlawful Exploitation By Third Parties Poses Serious Threats to U.S. National Interests”).

The global economy and the e-commerce age have changed not only the way that businesses operate, but also the way that intellectual property thieves interact with consumers. In the past, customers would knowingly buy inexpensive, obviously counterfeit goods from small-time hustlers who set up shop on street corners or at flea markets. Now, counterfeiters can interact directly with the consumer at the touch of a screen or keyboard, no matter how many miles apart. Online distributors sell counterfeit and unlicensed software that cannot be updated with the latest security patches, leaving unwitting consumers vulnerable to security threats and identity theft. Sophisticated technology, available at increasingly cheaper prices, allows criminals to create counterfeits that appear to be so realistic that only an industry expert using expensive laboratory tests can determine that the item is fake, at times, after a consumer has been harmed by the counterfeit product. Counterfeit goods can be shipped in small packages through express carriers or postal services, increasing the odds of evading detection through regular customs enforcement methods.

While criminals have been able to turn technological advances into profit, law enforcement, through cooperation with industry, has been able to use these same advances to counteract criminal actions. At the IPR Center, interagency partners collaborate to develop initiatives to address some of the most pressing intellectual property concerns confronting U.S.

business owners and American consumers. We meet regularly with industry representatives to stay apprised of the latest trends and to share best practices. We also conduct training on advanced law enforcement techniques to combat intellectual property theft both for domestic law enforcement and for our international counterparts. Today, I would like to tell you about a few of our most innovative and collaborative projects.

The IPR Center is committed to being accessible to everyone who is concerned about intellectual property enforcement. In 2016, the IPR Center improved its lead intake process by creating a new form, which is accessible via the “Report IP Theft” button on the IPR Center’s website, as well as websites of industry and other government agencies. Streamlining lead intake has improved the ability of the public and industry to submit information and the ability of ICE to share and de-conflict this information with its U.S. Government partners. The information received is vetted and shared with IPR Center partners. Additionally, unlike before, the new lead intake form allows industry to provide specific CBP-centric information, thus creating a one-stop ability for the public, industry, and law enforcement to report information to DHS. We are also developing a mobile application, or app, that will allow the public to report suspected IP theft directly from their phone and to include photographs of the suspected counterfeit goods in their submission. The app will send out news alerts about the dangers of counterfeits to raise public awareness.

In the field, ICE and CBP work closely to target counterfeit and other illicit goods crossing U.S. borders, including through the co-location of personnel at Trade Enforcement Coordination Centers (TECC) in the Los Angeles, New York/Newark, Detroit, New Orleans, Houston, El Paso, San Juan, Buffalo, Baltimore, and Chicago Ports of Entry. The TECCs enhance communication and combine resources to identify and combat trade fraud and

intellectual property crime. The TECCs proactively identify, interdict, and investigate inbound cargo that may enter U.S. commerce in violation of U.S. customs and trade laws. TECCs ensure joint CBP and ICE oversight and prioritization of the enforcement and interdiction process in the local area, and involve ICE early in the enforcement process.

The IPR Center also has full-time agents located at the National Cyber-Forensics & Training Alliance (NCFTA) in Pittsburgh, Pennsylvania. The NCFTA is a non-profit organization, which brings together experienced personnel from academia, law enforcement, and industry. By merging a wide range of expertise in one location, the NCFTA provides a neutral forum for information sharing regarding emerging and ongoing threats. In FY 2016, our NCFTA agents, working with IPR Center analysts, vetted 31,406 investigative leads.

Operation Chain Reaction is an IPR Center initiative that combines the efforts of 16 federal law enforcement partner agencies to target counterfeit items entering the Department of Defense (DOD) and other U.S. Government agencies' supply chains. Operation Chain Reaction partner agencies coordinate their efforts in a whole-of-government approach to more productively protect the U.S. government supply chain from substandard counterfeit parts that could impact the reliability of weapons systems, delay DOD missions, imperil the safety of service members, and waste taxpayer money. In FY 2016, Operation Chain Reaction resulted in 15 arrests, 14 indictments, nine convictions, and the seizure of almost \$3.5 million. In one case investigated by ICE, DCIS, FBI, Commerce, and AF-OSI, three Chinese nationals were arrested for attempting to purchase genuine military grade semiconductors that were to be stolen from a U.S. Navy base. As part of the conspiracy, the defendants offered to replace the genuine parts with counterfeits to prevent detection of the theft. When asked if the counterfeits would work, one of the defendants replied that they would look the same, but would not function. Had such

nonfunctional fake semiconductors actually been installed in some military applications, their failure could have led to serious injuries to military personnel, as well as potential damage to national security or military equipment. The three individuals' sentences ranged from time served to 15 months' imprisonment.

Operation Engine Newity addresses safety threats posed by counterfeit automotive parts, such as airbags, brakes, rims, and diagnostic tools, as well as aerospace, rail, and heavy industry components. These counterfeit parts are not only a health and safety risk to Americans, but they also impact the economic health of these industries. The Fiscal Year 2017-2019 U.S. Joint Strategic Plan on Intellectual Property Enforcement stated that “[w]hile counterfeit auto parts may have been historically limited to “cosmetic” items like hood ornaments and decals, customs seizure statistics reveal that counterfeit safety components like brake pads, air bags, wheels, and suspension parts are becoming increasingly common....almost every type of auto part can and has been counterfeited.”

In FY 2016, Operation Engine Newity resulted in six arrests, two indictments, four convictions, and the seizure of more than \$5.5 million. In a 2016 ICE investigation, two U.S. citizens, one of whom was living in China, were charged with selling counterfeit airbags for Honda, Nissan, Toyota, Mazda, Acura, Subaru, and Hyundai automobiles. The Automotive Anti-Counterfeiting Council, a valuable private sector partner, forwarded this lead to ICE. The counterfeit airbags were sent in pieces to the United States, where they were assembled by one of the men, who, in a conversation over Skype told the other, “It just may work. I can’t see why it wouldn’t but. . . I’m not an airbag expert.” The subjects were preparing for the shipment of large quantities of airbags to the United States when ICE executed the search warrants. To date, more than 400 potential victims have been identified and notified of the potential dangers posed by the

counterfeit airbags. ICE's swift action eliminated the exponential increase in the potential number of victims.

The newest IPR Center initiative, Operation Surge Protector, targets the sale and trafficking of counterfeit consumer electronics and technology. Counterfeit electrical products are often manufactured with inferior materials through sub-standard processes, without regard for any labeled ratings, certifications, or consumer safety requirements, leading to increased risk of malfunctions that may cause serious injuries, including electrical shock and death. Operation Surge Protector combines the expertise of ICE, CBP, CPSC, and others in the execution of investigations and surge operations at international mail facilities, express consignment carrier facilities, and ports of entry throughout the United States.

These operations play a significant role in combatting counterfeit goods that have already entered the United States. They also prevent future shipments of counterfeit goods from continuing to enter U.S. commerce by stopping the criminals from continuing their activities. Additionally, they deter others from committing similar crimes.

The IPR Center also cooperates closely with international law enforcement partners to ensure that counterfeit goods and pirated content are identified and action is taken before they reach the United States. One of the ways that this is done is through our international training program. In 2015, the IPR Center led four regional training events in India, Mexico, Hong Kong, and Brazil, locations identified on the U.S. Trade Representative's Special 301 Report as being at risk for trafficking of counterfeit goods posing health, safety, and economic implications on a global scale. As a result of the IPR Center's training program, collaboration between the ICE Attaché in New Delhi and Indian Customs resulted in the interception and seizure of 76,000

pairs of counterfeit sunglasses. Training in Mexico resulted in the seizure of 24,700 liters of counterfeit tequila. Training in Hong Kong bridged future efforts to enhance the capabilities of partners in Asia to combat the rising threat of IP crime. The 2017 International Law Enforcement IP Crime Conference will be held on August 28-29, 2017. For the first time in its 11-year run, it will be held in the U.S. The conference will be in New York at the United Nations and will be hosted by INTERPOL and ICE (via the IPR Center) in partnership with Underwriters Laboratories (UL). The conference will host approximately 500 law enforcement personnel from over 50 countries.

Finally, Brazilian Federal Highway Police have created an IP task force to improve Brazil's response to intellectual property crimes.

As part of Operation Apothecary, ICE and FDA-OCI represent the United States as the lead law enforcement agencies for INTERPOL-led Operation Pangea and are members of the Pangea Organizing Committee. Operation Pangea engages police, customs, national regulatory authorities, industry, and international organizations such as the WCO and the Permanent Forum of International Pharmaceutical Crime to shut down illicit websites, disrupt payment services, intercept the importation of illicit medicines, investigate pharmaceutical crime, and raise awareness on the dangers of purchasing medicines online. Operation Pangea has been conducted annually since 2008, and culminates in an international week of action organizing the collective efforts of participating countries. INTERPOL reported that Pangea IX resulted in 393 arrests worldwide and the seizure of more than \$53 million worth of potentially dangerous medicines.

Project Trans-Atlantic is a joint initiative between the IPR Center, Europol and INTERPOL to cooperate with industry to disrupt and seize domain names of websites that are selling counterfeit and pirated goods. Project Trans-Atlantic is part of Operation in Our Sites, an

initiative through which the IPR Center addresses illicit cyber commerce and the sale of counterfeit products through infringing Internet websites. In Project Trans-Atlantic VI, which concluded on “Cyber Monday,” November 30, 2016, international law enforcement agencies seized more than 4,500 domain names, and industry partners seized or shut down 15,000 websites and 48,000 links on e-commerce platforms through civil or administrative actions.

In addition to working with our international partners to seize domain names, the IPR Center, as part of Operation In Our Sites, continues to focus on the development of long-term investigations of the online sale of counterfeit goods and pirated content by identifying targets, assets, and financial schemes used in operating these websites. An example of the impact of these more complex investigations is the Rocky Ouprasith case, in which ICE took down the second largest music piracy cyber locker in the United States. On November 17, 2015, Rocky Ouprasith, the operator, was sentenced to 36 months’ imprisonment.

Conclusion

As we look toward the future, ICE anticipates that e-commerce and for-profit streaming will continue to be challenges, along with the following emerging technologies: 3D printing, the dark web, and virtual currency. ICE expects that intellectual property criminals will continue to use these technologies, and others we have not yet seen, in furtherance of their criminal activity. ICE further notes that it expects the issue of e-commerce direct-to-consumer business model that utilize express mail and postal small shipments to become increasingly challenging in the years ahead; there are numerous enforcement weaknesses in these environments that counterfeiters exploit.

While technology and innovation play an essential role in combatting intellectual property crimes, one of the most effective approaches the IPR Center uses is old-fashioned outreach—talking to the public about the dangers of counterfeit products and pirated content. In FY 2016, through Operation Joint Venture, the IPR Center reached more than 14,000 people through 310 outreach and training events. Intellectual property theft is far from a victimless crime. It can affect all of us. Raising awareness of the impact that these illicit goods and content have on the health and safety of our citizens and the economic impact of our country reduces demand, and one of the most effective approaches law enforcement has.

Thank you again for the opportunity to speak with you about the ways in which the IPR Center's intellectual property enforcement promotes innovation making our lives healthier, safer, and more comfortable.