

Testimony of
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before the
Senate Committee on the Judiciary

**“EXAMINING U.S. GOVERNMENT ENFORCEMENT OF INTELLECTUAL
PROPERTY RIGHTS”**

November 7, 2007

Chairman Leahy, Ranking Member Specter and Members of the Committee, thank you for this opportunity to discuss the State Department’s work to combat counterfeiting and piracy and enforce intellectual property rights (IPR) around the world. I value the leadership you and many others in Congress have demonstrated on this critical issue for American businesses and workers.

Meeting the Global Enforcement Challenge

A strong intellectual property rights regime – one where copyrights, trademarks, patents, and other forms of intellectual property are protected by law, effectively managed and vigorously enforced – has proven essential to driving economic progress in the United States and to making our nation one of the most innovative and competitive on earth. Intellectual property rights provide vital incentives to invest in breakthroughs in science, engineering, and the arts. They ensure knowledge-based firms and their workers are rewarded for their unique creativity and achievements.

The United States has been instrumental in building a robust worldwide legal infrastructure for innovation and creativity – bringing the strong intellectual property protections we enjoy at home to more than 150 economies around the world through the WTO Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS). That Agreement harnessed and harvested rules negotiated in a number of intellectual property treaties – clarifying and improving them where necessary and making them subject to binding dispute settlement.

This Administration has built on the strong legal protections in the WTO by including groundbreaking IPR provisions that improve on the TRIPS foundation in a dozen free trade agreements reached with 17 countries since 2001. Through negotiation of a new Anti-Counterfeiting Trade Agreement (ACTA), announced by U.S. Trade Representative Susan Schwab last month, we will bring improvements on TRIPS to a group of our trading partners with the goal of setting a higher benchmark for intellectual property enforcement, strengthening international cooperation, and improving enforcement practices.

America's trade agreements provide vital tools in our efforts to combat counterfeiting and piracy, and the Administration has made the full implementation and effective enforcement of the intellectual property protections in these agreements a top priority. For example, as a result of the United States-Australia FTA, Australia has strengthened its laws to combat internet piracy and signal piracy. As a result of the United States-Singapore FTA, Singapore passed a law to criminalize end user piracy of software and then used that law to criminally prosecute software pirates for the first time.

We have also achieved results through bilateral engagement with key countries. For example, through the United States-China Joint Commission on Commerce and Trade (JCCT), the Chinese government has agreed to mandate all imported personal computers have pre-installed legal operating software. We have been successful in committing Canada to introduce new copyright protection legislation, and to improve enforcement of its law criminalizing camcording in theatres. Early indications are that the new June 2007 camcording law has been successful in curbing camcording on a commercial level.

Recognizing the significant systemic challenge posed by the large and growing global trade in counterfeit and pirated goods – especially those faced by America's small and medium-sized businesses – this Administration has also further strengthened coordination among the full range of federal agencies engaged in intellectual property enforcement and brought new tools and partnerships to our work in this critical area. Through the Strategy Targeting Organized Piracy (STOP!) Initiative, announced in October 2004, federal agencies have helped small businesses secure and enforce their intellectual property rights at home and abroad, increased seizures of fake goods at our borders, worked closely with Congress to update and modernize U.S. intellectual property statutes, engaged the U.S. private sector on guidelines to keep supply chains free of fake goods, and built enforcement partnerships with countries around the world.

Leveraging State Department Tools and Resources

The State Department plays a vital role in supporting STOP! and in complementing the international intellectual property enforcement activities of federal agencies with lead responsibilities in this area. Secretary Rice is a strong champion of intellectual property protection and other top Department officials regularly press their overseas counterparts to improve intellectual property enforcement.

In 2005, at the request of Congress, the State Department established its first ever Office of International Intellectual Property Enforcement within the Bureau of Economic, Energy and Business Affairs. Led by Office Director Dan Jacobs and staffed by a strong team of subject matter and regional experts, this office serves as a focal point for the Department's contributions to protecting and enforcing the rights of American innovators and creative artists overseas – marshalling and leveraging the full range of often unique tools and resources at our disposal to achieve real results.

Advocating Abroad for American Right Holders

The most important of those tools and resources is the State Department's global network of 267 embassies, consulates, and missions around the world. America's Ambassadors and

Consul Generals from China, Korea and Vietnam, to Argentina, Senegal and beyond are regularly and publicly highlighting the economic damage and public health risks of counterfeiting and piracy and promoting robust intellectual property enforcement by local officials – including through high-profile conferences, roundtables and meetings that bring together U.S. and local government officials and private sector representatives to discuss challenges and solutions.

Just two weeks ago, the U.S. Ambassador to China, Clark Randt, hosted the Sixth Annual Roundtable Discussion on Intellectual Property Rights in Beijing. Attendees had the opportunity to hear first-hand from industry and trade association representatives with in-depth knowledge and experience on enforcement in China. In addition to improving coordination within industry and between industry and law enforcement to combat counterfeiting and piracy, past Roundtable Discussions have showcased effective new approaches to protecting IPR in China, such as by using technological measures (e.g., limiting access to industrial electrical current) or imposing liability on landlords.

These conferences, roundtables and meetings are more than forums for discussion. In Senegal last year, following a roundtable discussion hosted by our Embassy and subsequent events including a regional conference on combating counterfeiting and piracy, local artisans, musicians, fabric designers and others took the initiative and demanded significant changes in the way their government enforces intellectual property rights, which ultimately resulted in unprecedented arrests and seizures – including the arrest of as many as 100 street vendors, retailers and producers and the seizure of roughly 18,000 pirated DVDs, CDs, cassettes and videos, as well as recording equipment. Following a local roundtable in June 2005, the American Consulate in Guangzhou, China led delegations of U.S. right holders to meet local and provincial law enforcement authorities to press for tougher action against rampant counterfeiting and piracy, resulting in raids and crackdowns.

Through its Office of International Intellectual Property Enforcement, the State Department works to ensure Embassy and Consulate economic officers have the skills and resources they need to serve as effective advocates and first responders for U.S. intellectual property right holders facing complex counterfeiting and piracy challenges abroad. Since 2004, for example, we have organized regional intellectual property training seminars for economic officers in Europe, the Western Hemisphere, East Asia and the Pacific; developed special intellectual property training programs available to economic officers and others at the State Department's Foreign Service Institute and on-line; and created and made available to Embassy and Consulate officials up to date fact sheets, talking points, and model op-eds that address key IPR issues by region and topic.

Programs and resources like these ensure our economic officers can continue to play a powerful role in advancing and implementing the Administration's global intellectual property enforcement policies and activities – engaging regularly with private sector right holders and foreign government officials to encourage tougher enforcement, monitoring and promoting the full implementation of trade agreement commitments, and assisting in the development and execution of intellectual property training programs.

Building Global Intellectual Property Enforcement Coalitions

Capitalizing on its role in negotiations leading to annual G8 Summits, the State Department is also leading work among key industrialized nations of the world to prioritize and build a common agenda for enhancing global intellectual property enforcement. Beginning under the UK Presidency in 2005 and at each Summit thereafter, G8 Leaders have issued robust statements on combating counterfeiting and piracy and promoting and protecting innovation. These statements have underscored the pivotal role that strong intellectual property enforcement plays in economic growth and job creation, and have set high standards for the international community to substantially reduce global trade in counterfeit and pirated goods and deliver real enforcement results.

Work through the G8 has advanced partnerships between the Department of Justice, the Department of Homeland Security's Bureau of Customs and Border Protection, and their counterparts in Europe, Canada and Japan designed to improve border enforcement and combat serious and organized crime. Moreover, this work has served as a focal point for the development of joint intellectual property enforcement training programs in developing countries and for the exchange of information and effective practices among governments and with the private sector. And critically, it has helped to forge a global strategic partnership and common platform for cooperation among these like-minded countries dedicated to achieving results in the fight against intellectual property theft.

We look forward to building on this platform and working closely with the Japanese government as it assumes the G8 Presidency in 2008.

Training Foreign Law Enforcement Partners

Thanks to your leadership, Mr. Chairman, and to the leadership of Representative Diane Watson and others in Congress, the State Department is also increasingly leveraging another unique resource – its global intellectual property law enforcement training programs. Funding available for the IPR foreign criminal enforcement training and technical assistance programs has increased from less than \$1 million in FY2003 to \$3 million in FY2007.

Focused on strengthening the capacity of police, prosecutors, judges and customs and border officials to protect and enforce intellectual property criminal laws, these programs help to build the institutions necessary to achieve results now and in the future and to ensure raids and crackdowns are followed by prosecutions, convictions, and penalties. The focus on criminal enforcement also helps address the growing involvement of sophisticated transnational crime organizations in intellectual property theft.

The State Department Bureaus of International Narcotics and Law Enforcement and Economic, Energy and Business Affairs collaborate to target these funds for intellectual property criminal law enforcement training and technical assistance and to ensure these funds are deployed to maximum impact around the world. Specifically, we are:

- Directing training resources to programs in countries that are principal priorities of Congress and U.S. right holders. In FY2007, for example, we are funding bilateral training programs for law enforcement in Brazil, India, Russia, Turkey and the Ukraine, among others, as well as regional training for the law enforcement of ASEAN and APEC member economies.
- Building, wherever possible, on training provided in previous years – helping to anchor and advance progress over time and to strengthen institutional as well as individual capacity – with a goal of having foreign partners develop a self-sustaining growth in capacity.
- Supporting implementation of international commitments, such as the Asia-Pacific Economic Cooperation (APEC) guidelines designed to prevent optical disc piracy and keep supply chains free of fake products and the CAFTA-DR provisions on IPR.
- Coordinating fund allocation with other resource agencies, including the U.S. Patent and Trademark Office, through quarterly meetings of the State Department-led interagency Training Coordination Group and the State Department-maintained International IPR Training database (www.training.ipr.gov).
- Seeking to use our resources to leverage and increase the impact of funds committed by others – including partnering with other G8 countries on joint training programs and contributing to programs covered largely by recipient governments of key developing countries.

The intellectual property programs supported by the State Department’s law enforcement training funds are delivering real results. In Indonesia, for example, we support two full-time U.S. advisors who have helped the Indonesian government launch a string of large-scale intellectual property enforcement actions. In July 2007, Indonesian police closed down two optical disk factories suspected of illegal production and seized equipment and pirated products with an estimated value of between \$7.5 and \$9 million. That same month, they also conducted the largest counterfeit pharmaceutical raid ever worldwide, seizing 16 million medicine tablets valued at up to \$7 million. In Paraguay, our training has resulted in the government establishing a new data statistics center and a new special enforcement unit, which has been instrumental in increasing enforcement through conducting raids and seizures. Within a month after receiving training sponsored by our Embassy, local authorities conducted a successful raid of pirated software using methods they had just learned.

Building Public Support Overseas for Tougher Enforcement

Finally, the State Department is utilizing its extensive global public diplomacy tools to help build public understanding of the value of intellectual property and public support for stronger enforcement in countries around the world.

On April 26, 2007 – World Intellectual Property Day – the Department launched the first phase of a global public awareness campaign designed to highlight the importance of intellectual

property protection for economic development and the public health and safety dangers of pirated and counterfeit goods. During this initial phase, editorials signed by U.S. Ambassadors were placed in leading newspapers in more than 20 developing countries. The campaign continued through release of public fact sheets addressing topics important to specific regions, through digital video conferences with foreign government and private sector officials and through foreign press trips to the United States.

We are in the process of developing the next phase of the IPR public diplomacy campaign, which will continue to leverage the State Department's tools and resources to build and strengthen public support abroad for strong intellectual property enforcement. Through our IPR public diplomacy work, and our work through international organizations such as the World Intellectual Property Organization, we continue to encourage developing countries to integrate intellectual property into their economic development planning.

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Mr. Chairman, Ranking Member Specter and Members of the Committee, this Administration is acting aggressively to combat counterfeiting and piracy and to strengthen intellectual property enforcement at home and abroad. The State Department is supporting and complementing that work – leveraging its unique tools and resources to build strong global coalitions, advocate abroad for American right holders, train overseas law enforcement officials, and build public awareness and support.

As we move forward, we welcome the continued guidance and leadership of this Committee and others in Congress.

Thank you.