

Senator Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate

Hearing entitled “Examining the 2019 Annual Intellectual Property Report to Congress”  
Questions for the Record

**QUESTIONS FROM CHAIRMAN TILLIS**

1. With respect to enforcing intellectual property rights, the USMCA requires Mexico and Canada to specifically authorize law enforcement to seize suspected counterfeit goods on their own initiative at any time the goods are entering, exiting, or in transit through the country. How will this enhance the protection of American intellectual property rights and what concern does this change specifically address?

*In September 2018, under the leadership of President Trump, the United States, Mexico and Canada reached an agreement to modernize the 24-year old NAFTA into a 21<sup>st</sup> century, high-standard agreement. The USMCA will support mutually beneficial trade leading to freer markets, fairer trade, and robust economic growth in North America. The USMCA includes a modernized, high-standard Intellectual Property chapter, which breaks new ground in U.S. trade and IP policy. It requires enforcement authorities to stop goods that are suspected of being pirated or counterfeited at all areas of entry and exit. This “ex officio” authority will help ensure that infringing goods are stopped when they are found, preventing these goods from entering the stream of commerce, and reducing bureaucratic delays and hurdles.*

2. Indian policies such as the Drug Price Control Order and high customs duties on IP-intensive products pressure companies to develop and manufacture products in India. This includes medical devices, and pharmaceuticals. What steps are being taken to address these policies that limit market access for American companies?

*The relationship between the world’s oldest democracy and the world’s largest democracy remain strong, but there are a number of trade and economic challenges to be addressed. The Administration has made it very clear that one of its key objectives is to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe. I have engaged with my counterparts in the Indian government, and will continue to do so, and we are working with USTR and other departments and agencies as part of the U.S.-India Trade Policy Forum to address these important issues.*

3. What steps is the Administration taking to address unfair commercial use of pharmaceuticals and unauthorized disclosure of test data in India?

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*we are working with USTR and other departments and agencies as part of the U.S.-India Trade Policy Forum to address these important issues.*

4. Your Annual Report to Congress cites a number of effective roundtables you have convened with rights holders and U.S. government enforcement officials. This is certainly a critical and impactful role for your office to play. You noted in particular your work with the auto industry to address the growing problem of counterfeit auto parts. While federal agencies including DOJ, CBP, ICE and DOT have led effective enforcement actions, there still seems to be a major problem with counterfeit auto parts proliferating across major e-commerce platforms. What more can be done to address this problem, and can your office lead an effort to bring the automotive industry together with the leading e-commerce platforms to find real solutions to get unsafe, counterfeit auto parts off these Internet marketplaces?

*Last year, we launched the White House IP Roundtable series, where my office brings together industry, interested stakeholders, and government officials to examine pressing IP issues impacting our economy to develop new initiatives, examine legislative priorities, and find real world solutions. During 2018, we conducted our first roundtable on automotive anti-counterfeiting efforts, and we continue to engage with the automotive industry on these important public health & safety issues. The automotive industry has been an important partner in the U.S. government's enforcement efforts. For information about the U.S. government's anti-counterfeiting activities, including with respect to counterfeit auto parts, please see the 2019 Annual Intellectual Property Report to Congress. As we continue to work with e-commerce and internet platforms to address counterfeiting on online marketplaces, we look forward to continue working with the automotive, and other industries, to address these important issues.*

5. We have all heard about our large bilateral trade deficit with China and some of the negative externalities of being so leveraged to the exports of one country. However, I want to get your take on the vast campaign of IP theft that we have seen from China over the last several decades. As the trade negotiations continue, how will the US make sure that egregious examples such as the one chronicled in the WSJ from November of last year do not continue?

*The Administration has made it clear that addressing IP theft originating from China, along with effective enforcement mechanisms, is a high priority, and we are committed to strong and effective intellectual property protection around the world. The negotiations between the United States and China are ongoing, and Ambassador Lighthizer is best placed to discuss the Section 301 investigation and the current negotiation.*

6. The Justice Department unsealed charges in late October against a Chinese state-owned firm and its Taiwan partner for allegedly stealing trade secrets from the U.S.'s largest memory-chip maker, Micron Technology Inc. With countless examples of actions like this and now China advancing quickly with 5G technologies, how do we protect the intellectual property of our firms in China?

*Addressing the theft of trade secret is a high priority for this Administration. Trade secrets occupy a distinct place in the IP portfolios of our most innovative companies, and the cost of*

*trade secret theft to U.S. firms ranges from 1 to 3% of U.S. GDP, as much as \$540 billion. Cyber-enabled theft of intellectual property, particularly trade secrets, inflicts a significant cost to the U.S. economy, in addition to the immeasurable harm the theft of IP may cause individual companies. The Administration is committed to combatting the cyber-enabled theft of trade secrets and other confidential business information. Under Executive Order 13694, as amended, the Treasury Department has the authority to impose sanctions in response to certain malicious cyber-enabled activities, including the theft of trade secrets for commercial or competitive advantage or private financial gain. The Department of Justice is committed to aggressively investigating and prosecuting individuals and corporations who undermine American competitiveness by stealing what they did not themselves create. Last year, the Attorney General announced the creation of a China Initiative to identify priority Chinese trade secret theft cases, ensure that there are enough resources dedicated to them, and that they are brought to an appropriate conclusion quickly and effectively.*

7. I know several companies in the US, including Cloud Technology providers, have wanted to break into the Chinese market. Is this smart? Will this technology be immediately stolen and used against US companies?

*As referenced in the Annual Intellectual Property Report to Congress, USTR's China Section 301 findings and in the annual Special 301 report, there are significant challenges for innovators attempting to operate in the Chinese market.*

8. How do we balance the enormous market potential in China and potentially losing other Asian markets and IP theft?

*President Trump and his Administration has advocated strongly for free, fair and reciprocal trade. The Administration is standing strong against the theft of American IP and is committed to protecting our innovative economy.*

9. How do CFIUS controls integrate with current efforts to protect IP?

*The Office of Investment Security manages the day-to-day functions of Treasury's role as Chair of the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency committee authorized to review certain transactions that could result in control of a U.S. business by a foreign person, in order to determine the effect of such transaction on the national security of the United States. Pursuant to the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), and subject to implementing regulations, CFIUS now has the authority, among others, to review certain non-controlling investments by foreign persons in U.S. businesses that produce, design, test, manufacture, fabricate, or develop critical technologies, which could include aspects of intellectual property. CFIUS does not enforce intellectual property laws. If, however, during its review of a transaction CFIUS identifies a risk to U.S. national security arising from a foreign person's acquisition of, or access to, the intellectual property of the U.S. business, and if other authorities are not adequate or appropriate to address the identified risk, CFIUS will seek to mitigate such risk. Mitigation measures could take a variety of forms, including but not limited to: placing the intellectual property into escrow; controlling the foreign person's access to the intellectual property; requiring mechanisms to monitor and enforce such access controls; and ensuring U.S. Government access to, or insight into, the intellectual property. If CFIUS determines that*

*the identified risk cannot be resolved through mitigation, it will refer the transaction to the President, who can suspend or prohibit the transaction.*

10. Last year, the United States Trade Representative's 301 report talked at length about the threat international compulsory licensing regimes pose to American companies. Specifically, the USTR's 301 report found that:

“actions by trading partners to unfairly issue, threaten to issue, or encourage others to issue, compulsory licenses raise serious concerns. Such actions can undermine a patent holder's IP, reduce incentives to invest in research and development for new treatments and cures, unfairly shift the burden for funding such research and development to American patients and those in other markets that properly respect IP, and discourage the introduction of important new medicines into affected markets.”

Given the threat compulsory licensing regimes pose to the development of new medicines, what steps are being taken to combat international compulsory licensing regimes?

*The Administration is committed to strong and effective intellectual property protection around the world. I have led several inter-agency delegations where we have discussed these very issues with our international partners, and the importance of promoting free market solutions. And as reflected in the USTR Special 301 report, the Administration as a whole is working to address this important issue.*

11. Which countries or trading blocs are considered the “worst actors” when it comes to compulsory licensing?

*As reflected in the USTR Special 301 report, there are a number of trading partners whose compulsory licensing practices present concerns. The Administration is committed to strong and effective intellectual property protection around the world.*

12. Given the negative impact that international compulsory licensing regimes have on American innovation and entrepreneurship, I'm concerned about the number of my congressional colleagues who have begun endorsing a domestic compulsory licensing regime for pharmaceuticals. Bills that promote compulsory licensing at home are problematic even if they never become law because they normalize the practice. This makes it that much harder for USTR to push back on compulsory licensing abroad, and puts American property rights across all industries at risk. What are your views on some of the domestic compulsory licensing proposals? What impact would those proposals have on American leadership and innovation in the pharmaceutical sector?

*The Administration is committed to robust intellectual property protection, as well as affordable and safe medicines. As we work to ensure effective intellectual property protection around the world, we must ensure that at home we are promoting, protecting, and prioritizing the work being done by American innovators, consistent with our laws.*

13. It is a challenge for policymakers is keeping our IP laws up to date with the pace of technology and constantly evolving business models. An area where it appears Congress has not kept up with these changes is in the penalties for criminal copyright infringement. Currently, criminal penalties for copyright infringement distinguish between offering a work for downloading - which is a felony - and offering a work for streaming - which is a misdemeanor. In recent years, the Department of Justice, the Department of Commerce, and the Register of Copyrights have all taken positions supporting the harmonization of our criminal copyright infringement laws. Could you share IPEC's view on the scope of streaming piracy - domestically and internationally - and the role criminal penalties play in deterring willful and large-scale infringement? Will you work with this subcommittee as we study this issue?

*In May 2018, we hosted a White House roundtable aimed at addressing the growing use of illicit streaming devices (ISDs) that allow users to illegally access and stream content (e.g., movies, television shows, etc.) from the Internet. IPEC brought together representatives from various fields that are each affected by such online piracy, including movie studios, pay television providers, broadcasters, sports leagues, and the creative community. They described their experiences and concerns with officials from the FBI, Department of Homeland Security, Justice Department, Commerce Department, Federal Communications Commission, Federal Trade Commission, USTR, and Congress. At the roundtable we looked to see how our investigators and prosecutors are best able to address these issues, and our efforts are focused on using existing laws to address this criminal activity. And going forward, I would be happy to continue engaging with the subcommittee as you study these important issues.*

14. Your report you note that you held a summit to address the growth of streaming piracy devices and applications. What further steps do you have planned? Will there be additional summits? Are you working with other branches of the government to combat this problem? For example, are you encouraging the DOJ to bring criminal cases? Are you working to encourage the FTC to warn consumers of the identity theft and malware threats that come from visiting pirate sites, and to take action against pirate operations engaged in unfair and deceptive trade practices?

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15. I want to commend your office for taking a leadership role in promoting voluntary collaboration between social media and internet intermediaries on the one hand, and the content community on the other, to curb intellectual property theft. Thanks to the work of the IPEC and others, for example, payment processors such as MasterCard, Visa, and PayPal are commendably taking voluntary steps today to prevent pirates from using their

financial networks to collect ill-gotten gains. Advertisers and mainstreams brands are similarly working collaboratively to keep major advertising off of pirate sites. We have yet to see some other internet intermediaries take similar steps, however. What can you do to encourage domain name providers to enforce their terms of service providing that a web site will lose its domain name if it engages in illicit activity, including IP theft? Similarly, what can you do to encourage host providers and reverse proxy services to deny service to those engaged in illegal conduct, including piracy?

*We continue to engage with all stakeholders within the internet ecosystem to find ways for industries to engage in voluntary collaboration to address these important issues. Ensuring that registrars are properly enforcing their terms of service, and for host providers and reverse proxy services to work with our investigators to address illegal conduct, is an important priority.*

16. In your report, you note the importance of access to domain name registrant data, known as WHOIS data, for intellectual property enforcement purposes. Should more be done to ensure that IP rights holders have timely access to this data to be able to protect their rights online?

*The WHOIS data is important not just for intellectual property enforcement efforts, but for law enforcement globally. The Administration is working to make sure that continued access to this data is available. The issuance of the European Union's General Data Protection Regulation (GDPR) has injected uncertainty into continued access to this data to this day, and it will be important for not only governments, but also stakeholders to ensure that registries and registrars continue to collect data and provide reasonable access.*

17. In your report, you note that "Intellectual property is integral to our nation's economic competitiveness and the growth of our innovative economy. For instance, copyrights are not only economically important, but a key part of our culture and society." I agree that copyright is important help protect our culture, including our books, movies and music, particularly when so much of that work is stolen online. Can, or should, internet tech companies voluntarily take more action to protect these works or deter such infringement?

*We continue to build on the Federal Government's efforts, by working with stakeholders, where possible, to facilitate voluntary agreements in the online infringement space and other areas. As part of our ongoing approach, it will be important to engage and partner with the private sector, including stakeholders within the internet ecosystem.*

**Intellectual Property Enforcement Coordinator Vishal Amin – Examining the 2019  
Annual Intellectual Property Report to Congress Questions for the Record  
Submitted March 5, 2019**

**QUESTIONS FROM SENATOR COONS**

1. Strong intellectual property protections not only ensure economic competitiveness for United States companies but also promote national security. These protections historically have enabled our leadership role in developing next-generation standards across industries to prevent our adversaries from dominating, disrupting, or even exploiting technologies that we rely on every day, from power grids to medical devices. The 2019 Annual Intellectual Property Report to Congress (2019 Report) notes White House meetings with mobile networking business leaders concerning the development and imminent deployment of fifth-generation (5G) wireless technology, but China continues its push to lead in all corners of 5G – from research and development to standard setting to manufacturing and deployment. What concrete steps is the administration taking to ensure that U.S. companies remain at the forefront of innovation and development in this critical technology?

*In the annual report, we indicated that in 2018, the White House and Administration officials met with the mobile networking business community to discuss standard setting for the soon-to-be-deployed fifth generation (5G) of wireless infrastructure. Standards bodies are actively trying to develop voluntary consensus standards for 5G that will satisfy the diversified requirements set by the current and future use cases and applications. These meetings emphasized the need for U.S. companies to continue to lead in this space and ensure America is at the forefront of innovation and development. These discussions are the beginning of an ongoing process to determine the steps that United States needs to take to protect our competitive advantage in these critical technologies.*

2. The 2019 Report highlights the U.S. Trade Representative's Section 301 notice published last April, which found that market-access restrictions and technology-transfer requirements impair the ability of American companies to compete within China.
  - a. The 2019 Report discusses the administration's imposition of tariffs on Chinese goods and initiation of a World Trade Organization complaint. What else is the administration doing to address China's unfair treatment of U.S. companies, including compelled technology transfer?
  - b. The 2019 Report also notes the Attorney General's creation of a China Initiative to identify high-priority trade secret theft cases and ensure the dedication of sufficient resources to bring them to resolution. What else is the administration doing to counter China's persistent failure to respect the proprietary trade secret information of American innovators?

*When it comes to China, the Administration is taking a comprehensive approach. We are working to ensure that we are making effective use of all of our legal authorities, including our trade tools. We are expanding law enforcement efforts, and engaging with stakeholders. The bilateral negotiations between the United States and China are ongoing, and Ambassador Lighthizer is best placed to discuss the Section 301 investigation and the current negotiation. The Administration has made it clear that addressing IP theft originating from China, along*

*with effective enforcement mechanisms, is a high priority, and we are committed to strong and effective intellectual property protection around the world.*

*Addressing the theft of trade secret is a high priority for this Administration. Trade secrets occupy a distinct place in the IP portfolios of our most innovative companies, and the cost of trade secret theft to U.S. firms ranges from 1 to 3% of U.S. GDP, as much as \$540 billion. Cyber-enabled theft of intellectual property, particularly trade secrets, inflicts a significant cost to the U.S. economy, in addition to the immeasurable harm the theft of IP may cause individual companies. The Administration is committed to combatting the cyber-enabled theft of trade secrets and other confidential business information. Under Executive Order 13694, as amended, the Treasury Department has the authority to impose sanctions in response to certain malicious cyber-enabled activities, including the theft of trade secrets for commercial or competitive advantage or private financial gain. The Department of Justice is committed to aggressively investigating and prosecuting individuals and corporations who undermine American competitiveness by stealing what they did not themselves create. Last year, the Attorney General announced the creation of a China Initiative to identify priority Chinese trade secret theft cases, ensure that there are enough resources dedicated to them, and that they are brought to an appropriate conclusion quickly and effectively.*

3. Despite seizing over a billion dollars of counterfeit goods annually, we reportedly fail to intercept over 97 percent of counterfeit goods shipped to our shores. These counterfeit goods harm the reputation and profitability of U.S. companies and frequently put the health and safety of Americans at risk. The Synthetics Trafficking and Overdose Prevention Act, which Congress passed as part of a bipartisan reform package to respond to the opioids crisis, includes provisions that will assist Customs and Border Protection in identifying and seizing counterfeit shipments. Please describe steps that the administration is taking or plans to pursue to leverage these new statutory provisions and reduce the importation of counterfeit goods.

*While the STOP Act is focused on stopping the importation of dangerous synthetic drugs through the mail, the Act's provisions – which require the collection of advance electronic information from postal international shippers, and provide for the reimbursement of costs that the U.S. Postal Service and CBP incur in their processing of inbound express mail service – will also assist CBP in identifying counterfeit shipments and preventing them from entering U.S. commerce.*

4. The Intellectual Property Enforcement Coordinator's Joint Strategic Plan for 2017 through 2019 identifies key enforcement challenges and ideas for moving forward, and the 2019 Annual Report states that you are implementing the Joint Strategic Plan to the extent it is in line with the President's "policies and priorities." Has your office re-prioritized or reconsidered any portion of the 2017 to 2019 Joint Strategic Plan based on those policies and priorities? If so, please describe these adjustments in strategy.

*Over the past two years, the Trump Administration has taken significant actions to promote and protect intellectual property. The Administration's four-part strategic approach includes:*

- *Engagement with our trading partners;*
- *Effective use of all our legal authorities, including our trade tools;*
- *Expanded law enforcement action and cooperation; and*

- *Engagement and partnership with the private sector and other stakeholders.*

*As to the prior administration's joint strategic plan, much of the agency-level work has been incorporated into our current strategic efforts. When it comes to overall strategy, the President has made clear that our trading relationships must be fair and reciprocal, that we will work to fix bad trade deals, and protect American workers and American intellectual property, through strong enforcement of our trade rules. Our focus is on developing the Administration's next Joint Strategic Plan on IP Enforcement. I look forward to working with all interested stakeholders to make sure that we issue a strategy that will set the stage for our efforts going into the next decade.*

**Questions for the Record for the Honorable Vishal Amin Senate Committee on the  
Judiciary  
Subcommittee on Intellectual Property  
Hearing on “Examining the 2019 Annual Intellectual Property Report to Congress”  
February 26, 2019**

**QUESTIONS FROM SENATOR BLUMENTHAL**

1. Two public rights organizations—ASCAP and BMI—play a critical role in licensing out the intellectual property for songs that are familiar to millions of Americans. These two organizations are governed by consent decrees that are decades old and critical to maintaining fairness in the market. Congress recently passed the Music Modernization Act, which was premised on these two consent decrees. Yet, the Department of Justice has recently threatened to terminate these longstanding decrees.

I am concerned that if the Department of Justice terminates these consent decrees, it will create chaos in the process for licensing out intellectual property in the music industry.

- a. **Would you agree with me that, if the Department of Justice decides to terminate or modify the ASCAP and BMI consent decrees, the Department of Justice should first work with Congress to develop an alternative framework?**
- b. **You have the power to convene different agencies to address critical intellectual property issues. Will you commit to raising the ASCAP and BMI consent decrees with your counterparts at the Department of Justice?**

*A well-functioning copyright system is essential. The Music Modernization Act was landmark legislation that provided critical updates to copyright law to reflect the realities of music licensing in the digital age and to better reward artists and producers for the online use of their music. It’s important for not only the Administration, but also to Congress and stakeholders that the MMA is properly implemented. As to the consent decrees, those have been in place for nearly 80 years, so any potential change could have significant impact, and, on a policy level, it would be important to ensure that our copyright system is not negatively impacted. In regards to section 105 of the MMA, the President has stated that his Administration will strive to provide the Congress with notice in advance of any such filings. The Department of Justice would make a final determination as to the application of their enforcement authorities.*

2. A scheme called “pay-for-delay” is significantly raising the price of drugs for Americans. The Federal Trade Commission has defined pay-for-delay as a system whereby “drug makers have been able to sidestep competition by offering patent settlements that pay generic companies not to bring lower-cost alternatives to market.” This issue relates directly to abuse of our patent laws.

- a. **Would you agree with me that pay-for-delay is a serious challenge to our intellectual property system, and must be stopped?**
- b. **Do you think that ending pay-for-delay tactics should be a priority of this administration?**
- c. **What legislation or policies should Congress be considering to make sure that drug makers do not artificially extend their market exclusivity through “pay-for-delay” tactics?**
- d. **Can you commit to speaking with your counterparts at the Department of Justice and the Federal Trade Commission about efforts to end pay-for-delay?**

*“Pay-for-Delay” is a serious challenge and one that the Administration is actively engaged in and should be addressed. I look forward to working with my Administration colleagues, including at the Department of Justice and FTC to examine this important issue.*

3. There are two main procedures that allow individuals to challenge the validity of an issued patent: post grant review and inter partes review.
  - a. **Are the current procedures for challenging the validity of patents successful in improving patent quality?**
  - b. **Do you believe these procedures produce significant harmful or unintended consequences?**
  - c. **Do you believe that the U.S. Patent and Trademark Office has improved its administration of the procedures for challenging the validity of patents?**
  - d. **Would you recommend any changes to the post grant review or inter partes review processes?**

*A well-functioning patent system is important for our economy. The Administration is working to promote innovation and to ensure that we have high quality, strong and reliable patents, that the process for granting them is thorough, yet expeditious, and that any subsequent reviews by the courts or administrative agency is done fairly. The post grant proceedings help address patent quality and ensure that the office that is issuing patents has an opportunity to review potential mistakes that may have been made. I understand that the USPTO has made changes to the post grant proceedings; it will be important to see the data going forward to determine if those changes have had a measurable impact. The USPTO would better be able to address the internal workings of their post grant proceedings.*

4. If we are going to have a patent system that works for all Americans—especially our small businesses and inventors—we need a patent system that is accessible and easy to understand. The Patent Pro Bono Project run by the Patent and Trademark Office plays an important role in providing low cost or free services to financially under-resourced inventors and small businesses.
  - a. **What is being done to make sure that our patent system is open and accessible to all?**

**b. What do you think can be done to improve the Patent Pro Bono project?**

*Ensuring that all of our innovators and creators are able to properly utilize the American intellectual property system is important. The 2011 America Invents Act included a number of provisions, including creation of a patent ombudsman program for small business concerns, study on international patent protections for small business, creation of satellite offices, the Pro Bono program, etc. The USPTO would have more information as to how the Patent Pro Bono project has been working, and if any improvements are needed. Also, the USPTO offers fee discounts to small and micro entity patent applicants and provides guidance regarding the patent application process through its inventor assistance center.*

Questions for the Record for The Honorable Vishal Amin  
From Senator Mazie Hirono

1. In your annual report to Congress, you discussed the trade war President Trump started with China. You stated:

“As part of the United States’ continuing response to China’s theft of American intellectual property and forced transfer of American technology, and at the direction of President Trump, the U.S. has imposed three rounds of tariffs on Chinese products this year, totaling \$250 billion worth of goods.”

But, according to a recent report in Bloomberg, Chinese hacking—which had declined substantially after President Obama reached an agreement with the Chinese government in 2015—has significantly increased since President Trump started his trade war.

- a. What conversations occurred within the executive branch regarding China’s likely response to the imposition of tariffs?
- b. What was done to defend against the seemingly inevitable decision by China to reengage in its hacking campaign?

*As we explained in the annual report, the Administration is countering unfair trade practices, utilizing all appropriate means from dialogue to enforcement tools. The United States is committed to protecting the intellectual property of our companies and providing a level playing field for our workers.*

*Addressing the theft of trade secrets is a high priority for this Administration. Trade secrets occupy a distinct place in the IP portfolios of our most innovative companies, and the cost of trade secret theft to U.S. firms ranges from 1 to 3% of U.S. GDP, as much as \$540 billion. Cyber-enabled theft of intellectual property, particularly trade secrets, inflicts a significant cost to the U.S. economy, in addition to the immeasurable harm the theft of IP may cause individual companies. The Administration is committed to combatting the cyber-enabled theft of trade secrets and other confidential business information. The Department of Justice is committed to aggressively investigating and prosecuting individuals and corporations who undermine American competitiveness by stealing what they did not themselves create. Last year, the Attorney General announced the creation of a China Initiative to identify priority Chinese trade secret theft cases, ensure that there are enough resources dedicated to them, and that they are brought to an appropriate conclusion quickly and effectively.*

2. China’s campaign of stealing American intellectual property to advance the Chinese economy is widespread. Some estimates I’ve seen place the value of this theft as high \$600 billion annually.

The Justice Department has initiated a number of criminal actions against Chinese entities, citizens, and agents accused of intellectual property theft. But actions like these often come too late, after critical technology has already been transferred to China.

What proactive steps is the Administration taking to protect American intellectual property and businesses from theft by China?

*When it comes to China, the Administration is taking a comprehensive approach. We are working to ensure that we are making effective use of all of our legal authorities, including our trade tools. We are expanding law enforcement efforts, and engaging with stakeholders. The bilateral negotiations between the United States and China are ongoing, and Ambassador Lighthizer is best placed to discuss the Section 301 investigation and the current negotiation. But the Administration has made it clear that addressing IP theft originating from China, along with effective enforcement mechanisms, is a high priority, and we are committed to strong and effective intellectual property protection around the world.*

3. The Chinese government seems to be taking a coordinated approach to IP theft with the Chinese military, intelligence services, state-owned businesses, and other Chinese entities all working toward the common goals spelled out in China's "Strategic Emerging Industries" and "Made in China 2025" initiatives. It is not clear to me that our government is taking a similarly coordinated approach to combatting China's actions. The Justice Department has its "China Initiative." The U.S. Trade Representative has imposed tariffs. Presumably, the Defense Department is taking action to harden its systems and those of defense contractors.
  - a. What coordination is going on among federal agencies to combat intellectual property theft by China?
  - b. Does this coordination extend to American industry? What type of outreach has the Administration made to U.S. companies to make sure they are adequately defended against Chinese theft?

*When it comes to China, the Administration is taking a comprehensive approach. We are working to ensure that we are making effective use of all of our legal authorities, including our trade tools. We are expanding law enforcement efforts, and engaging with stakeholders. The bilateral negotiations between the United States and China are ongoing, and Ambassador Lighthizer is best placed to discuss the Section 301 investigation and the current negotiation. The Administration has made it clear that addressing IP theft originating from China, along with effective enforcement mechanisms, is a high priority, and we are committed to strong and effective intellectual property protection around the world.*

*As stated in our Annual Report, the fourth pillar of our strategic approach focuses on engagement and partnership with the private sector and other stakeholders. The Administration is working closely with a broad range of U.S. industry stakeholders, covering small, medium and large sized enterprises, to address the full scope of intellectual property policy, enforcement and*

*protection issues. That engagement has included training and capacity building programs conducted by Executive Branch agencies with the public.*

4. In your report, you noted that “our economic prosperity relies upon our leadership in technology and creativity.” I agree.

I am concerned that the supposed reforms of the America Invents Act and certain decisions by the courts regarding what subject matter is eligible for patent protection have weakened our patent system to a degree that our “leadership in technology and creativity” is in doubt. I’ve heard that investment in the next wave of innovation—things like artificial intelligence and quantum computing—is moving overseas, because innovators are not confident that their inventions will be protected in the United States.

- a. Do you share my concern? Why or why not?
- b. If you agree that our intellectual property system requires strengthening to ensure American leadership in future innovation, what legislative changes do you recommend?

*American innovation and ingenuity and the United States intellectual property system stands second to none. The Supreme Court has ruled on a number of significant intellectual property cases in recent years. The Administration is monitoring how those decisions are being implemented by lower courts and executive branch agencies. As I stated at the hearing, I understand that the Committee has recently started a process to look at patent eligibility issues, and at this time, the Administration continues to monitor how the existing case law is developing.*

5. Throughout your report, you emphasize the efforts the Administration has taken to strengthen intellectual property protections overseas. Yet, as I just noted, intellectual property protections here in the United States seem to have fallen behind. It is nearly impossible for a patent holder to get an injunction even though the right granted by a patent is the right to exclude another from practicing the patented invention. Patent holders also have to defend against serial challenges to the validity of their patents through inter partes and other post-grant reviews at the U.S. Patent and Trademark Office.

I have worked with Sen. Coons and others to fix some of these problems through the STRONGER Patents Act.

Does the Administration support the STRONGER Patents Act? If not, why not?

*American innovation and ingenuity and the United States intellectual property system stands second to none. With respect to injunctive relief in federal court litigation, the Supreme Court in eBay Inc. v. MercExchange LLC (547 U.S. 388, 394 (2006)), held that “whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards.” At this time, the Administration is not*

*pursuing any legislative changes to the availability of injunctive relief, or to the post grant or inter partes review processes.*

6. In recent years there has been an explosion in the use of so-called “Kodi boxes,” fully-loaded devices that look like an Apple TV or Roku and allow a user to illegally watch copyrighted television shows and movies, including movies that are still in theaters. I understand that you held a roundtable last spring to discuss these devices.
  - a. What was the outcome of that roundtable?
  - b. Has the Justice Department ramped up its enforcement efforts against people that make and sell these types of devices?

*In May 2018, we hosted a White House roundtable aimed at addressing the growing use of illicit streaming devices (ISDs) that allow users to illegally access and stream content (e.g., movies, television shows, etc.) from the Internet. IPEC brought together representatives from various fields that are each affected by such online piracy, including movie studios, pay television providers, broadcasters, sports leagues, and the creative community. They described their experiences and concerns with officials from the FBI, Department of Homeland Security, Justice Department, Commerce Department, Federal Communications Commission, Federal Trade Commission, USTR, and Congress. Going forward we are planning on looking at opportunities for additional roundtables to examine progress that has been made by the Department of Justice, FTC, and other agencies, as well as industry to address this important issue. With respect to the Justice Department’s ongoing enforcement efforts, they would best situated to provide that information.*

7. Your report notes the role the International Trade Commission plays in excluding goods that infringe a U.S. patent from entering the country. The system was designed to protect domestic companies from unfair trade practices by foreign competitors. But today, the system is at times misused by foreign companies with no domestic presence other than patent licensing against American corporations that actually make and sell products.

In your view, should Congress revisit Section 337 of the Tariff Act and clarify what types of patent holders have standing to bring an exclusion action?

*With respect to the granting of an exclusionary order by the ITC under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), the statute provides that the ITC “shall” issue an exclusion order as a remedy for patent infringement “unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.” The ITC’s existing practice and precedents include standards for domestic industry requirements. At this time the Administration is not pursuing any legislative changes to Section 337 of the Tariff Act.*