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OVERSIGHT OF THE OFFICE OF THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

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OVERSIGHT OF THE OFFICE OF THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

WEDNESDAY, JUNE 23, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Whitehouse, Klobuchar, Franken, Hatch, Grassley, and Coburn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. There are many things going on on the Hill, but this whole area of intellectual property is one of great concern not only to me, but to many here. Intellectual property fuels the American economy and creates jobs.

The Chamber of Commerce estimates that American intellectual property accounts for more than $5 trillion. IP-intensive industries employ more than 18 million workers, many of them in my own State of Vermont.

Just as intellectual property is crucial to our economy, counterfeiting and piracy of that American intellectual property slows our growth. We recognize the value and importance of IP throughout our Nation's history.

It is actually included in our Constitution; a strong, but balanced system for protecting intellectual property is not uniquely a Democratic or Republican priority. It is something that joins both parties.

The pro-IP bill enacted last Congress was co-sponsored by 22 Senators, 11 Democrats, 11 Republicans, and it passed the Senate unanimously. Patent reform legislation is another shining example of our bipartisan work in this area.

Along with Senators Hatch, Sessions and Kyl, we forged bipartisan consensus, legislation to improve the economy and create jobs and not add to the deficit. It shows what we can do when we work together.

Today's hearing is the first oversight hearing with the Intellectual Property Enforcement Coordinator. It is her first appearance before this panel since her confirmation hearing before this Committee last November. And we welcome Victoria Espinel back to

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the Committee to discuss the joint strategic plan for intellectual property enforcement.

She testified here in her confirmation hearing, got a unanimous vote out of the Judiciary Committee, and was confirmed unanimously on the floor of the Senate.

Congress created the IP enforcement coordinator position in response to concerns of numerous agencies within the government sharing responsibility for protecting intellectual property who were not sharing information and coordinating as well as they should.

In order to enforce the laws, we have to have it as efficient and effective as possible. And intellectual property crime takes so many different areas. It could be a counterfeit, an inferior semiconductor that then finds its way into one of our military aircraft.

It could be the counterfeit and unsafe pharmaceutical products used to treat an illness, pirated software. Mob-run Cyberlockers subscription service has stolen American movies, as Reuters reported just yesterday.

In all these forms, it hurts our economy, results in the loss of hundreds of thousands of jobs, and billions in tax revenues. But it can also put our health and safety in jeopardy here in this country and put the health and safety of our troops fighting abroad in jeopardy.

So the first important task for the enforcement coordinator was to create a joint strategic plan, and I applaud Ms. Espinel for the way she has worked on that and the openness of it.

I am concerned that increasingly the Internet is being used to steal intellectual property from books and journal articles, software, movies, music. This is no longer an emerging nuisance, but a very real threat to our economy.

The AFL–CIO recently cited studies estimating that digital theft of just movies and music cost more than 200,000 jobs. That is unacceptable under any economic climate, and it is devastating today.

So I wish to work with Senator Hatch, Senator Whitehouse and others on legislation that is going to target those that profit directly from taking American property.

I thank Ms. Espinel for appearing before the committee. And something we normally do not do in this committee, if there is good news to report from the U.S.-Algeria World Cup match, I will report it.

[Laughter.]

Chairman LEAHY. I have been on this Committee for a third of a century and I think that is the first time such an announcement has been made.

Ms. Espinel, of course, had previously served as the Assistant U.S. Trade Representative for Intellectual Property. She was chief trade negotiator for the United States on intellectual property issues.

She received her undergraduate and law degrees from Georgetown. Those of us who got law degrees from Georgetown appreciate. She has a master of laws degree from the London School of Economics.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. Ms. Espinel, please go ahead.

STATEMENT OF HON. VICTORIA A. ESPINEL, INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC

Ms. ESPINEL. Thank you. Chairman Leahy, members of the Judiciary Committee, thank you for your continued leadership on this important issue.

I sit here today humbled by my recent confirmation and service to the President as the first Intellectual Property Enforcement Coordinator on a vital issue facing American businesses and American consumers in the 21st century.

Congress created my office in an important first step at reform, and the response has been overwhelmingly supportive. I feel privileged to have the opportunity to work with you on this effort.

Congress tasked the Administration with developing and implementing a U.S. Government strategy to tackle a wide range of problems associated with intellectual property enforcement, and today I am pleased to present you with that strategy.

This first strategy reflects the hard work of and coordination between numerous U.S. Government agencies, including many dedicated public servants and law enforcement officials, the public, the private sector, and my small, but hardworking team. But the release of this strategy marks the commencement of a long process, and much hard work lies ahead.

Our country needs America's ingenuity now more than ever. It is America's innovation that drives our economy and keeps our people working, and that makes our enforcement efforts all the more critical.

In this strategy, we have attempted to capture the most significant issues that require immediate attention. We will be targeting counterfeiters and pirates, not those engaged in legal and legitimate activities. Increased coordination, cooperation, and prioritization must accompany this first step; and, legislative action may be required in order to fulfill our goals.

The United States has always been a global leader in developing new technologies. We lead the way in bringing new pharmaceuticals to consumers, inventing tires that keep families safe on the road, developing environmentally conscious technologies, creating innovative software, and producing films, music and games that are craved by consumers around the world.

However, our leadership in the development of innovative technology and creative works also makes us a global target for theft. Counterfeiting and piracy affects a vast range of businesses and industry sectors. As part of our efforts to develop the strategic plan, we asked the public for input so that we could understand directly their concerns, and we received over 1,600 responses. My office reviewed all of those responses and posted them all on our Website.

I also met with companies across a broad range of America's industries, as well as unions, academics, and consumer groups, to engage them about where the problems in intellectual property enforcement lie and to find out what we can do to make things better for the many Americans and American industries that depend on intellectual property for their success. This strategy reflects the recommendations that came from the public.

I want to emphasize that the development of this strategy was an interagency collaboration. The Department of Justice, Homeland Security, Commerce, USTR, HHS, State and others all worked tirelessly to make this an excellent and forward-leaning strategy.

The overarching mission is to ensure that all of the agencies that have a hand in enforcing intellectual property are working together in a coordinated fashion and in a manner that is consistent with the priorities of this Administration.

With increased cooperation and coordination, this plan has the ability to alter our approach to enforcement for the better for many years to come. To do so, we are taking some bold new steps and we look forward to working with you.

Just to highlight a few items. The U.S. Government will launch an initiative to collect and analyze data to determine the jobs and the exports that are generated by the intellectual property industries.

We will also collect data on the resources that we spend on intellectual property enforcement to make sure that we are using those resources as efficiently as possible. This information will be valuable to better inform our approach for years to come.

We will lead by example. We are establishing a governmentwide procurement working group which will prepare recommendations on how to reduce the risk of the purchase of counterfeit products. We will also review our policies and practices to promote the legal use of software by those who are doing business with the U.S. Government.

This Administration is strongly committed to transparency in our policymaking. Both the process through which the strategy was developed and the substance of the strategy reflect that. We will increase information-sharing with right-holders. We will work to ensure that victims of crime and the public are appropriately informed of our activities.

In order to reduce duplication and waste, we will ensure that Federal agencies are coordinating, cooperating, and offering broad participation on this issue. We will improve the effectiveness of our personnel that are overseas to combat intellectual property infringement. We will strive to station those personnel in the countries of top concern, and we will improve coordination of our capacity and training so that the foreign governments have the tools necessary to strengthen enforcement on their own.

We will work with foreign governments to increase foreign law enforcement efforts, and we will promote enforcement of our rights through our trade policy tools, such as trade agreements and the special 301.

We are establishing a counterfeit pharmaceutical interagency Committee to examine the numerous problems associated with unlicensed Internet pharmacies, health and safety risks in the United States due to the distribution of counterfeit pharmaceuticals, and the proliferation of counterfeit drugs abroad.

To further guard against counterfeit drugs, we will increase our enforcement efforts in cooperation with relevant agencies, including Customs, the Food and Drug Administration, and DEA.

In order to reduce counterfeit goods coming into our supply chain, we want to encourage voluntary disclosure; to encourage im-

porters to come forward when they learn that counterfeit drugs have infiltrated their supply chain without their knowledge.

We also need to facilitate cooperation to reduce infringement occurring over the Internet. It is important for the private sector to work together to find practical and efficient solutions to the problems on their own.

In the meantime, we will be, also, exploring alternative measures to reduce piracy online. For example, we will go after foreign-based Websites and Web services that violate our intellectual property rights using a combination of tools, including law enforcement, diplomatic measures, and coordination with the private sector.

We will also conduct a comprehensive review of our laws to determine if there are deficiencies that are hindering our enforcement efforts and to make sure that we are addressing those deficiencies.

Finally, we will undertake a comprehensive review of our efforts to support our businesses, big and small, when they are navigating in overseas markets, including in China.

I have stated some ambitious goals. This Committee has been steadfast in its fight for justice for the American people. I commend your leadership on these issues, and I look forward to working closely with this Committee in the coming months on improving our enforcement efforts here and abroad.

Thank you very much.

[The prepared statement of Ms. Espinel appears as a submission for the record.]

Chairman LEAHY. I believe in balanced copyright laws. The same day the Senate passed the Pro-IP Act, the Senate also passed legislation that Senator Hatch and I had to make it easier to use orphan works.

When I look at online piracy, the criminal enterprises are stealing full-length feature movies made in the U.S., and then that money is being used to fund other criminal activity. Organized crime used to be involved in things like bootleg liquor and that generations ago. Now, they are involved in these things.

Will you work with us on legislation that we can enact to allow us to shut down these kinds of Websites that are being used by organized crime?

Ms. ESPINEL. Yes. This is an issue of great concern to us and we would look forward to working with you on such legislation.

Chairman LEAHY. Now, one of the concerns we had and one of the reasons why, again, several on this committee, in both parties, wanted to do this coordination, is that, we were afraid that some of the actions that should be taken were not being taken, because there was not good enough coordination among the various agencies.

Are you finding you are able to bring these agencies together or are you finding resistance? And be frank.

Ms. ESPINEL. Thank you, Senator. I have found, in the process of putting together this strategy, that there has been a tremendous amount of coordination and excellent input from the agencies.

I really want to underscore actually how committed the agencies have been to this process. We worked very, very closely with many of them, including the Department of Justice, Homeland Security, Commerce, the USTR, State, HHS, and they have worked very

closely and collaboratively with us to make this strategy as strong as possible.

There are a number of things in the strategy that go to exactly the issue that you raised. I will highlight just a few, but we have committed to increase coordination of our domestic law enforcement agencies to make sure that they are working together as well as possible, including increased information-sharing.

Chairman LEAHY. If I could just go on that a bit. That coordination, the local law enforcement, there are a lot of things they could do if they had the tools, the expertise, and the coordination; am I correct?

Ms. ESPINEL. Yes, you are correct. And, in fact, there are items in the strategy that go to that issue very directly; coordination with our state and local law enforcement, so that we can maximize the resources that we have and help support the Federal law enforcement efforts that we have ongoing.

We also want to make sure that our personnel that are stationed overseas are well coordinated both in country, so they are working together well as teams in country, and that they are getting good, clear guidance and priorities from the Administration back at home.

We have committed to make sure that our training efforts are coordinated; that we are focusing on the countries of most concern. We are also establishing four new working groups. So in addition to the interagency Committee that we have created on intellectual property enforcement, we will be creating four new working groups on government procurement, counterfeit pharmaceuticals, economic analysis, and our international capacity-building and training efforts.

Chairman LEAHY. One of the things I am very concerned about—I am trying to say this based on just what has been in the press, obviously. If there is a closed session—and I am sure you have seen some of the classified material on it.

But if we are having counterfeit microchips and other materials in our Department of Defense chain or acquisition chain, I worry what that might do to our men and women who are on the front lines, and we are in two wars, and we have other responsibilities around the world.

Is that something that you and the Department of Defense are looking at?

Ms. ESPINEL. Yes, Senator. We share your concern. Selling counterfeit products to our military is reprehensible and must be stopped. We are working with the Department of Defense, as well as other relevant agencies to address this problem.

Chairman LEAHY. Well, I think it is safe to say that if you need help from this Committee or any other Committee on that, you will get strong bipartisan help.

Ms. ESPINEL. Thank you.

Chairman LEAHY. Then, last, you raised the issue of IP theft and international organized crime. The Attorney General has stressed that.

Is this a priority in trying to coordinate between Homeland Security and Department of Justice? I know you have referred to this

already in your department, because if organized crime gets their hands into this, we have a real, real problem.

Ms. ESPINEL. We share that concern, as well. We are concerned that this type of activity is very attractive to organized crime, because the profit margins are high and the risk is low.

I think many of the things that we are doing in the strategy, including the increased coordination efforts that I mentioned, will help us better target all types of intellectual property crime, including those that are linked to organized crime.

Chairman LEAHY. Thank you very much.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman.

Welcome to the committee. We are very pleased with your work and what you are doing, and I really appreciated your comments, your opening comments.

Today's hearing is really history-making, because this is the first oversight hearing of the Office of the Intellectual Property Enforcement Coordinator. So I think that is a good thing.

Let me just ask a few questions here that hopefully will help us a little bit.

When you appeared before this Committee last year, I expressed reservations about placing your position in the Office of Management and Budget. As you know, I believe that the IP enforcement coordinator position would have been better suited with an organization that had a clear nexus to intellectual property concerns.

Could you give us an update on how things are working with OMB and how many are working with you on your staff, and what is your annual budget?

Ms. ESPINEL. Yes. So just let me start by saying that the Office of Management and Budget coordinates policy in a number of areas, and one of their roles is to make sure that the agency's activities are consistent with the President's priorities and the Administration's priorities, and that is the role of my office, as well.

I am lucky in this effort in that I am not alone. There are many agencies that are committed to this effort, and so I have the resources and the expertise of those Federal agencies to call on, as well as the resources and the expertise inside of OMB.

Some of those agencies have been generous enough to supply me with temporary details in order to help with the development of this strategy. So I have a small, but very hardworking team.

We are a new office, as you know. So we will be assessing our needs on an ongoing basis. But I would also just like to say I think I came into this job with a choice either to put together a very modest plan that would be easy to implement or put together an ambitious plan.

It was my choice and the choice of the agencies that worked with me to put together a very ambitious plan, and I am confident that we will be able to implement it.

Senator HATCH. Thank you. I noticed in the joint strategic plan that the first enforcement strategy action item is the establishment of a U.S. Government-wide working group to prevent U.S. Government purchase of counterfeit products.

As you are well aware, counterfeiting and piracy are not just about downloading music or pirated software, although that's bad

enough. These crimes affect all sectors of our economy, including high tech, pharmaceuticals, auto parts, the quality and safety of our food, just to mention a few.

Take the semiconductor industry, for example. If fake chips find their way into many critical parts of our infrastructure, they can threaten the safety of not only our military and first responders, but the general public who rely on semiconductors to control their cars, planes, trains, medical equipment, or even power systems.

What do you recommend we do to immediately halt this illicit and dangerous trade of illegal counterfeit imports? Now, you have given us some indications here and I have appreciated what you have said so far.

Ms. ESPINEL. Thank you very much. The health and safety risks that are posed by counterfeit products are significant and of serious concern to us.

Obviously, counterfeit products coming into the U.S. Government procurement supply chain, particularly our military and our law enforcement, is completely unacceptable and something that we need to address as a matter of immediate concern.

As we say in the strategy, we have committed to working with the Department of Defense, as well as many, many other agencies, to make sure we are getting a handle on this problem and that it stops.

There are other things in the strategy, as well, that I think will help us in this effort, including seeking to give more law enforcement authority so that FDA, CVP and others can help stop counterfeit products, including counterfeit pharmaceuticals that are coming into our country.

Senator HATCH. Thank you. There seems to be a lot of misinformation regarding the Anti-Counterfeiting Trade Agreement, or ACTA. In some cases, those who are intimately familiar with the actual text of the publicly available draft treaty documents have done the misreporting.

Now, I recognize that you are not actively negotiating ACTA, but I would like your comments on whether ACTA would indeed change existing law and what role do you see ACTA playing in increasing the quality of international IP enforcement?

Ms. ESPINEL. The ACTA negotiations are ongoing, as you know. I can say, and let me say very clearly, that the USTR and the Administration do not see ACTA as a vehicle for changing existing law.

Let me also say that the ACTA negotiations, I think, are a critical component of our strategy to increase cooperation with foreign law enforcement and our trading partners in other countries, and the Administration is committed to concluding an ACTA that has strong intellectual property enforcement provisions as part of that effort.

Senator HATCH. Well, thank you. Mr. Chairman, I want to compliment you for your leadership in the IP world and the things that you have done ever since I have been on this committee.

I have appreciated working with you. You are an excellent leader in this area, and I just want to personally compliment you for your work.

Chairman LEAHY. Thank you. We have worked together on these things. As we have tried to demonstrate, it is not a partisan issue. We think we have some of the most innovative geniuses in the world here in the United States. We just want to protect what they do.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Thank you for your leadership in this area.

Ms. Espinel, I want to thank you for coming to this hearing to speak with us again today. As I mentioned to you at your confirmation hearing, I am extremely concerned about Net neutrality.

Today, a young kid in his basement in Owatonna, Minnesota can create a song and can, via the Internet, become an international sensation. If some company can pay for priority Internet access, that kid might not be able to have a shot.

But Net neutrality is and must also be a matter of protecting lawful content and usage, and I am also extremely concerned about piracy on the Internet. I do not want what happened to the record industry to happen to the motion picture industry. I know that people sometimes in those industries get nervous when you talk about Net neutrality that lip service is given to piracy, but they do not believe it. "No, you are talking about Net neutrality, you cannot be concerned about piracy."

What I want to know is how do you put in place—and I asked this kind of last time—measures to protect against privacy that do not impede the free flow of information on the Internet?

Ms. ESPINEL. We recognize the need for legal certainty and effective measures both to promote investment in the Internet and for our right-holders. Let me also say, as you pointed out and as the Chairman of the FCC has pointed out, that Net neutrality does not apply to unlawful content, including distribution of illegal copyrighted products.

I felt when I took this job and I feel having now been in the job for a few months even more strongly that it is possible for us to preserve Net neutrality while still going after the type of illegal infringing activity that you refer to that is a priority for this Administration.

Senator FRANKEN. I understand that. And maybe we can do this further down the road, talk about the kind of architecture in the Internet that we need to do that. You also talked about legislative action that might be needed to achieve our goals. And the Chairman talked a little bit about that, but I would like to pursue that further.

But I do want to talk about medical device manufacturers in my home state of Minnesota. New ideas in medical devices can be a huge source of hope and a big help for Americans with medical conditions, and I want to make sure that we protect those intellectual property rights that encourage this innovation.

But recently, people in India and China have been making counterfeits of these devices. Now, how are we going to enforce those rights there internationally? That is what I want to know. How are we going to enforce on medical devices?

Ms. ESPINEL. Medical devices, among many industries, are facing significant challenges overseas, including in the markets that you

just mentioned. There is a whole—that is a great priority for us and a great concern for us.

There is a whole section of this strategy that speaks to exactly that, to enforcing our rights overseas, and there are a number of recommendations in the strategy that go to that.

Let me highlight one in particular. I think it is very clear to me, to our Attorney General, to the Administration as a whole, that we need to have the cooperation of our trading partners if we are going to effectively address intellectual property.

We can pour resources and commitment into this issue, but unless we have their cooperation, it is possible for the United States to address this problem around the world effectively on our own.

So there are a number of things in the strategy that go to exactly that issue, to make sure that we are making very clear to our trading partners that it is a priority for us that they enforce American intellectual property rights; that we work with our trading partners to ensure that they have the tools that they need in order to enforce our rights.

There is good activity already happening now there, but I think there is more that could be done and this is our plan for getting that done.

Senator FRANKEN. I just want to make sure that when we are doing our trade agreements and talking to our trading partners, that we have the leverage to be able to make that happen, and I know that is what you did in your last job.

So thank you very much. And thank you, Mr. Chairman.

Ms. ESPINEL. Thank you.

Chairman LEAHY. Senator Coburn.

Senator COBURN. Thank you. Welcome. Following up on a little bit of what the Senator from Minnesota asked you.

Do we have the cooperation of China now in enforcement of our intellectual properties?

Ms. ESPINEL. Obviously, China is an issue of great concern. Obviously, there is much improvement on intellectual property that needs to happen with respect to China.

There is much in this strategy that goes to that issue, but I also want to emphasize that this strategy is part of a larger Administration strategy with respect to China; and, in fact, I believe there are senior officials, Ron Kirk and Secretary Locke, that are testifying, I believe, at this moment on our overall China approach.

Senator COBURN. But the answer is no. Is that correct?

Ms. ESPINEL. The answer is that we need to see improvement in China, absolutely.

Senator COBURN. The answer is we do not have the cooperation of the Chinese government. Matter of fact, in a meeting there 2 years ago, the secretary of commerce of China told me personally he had no intent of honoring those properties, because they were a developing nation, even though they are a signatory to the WTO, which requires them to honor it.

So just for the record, we do not have the cooperation of China. They are stealing our intellectual property. They are stealing our future today.

Which services do you believe have made the most progress in strengthening intellectual property enforcement?

Ms. ESPINEL. In terms of the agencies of the U.S. Government?

Senator COBURN. Yes, in terms of the agencies.

Ms. ESPINEL. I can say with great sincerity that I feel the agencies that we work with most closely, and I will name those, have shown a tremendous commitment to this issue over the last 6 months, and I expect that to continue.

In fact, as much work has gone into developing this plan, the much harder work of implementing it lies ahead of us. So I want to thank them for the commitment they have shown, but also thank them for all the hard work, the increasingly hard work that they will be committing to this process as we move forward.

We have worked very closely with the Department of Justice, with the Department of Homeland Security, with State, USTR, Commerce, Health and Homeland Services, particularly the Food and Drug Administration, and all of them have shown a great deal of commitment to this effort.

Senator COBURN. Is it your plan to focus more on domestic intellectual property enforcement more so than international enforcement?

Ms. ESPINEL. That is an interesting question. So I think in many cases, it is very hard, frankly, I think to draw sort of a bright line between them.

For example, one of the things that we are focused on is coordinating our domestic law enforcement, but much of what our domestic law enforcement does is work to stop products that are coming in from overseas from entering our borders. So while that is a domestic coordination effort, it is going to support our international efforts.

That is also true with the Internet, obviously. That is a tool for global distribution. So while there may be domestic efforts that we are undertaking there, much of that activity is going to address Internet activity that is taking place outside of our borders.

There is an entire section of the strategy that focuses just specifically on actions to enforce our rights overseas, but I want to emphasize that much of what we are doing domestically will also have a positive impact on infringement that is occurring abroad.

Senator COBURN. I want to thank you for the report, and I know it was not your responsibility to deliver it on time. It was due in 2008 to the committee. But I do thank you for the effort that you put forward in that regard.

Tell me what your comments are on the newly reconstituted Intellectual Property Task Force of the Justice Department.

Ms. ESPINEL. We were very pleased that Attorney General Holder relaunched the task force. The task force has attacked this problem with vigor, and they have worked very, very cooperatively with us, with the other Federal agencies, with the Administration as a whole. I think it is a very good effort.

Senator COBURN. How many enforcement actions have you seen carried out by them?

Ms. ESPINEL. The task force that has been set up by the Attorney General is not—it is not their responsibility to take on operational cases. In other words, what the task force is doing is informing the overall policy approach and the prioritization and resources the Department of Justice will put into this effort.

And in that regard, I think there has been a great deal of energy and commitment to this.

Senator COBURN. But do you recall or are you aware of the number of actions that the Justice Department has filed in terms of intellectual property?

Ms. ESPINEL. I would rather not take the risk of giving you an imprecise answer. So if it is all right with you, I can check on a precise number and be back to you shortly.

Senator COBURN. Thank you. Mr. Chairman, I want to thank you for holding the hearing. We are a nation that is suffering a lack of jobs right now and one of the reasons we are suffering a lack of jobs is tens of billions of dollars in productivity and jobs that should be in this country have been stolen by those that violate international intellectual property rights, chief of which is China.

Chairman LEAHY. You will get no disagreement here. Senator Hatch and I were just talking back and forth, because the two of us have worked on this for decades now. I know in my own state, so many of our jobs are based on intellectual property, we have become a high tech state, and the constant concern we have in that area.

Senator Whitehouse, I am going to step out for a few minutes. But then if you would take the gavel, I will be right back.

Senator WHITEHOUSE [presiding]. I would be happy to. And I want to thank you, before you go, for holding this hearing. I want to join all of my colleagues in applauding your leadership on this issue and emphasizing how important this is, as Senator Coburn has just said, to our economy.

In that context, Ms. Espinel, you indicate in your testimony that it is our leadership in the development of innovative technology and creative works that makes us a global target for theft. I would hazard that we are "the" global target for theft, not "a" global target for theft.

But I wonder if you have any quantification of the loss to our economy from the piracy and theft of intellectual property, not just in the entertainment industry, but across biotech, high tech, pharmacy, consumer, defense, all these other areas in which we are at the wrong end of the intellectual property drain.

Ms. ESPINEL. So I would say it is very difficult to quantify precisely the impact of infringement on our economy, because infringement——

Senator WHITEHOUSE Orders of magnitude?

Ms. ESPINEL [continuing]. Because infringement is illicit activity and it is difficult to quantify. Counterfeiters and pirates tend not to keep excellent records.

That said, I think it is very clear and indisputable that we have a very significant problem on our hands, which is why the Administration is focused on fixing it.

Senator WHITEHOUSE. Orders of magnitude, tens of millions of dollars, tens of billions of dollars, trillions of dollars?

Ms. ESPINEL. It is not my nature or inclination to speculate without precise data. I think it is—from what we hear, from what we hear every day from industries across this incredibly broad range of American industries—and I should say, even though I have done this work for a long time, I myself was surprised when we went

out to the public and asked to hear concerns and as I traveled around the country talking to companies how broad the spectrum of American industries was to come forward to tell us that they were suffering, both small companies and big companies.

So I think it is fair to say that it is an enormous problem. I think it is having a significant impact on the U.S. economy.

I am aware, as you may be, as well, that the ITC is doing some analysis of this issue, particularly with respect to activities that are ongoing in China, and we look forward to the outcome of that.

I will also mention in this regard that one of the things that we have committed to do in this strategy is launch an initiative by the U.S. Government to start collecting comprehensive data across all the spectrums of American industry that depend on intellectual property so that we can——

Senator WHITEHOUSE. Well, let me jump in and ask that you conclude your answer on that in the form of a written response to a question for the record, to get back with whatever data you have.

The reason that I am asking this question is because from my point of view, it very much appears that this is an issue that average Americans do not appreciate, because the information is not out there about how significant it is.

When it is defense contractors that are hacked and plans of fighter planes that are stolen, it is classified. When it is a biotech company that has its process stolen and replicated in China, it is not in their interest to disclose that or even really find out about it. They just want to kind of keep doing what they are doing.

I think we have a significant under-appreciation of this. It would not surprise me if we are on the losing end of the biggest transfer of wealth, the biggest criminal transfer of wealth in the history of the planet right now. We are just being—every industry—just hoovered out of intellectual property, and I think, frankly, we do very little about it.

So I think the more we can push on the enforcement, it will help our trade policies if we are showing really strong enforcement at home.

Why is it that I can go, in four or five mouse clicks, to a pirated movie on a Website and find MasterCard and Visa supporting that criminal activity by having themselves there on the Website to pay? Why is it that we had testimony on this Committee that if you go to the Chinese competitor to Cisco, you can find the little personal quirks that people wrote into the software that they designed it for Cisco in the Chinese software, proving that they stole it, and we are OK with that, we have not done anything about that?

Over and over again, you see an acceptance of piracy of our intellectual property that I think exists, the tolerance exists, because we have not been clear about how hard this hits our economy and how many industries it hits and how big the number is of what we are losing.

So my time is going to run out on that, but I really hope that you will dedicate some effort to trying to get as solid answer as you can to my question and, in your important role as the IP coordinator, dedicate as much of your energy as you can to getting this message out to people. And you cannot do that if you cannot tell stories or give data. If all you can do is say words like "enor-

mous"—we hear the word "enormous" 50 times a day. It does not mean anything.

We need stories, we need data, and then we can become very strong advocates for you and help you solve this problem.

Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I am not going to be able to stay very long. But this is such an important issue, I wanted to come by and explain that I had conflicts and could not be here.

I think it is very, very important that we have this oversight hearing, because the situation is as serious as Senator Whitehouse has just stated. I am very interested in making sure that intellectual property rights are protected here in the United States and abroad.

Because of that, I was engaged in the drafting of the legislation that created the IPEC position a few years back. I support improved coordination between U.S. Government agencies to go after bad actors and strengthen enforcement of our intellectual property laws. And I also want to make sure that we are doing our best to efficiently utilize limited resources and reduce duplication and waste.

So I am looking forward to reviewing this proposed strategy and hearing how it can be improved for enforcement efforts against counterfeiting and piracy. And I am going to submit some questions for answers in writing.

Thank you, Mr. Chairman.

Ms. ESPINEL. Thank you, Senator. I look forward to it.

Senator WHITEHOUSE. Thank you, Senator Grassley.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Senator Whitehouse. And thank you for your work today, and to all the witnesses.

I am very glad we are holding this hearing today. It is incredibly important to our state. In addition to the medical device industry that Senator Franken spoke about, we are now seventh in the country for Fortune 500 companies. We make a lot of things in Minnesota and we care very much about the protection of our products.

In fact, as we move forward, I believe one of the ways we are going to get out of this economic rut we are in is through innovation and through actually even more innovation and more products and more new things.

So I am very concerned about this international counterfeiting and the piracy that is going on.

My first question is a specific one. I head up the American-Canadian Inter-Parliamentarian Group, and Senator Grassley sometimes goes to the meeting, and every time we push on this issue with the Canadians. And I know the Harper government actually asked the Prime Minister about this.

I know they want to do more on this. But do you know anything about the status of the Canadian counterfeiting laws? Because there is a major problem, I know, for our movie industry and music industry and others with what is going on in Canada.

Ms. ESPINEL. So let me first just say I completely agree with you on the importance of innovation and IP enforcement to our economy.

The President has made clear that it is the No. 1 priority for this Administration to get our economy back on track, and we feel very strongly that enforcement of our intellectual property rights will help support our jobs and promote our exports. So we are in complete agreement on that fact.

Turning to your specific question with respect to Canada, we share your concerns with the Canadian system, and I appreciate your raising it. You may be aware that the Canadians have recently introduced new legislation.

Senator KLOBUCHAR. It seems like they do every year.

Ms. ESPINEL. It has been an ongoing process with the Canadians. And you are right, the legislation has been introduced on this issue before.

I think the latest bill that has been introduced is different from earlier bills in significant ways. One of those ways is it is focused on enablers. But we are still in the process of assessing that legislation.

I think it is very important that Canada move forward to address the deficiencies in its system. I think it is important that they, in addition to the type of legislation that they have introduced, that they pass the WIPO Internet Treaties.

As long as we are discussing Canada and given your interest in medical devices, I think it is also important that Canada make progress on its own border control. As you may know, they do not have sufficient law enforcement authorities for their border control. That has made it harder for their law enforcement officials to act, and we continue to encourage Canada to fix that problem.

Senator KLOBUCHAR. All right. Thank you. Senator Thune and I recently introduced a P2P Cyber Protection and Informed User Act, which focuses on these peer-to-peer file sharing programs, which are often a method for transporting copyrighted works. And I have been shocked at some of the stories we have heard more on the fraud front from our state of people who—someone goes home and they are working from home on the accounting for their company, a company of 100 people, and then they do not know their kid has one of these programs on and suddenly all the employees' data is there stolen and basically used for identity theft.

But my focus here is on copyrighted works with peer-to-peer. Do you know if that is addressed in the strategic plan and if there is a focus on that kind of computer theft?

Ms. ESPINEL. So there are a few things in the strategy I would point to that go to this issue of the distribution of pirated material over the Internet, including with respect to P2P.

First, we believe it is essential for the private sector to work together. So we are and have actively encouraged Internet service providers and others to work with the right-holders to come up with solutions that are practical and efficient to try to address this problem, and we believe that type of cooperation is very important.

However, I also want to emphasize that it is not our position that we will sort of sit back and let the private sector deal with this problem on their own. We are also committed to taking action ourselves.

In that regard, I would mention a couple of things. The foreign-based Website commitment that we have made, it is clear to us

that foreign-based Websites are a particular problem that we need to address, both in terms of the products that are coming into our country from those foreign-based Websites and the particular law enforcement challenges that they pose because they are overseas. So that is a problem that we are committed.

As we say in the strategy and there has been some allusion in ths hearings to we are also undertaking assessment of our laws to see if there are deficiencies there that are hindering our enforcement efforts with respect to the issues that we raise and what we need to do to address those.

Senator KLOBUCHAR. Thank you very much. I will submit some other medical device questions, I know that has been covered, for the record. But I want to thank you for that and just say I really believe if we are going to continue with this innovation economy in the direction I think we need to go for our entire country, this is going to be a major component of it.

So thank you for your work.

Ms. ESPINEL. Thank you.

Chairman LEAHY [presiding]. Thank you very much for being here. If there are other questions, we will submit them for the record. I appreciate you being here. I appreciate having your father here in the audience.

Ms. ESPINEL. Thank you, Chairman Leahy. And thank you and the other members of the Committee for continuing to bring attention to this issue and for your leadership.

Chairman LEAHY. Thank you. Staff will set up for the next panel. Thank you very much.

Ms. ESPINEL. Thank you.

Chairman LEAHY. Incidentally, in the soccer game, we actually did score, but it was disallowed. So it is still zero-zero. As you may have noticed, that has happened to the U.S. in a couple of these things. I do not want to suggest anything, but there is a strong feeling among some of the staff watching that, and doing it solely as a professional aid to the chairman, that it was not the world's best call. And those comments had absolutely nothing to do with the hearing.

Now, we have four witnesses here. The first will be Barry Meyer, the Chairman and CEO of Warner Brothers, a position he has held since 1999. He first joined Warner Brothers in 1971. He has gone sort of up through the lines, including executive vice president and chief operating officer; has brought Warner Brothers into being one of the best companies in America.

He is a member of many industry boards and associations, including the Motion Picture Association of America, the Museum of Television and Radio, and the Academy of Motion Pictures Arts and Sciences.

He received his undergraduate degree from the University of Rochester, law degree from Case Western University School of Law.

What I am going to do, if nobody has any objection, we will have each witness testify and then we will ask questions, and I am aware of the fact that Mr. Hirschmann is suffering from laryngitis.

Mr. Hirschmann, I can assure you, I sympathize. With all the pollen in the air, my voice leaves a lot to be desired.

But, Mr. Meyer, we will start with you, and thank you very much. I know you and Dr. Smith came in here last night and I appreciate having you here; and, Carol Melton, appreciate you being here.

STATEMENT OF BARRY M. MEYER, CHAIRMAN AND CEO, WARNER BROTHERS ENTERTAINMENT, INC., BURBANK, CA

Mr. MEYER. Thank you. Thank you, Chairman Leahy, and thank you, members of the committee. I appreciate the opportunity to appear before you today.

And I want to start, first, by thanking all of you and your colleagues for passing the Pro-IP Act to establish this critical role of intellectual property enforcement coordinator, and thereby to strengthen our government's commitment to copyrights, American creativity, and innovation.

As the release of the joint strategic plan and her testimony this morning demonstrates, consumers are being well served by the appointment of Victoria Espinel. She hit the ground running and, in our opinion, she is doing an incredible job of bringing together the many resources of the Federal Government to coordinate and share information.

The plan she presented represents another important step forward in achieving a higher level of cross-agency collaboration on intellectual property issues, and we are particularly pleased to see a call for greater cooperation in the business community in reducing the spread of online infringement, as well as the proposal for a comprehensive initiative to pursue foreign-based websites that infringe and steal American intellectual property.

Encouraging all stakeholders in the online ecosystem to help reduce copyright crime and combating illegal online activity from abroad are appropriately identified as top priorities in this plan.

We commend the efforts of all those in the Administration who played a role in developing this plan, and especially thank President Obama and Vice President Biden for their deep commitment and their strong and thoughtful leadership.

We stand ready to work with Ms. Espinel to implement this ambitious blueprint for strengthening the government's coordinated IP enforcement activities.

Mr. Chairman, the work being undertaken by the intellectual property enforcement coordinator goes to the heart of what we and others in the creative community do to inform, educate and entertain.

We at Warner Brothers are engaged in virtually every aspect of the entertainment industry, from feature films to television, home entertainment, animation, comic books, interactive games, product and brand licensing, international cinemas, and others. Now more than ever, technology and media in all of these businesses are seamlessly integrated into consumers' lives.

While today's average consumer still spends more time watching content on television than over the Internet, that is changing. Online video views were up more than 200 percent at the end of 2009. We continue to see double-digit growth in time spent with online media as consumers continue to shift their behaviors and their habits.

Technological advances, coupled with market changes and consumer behavior, have required us to constantly rethink our models. We do this more than willingly. We use such events as opportunities to innovate.

Warner Brothers has developed many new digital delivery models that enable consumers to access content across numerous platforms and devices. Our goal is straightforward—to deliver content to consumers in the highest quality, with the most choices, with reliable convenience and portability, at reasonable price points, while at the same time diminishing the risks of unauthorized reproduction and distribution.

Beginning more than 15 years ago, Warner Brothers led the effort to work with consumer electronics and technology companies in the development of the DVD. We continue to collaborate with the technology industries to deliver content in new, smart, consumer-friendly ways.

For example, today we include with our Blu-ray titles a standard definition version that can be used on a PC, MAC or mobile device. We have launched numerous products that allow users to incorporate their social networks into functions like BD-Live to coordinate online movie screenings with friends and post commentaries via Internet-connected Blu-ray players.

With recent data showing that 58 percent of television-Internet households use television and the web simultaneously at least a third of the time, incorporating these experiences—connecting them—is a key component of our digital strategy.

We have partnered with Apple, Microsoft, Amazon, Sony, and many others to distribute our products to personal computers, media servers, gaming consoles, and mobile devices. Our content is available on a wide variety of video-on-demand subscription and electronic sell-through services over the Internet, cable and satellite platforms, and mobile networks.

At the same time that we release our films in physical form on DVD and Blu-ray, electronic copies are available for purchase online and can be enjoyed on a variety of devices.

Warner Brothers is also at the forefront of modifying the traditional distribution windows. Typically, studios released motion pictures on DVD at least 2 months before they were available electronically via video-on-demand rental services. Today, Warner's video-on-demand window coincides with our packaged media release dates so consumers can access both physical and digital options of our content sooner.

Furthermore, as a result of the FCC's recent decision promoting the use of secure digital outputs, we are now actively pursuing opportunities for an early window release of our films over cable and satellite systems in advance of DVD and Blu-ray.

My point here, Mr. Chairman, is that the image of the entertainment industry as one that is simply circling the wagons around old outmoded business models despite the explosion of new technology is simply not true. Our industry has been changing and innovating with remarkable speed.

It is clear to all of us that none of this innovation would be possible without the tireless efforts of millions of talented professionals working in the film and television industries, which extends

far beyond just the studio lots in California or the streets of New York.

Last year, the motion picture industry employed over 2.4 million people and paid over $41 billion in wages across all 50 states. Our on-location production activity also supports more than 115,000 small businesses across the country, 80 percent of which employ fewer than 10 people. And when film productions roll into a local community, they average $225,000 a day of economic input into the local economy.

Nationwide, the motion picture industry generated $15.7 billion in public revenues in 2008, and we consistently boast a positive balance of trade in virtually every country in which we do business.

While high-speed broadband networks bring immense opportunities for the exchange of information and ideas, the inappropriate use of these networks can facilitate the anonymous theft and rapid, ubiquitous, illegal distribution of copyrighted works.

It is not an overstatement to say that rampant theft of intellectual property strikes at the heart of our Nation's economy. It strikes at the heart of the core values of reward for innovation and hard work and our ability to complete globally.

In short, Internet theft puts at risk one of America's great export industries. We at Warner Bros. are doing everything we can to combat piracy, spending tens of millions of dollars annually to do so. We have secured our production and distribution chains such that there has been no pre-theatrical release of a Warner Bros. movie in over 5 years.

We are working with technology companies to develop technical tools and reaching out to Internet service providers and online intermediaries to enlist their assistance in reducing the vast amounts of digital piracy that clog their networks.

We hope the government will continue to encourage Internet service providers, online payment processors, search engines, advertising networks and others to cooperate with copyright owners and take reasonable proactive measures to disable or disrupt digital piracy.

While the release of the joint strategic plan is a critical step forward with respect to government-led efforts, we acknowledge that no silver bullet exists either in the public or private sector that can fully eradicate the problem of piracy.

Rather, the problem must be pursued on a variety of levels and through multiple approaches, which include providing robust legitimate alternatives, ensuring cross-industry cooperation to prevent infringement, and vigorous enforcement efforts at home and abroad. But there is no doubt that continued and hopefully increasing government support regarding the value of copyright protection and the responsibility of all participants to address the issue of piracy is crucial.

As the Administration's plan recognizes, Warner Bros. and others in our community play a significant role in the vibrancy of the American economy. Enforcement of laws to ensure that consumers enjoy what we create has broad benefits, as recognized by today's hearings and the effort described by the coordinator.

In closing, I would like to again thank Ms. Espinel for her hard and thoughtful work to date, and to thank you, Mr. Chairman, and

the members of your committee for allowing me the opportunity to address this really important topic for our industry.

I am happy at this point to answer any questions you may have.

[The prepared statement of Mr. Meyer appears as a submission for the record.]

Chairman LEAHY. Thank you very much. Of course, all of the statements will be placed in the record in full.

Paul Almeida is the President of the Department for Professional Employees at the AFL–CIO. He has been there since 2001. Mr. Almeida serves on several AFL–CIO policy committees, including the legislative public policy committee, the international affairs committee, and the immigration committee, where he serves as vice chair.

Prior to joining the Department for Professional Employees, Mr. Almeida served as president to the International Federation of Professional and Technical Engineers. He has a degree in engineering from the Franklin Institute of Boston.

Mr. Almeida, I am delighted to have you here. Please go ahead.

STATEMENT OF PAUL E. ALMEIDA, PRESIDENT, DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL–CIO, WASHINGTON, DC

Mr. ALMEIDA. Good morning, Chairman Leahy and distinguished members of the committee. My name is Paul Almeida. I am the President of the Department for Professional Employees, a coalition of 23 national unions affiliated with the AFL–CIO.

I am honored to speak today on behalf of the more than 4 million professional and technical people whom our affiliated unions represent. On their behalf, permit me to commend and thank you. Many of you participated in passing the Pro-IP Act.

My message is simple. Numerous industries are adversely impacted by the theft of intellectual property. Intellectual property equates to jobs and income for American workers. Theft of intellectual property raises unemployment and cuts income.

For too many workers in the United States today, both jobs and income are hard to come by. If the United States allows attacks on intellectual property to go unanswered, it puts good livelihoods at risk.

With regards to the arts, entertainment and media industries, I am especially pleased to deliver today a statement that the executive council of the AFL–CIO unanimously adopted in March.

I would ask that this statement, "Piracy is a Danger to the Entertainment Industry Professionals," be made part of the hearing record.

Chairman LEAHY. Without objection, it will be.

[The statement appears as a submission for the record.]

Mr. ALMEIDA. As you will see, the Department for Professional Employees proposed this statement on behalf of the nine affiliated unions representing professionals, both performing artists and craft workers in arts, entertainment and media industries.

At the core of this statement is a recognition that digital theft diminishes incentives to invest and prompts a downward spiral for U.S. jobs and our economy. Digital theft imperils jobs and income.

In the words of this statement, combating digital theft and the sale of illegal CDs and DVDs is nothing short of defending U.S.

jobs and benefits. Estimates of the number of jobs lost to piracy in this one sector alone runs in the hundreds of thousands.

While exact numbers are difficult to find, there can be no question about the magnitude of the problem for the entire United States—billions of dollars of revenue for U.S. industries and millions of lost U.S. jobs.

Online access continues to accelerate and expand. As it does so, it increasingly displaces traditional models for distributing content and, thus, heightens the potential for digital theft.

The efforts of the Screen Actors Guild and the American Federation of Television and Radio Artists, along with the Motion Picture Association of America, to conclude an international treaty that will protect the economic and moral rights of audiovisual performers will provide additional support in this battle.

The losses of income arise because entertainment professionals depend on compensation at two points; first, when the professionals do the work, and, later, when others use and reuse the intellectual property that the professionals created.

In the words of the statement, entertainment professionals may work for multiple employers on multiple projects and face gaps in their employment. Payments for the work that they have completed helps sustain them and their families through under-employment and unemployment.

For AFTRA recording artists, in 2008, 90 percent of income derived from sound recordings was directly linked to royalties from physical CD sales and through paid digital downloads.

SAG members working under the feature film and TV contract that same year derived 43 percent of their total compensation from residuals. Residuals derived from the sale of secondary markets funded 65 percent of the International Alliance of Theatrical and Stage Employees, the motion picture industry health plan, and 36 percent of the SAG health and pension fund.

Writers Guild of America East-represented writers often depend on residual checks to pay their bills between jobs, and, in some cases, the residual amounts can be as much as the initial compensation.

Online theft robs hard-earned income and benefits from professionals who create the works. So digital theft and counterfeiting threatens U.S. jobs and income. That is the bad news. The good news is that you have taken action and have had the wisdom to confirm Victoria Espinel to fill the position you have created.

Permit me to add a final observation. The arts, entertainment and media industries are some of the all too few U.S. industries that generate a trade surplus in the midst of growing U.S. trade deficits. Professionals in the arts, entertainment and media industries organized in labor unions at a rate far above the private sector generally.

These facts belie the ill-founded and thoughtlessly repeated misconception that unions somehow undercut union competitiveness. Years of research at the Department for Professional Employees showed that professional and technical people want a chance to do their job right.

The unions that these people organize help them to achieve that goal. With innovation through intellectual property, heavily union-

ized industries not only compete globally, but enable the United States to lead the world.

Thank you for inviting me to participate in this hearing, and I look forward to answering questions.

[The prepared statement of Mr. Almeida appears as a submission for the record.]

Chairman LEAHY. I thank you, also, for being here. It is helpful. One of the interesting things about your testimony, sir, is that it is nice when we see labor and business sitting side-by-side on something where there is this agreement.

I just hope that we can make sure that not only the policymakers here on the Hill, but on the other end of Pennsylvania Avenue know how important this is.

David Hirschmann is President and CEO of the Global Intellectual Property Center, U.S. Chamber of Commerce. He is also Senior Vice President of the Chamber. He has been with the Chamber since 1992.

Prior to his work for the Chamber, he served as a staff member in the House of Representatives, as a graduate of Duke. One thing he and I have in common is we are both losing our voice today.

But, Mr. Hirschmann, obviously, your full statement will be in the record. Please go ahead, however you care to.

STATEMENT OF DAVID HIRSCHMANN, PRESIDENT AND CEO, GLOBAL INTELLECTUAL PROPERTY CENTER, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. HIRSCHMANN. Thank you very much, if you put up with the voice. If this does not hold up, I can either have somebody read it or maybe we will just stand with what the AFL–CIO said on this issue.

Chairman LEAHY. See the lights dim.

[Laughter.]

Mr. HIRSCHMANN. Mr. Chairman, the leadership you have provided on this issue really is exemplary. It is truly this committee's jobs agenda and it is why labor and business can join together on this issue.

The enactment of the Pro-IP Act 2 years ago was a landmark event. We are very pleased that the——

Chairman LEAHY. Would you like one of the staff to read the—I would be happy to, either from your office or—I realize it is your statement, but it is an important statement.

Would you please identify yourself?

Mr. Esper. Sure, Mr. Chairman. My name is Mark Esper, and I am the Executive Vice President of the Global Intellectual Property Center.

Chairman LEAHY. At the Chamber.

Mr. Esper. At the Chamber, yes, sir.

Chairman LEAHY. Thank you.

Mr. Esper. So I am pinch-hitting right now.

Let me begin with a statement. As David Hirschmann was saying, the enactment of the Pro-IP Act in the fall of 2008 was a landmark event that was accomplished on a bipartisan basis, with the support of a diverse group of stakeholders, including both business and organized labor.

Without that legislation, we would not be having today's important session.

We are very pleased that the Administration yesterday released the first national IP enforcement strategy. We applaud the White House intellectual property enforcement coordinator, Victoria Espinel, for undertaking this thorough review of the government's IP enforcement efforts with alacrity following her Senate confirmation late last year.

Congress and the Administration should focus now on implementing and building up on this plan to approve the effectiveness of Federal IP enforcement. As a first step, Congress should help ensure that Ms. Espinel and each of the agencies responsible for a portion of this strategy have the requisite authority, budget and staff to implement and expand upon this plan.

U.S. competitiveness has become directly and inextricably linked to our Nation's ability to adequately and effectively enforce IP rights. That is why we must do more to address counterfeiting and piracy in both the physical and the online environments. Businesses invest heavily in measures to prevent and investigate IP theft, but the private sector can only do so much.

Congress and the Administration must also be committed to implementing sound IP policies and sustaining strong enforcement efforts in the U.S. and abroad.

In working to implement and build upon this plan, we urge this Committee to keep three goals at the top of the list. First, aggressively cracking down on the growing problem of IP theft online by making it harder for criminals to use the Internet to distribute stolen American ideas and to harm consumers.

Second, make the United States the toughest, most capable enforcer of IP laws in the world, building on the Pro-IP Act, by further expanding the dedicated, effective, full-time resources at both the state and Federal level to fight IP theft. For example, the Customs reauthorization bill, which provides structure, resources, tools and direction necessary to bolster Customs and Border Protection and ICE's capacity to prevent counterfeit goods form entering the United States.

And third, protecting IP rights globally. We must resist all efforts to create unwarranted exceptions to strong IP protections, hold our trading partners accountable, and work with ally countries to raise the global bar for IP protection. For example, we should complete an ambitious and comprehensive anti-counterfeiting trade agreement, ACTA, with strong IP protection and enforcement provisions this year.

Let me offer a couple of additional thoughts on the need to thwart online theft of IP. Intellectual property thieves are, above all else, distribution experts. They do not spend money on innovating new products. They do not spend money on testing products for safety.

Instead, they focus all their efforts on building world class distribution channels for their illicit activities. These are highly organized criminal networks, often with global reach.

So it is no surprise that these thieves have migrated their illegitimate enterprises to the Internet. This includes both physical goods and digital services. It includes everything from knock-off pharma-

ceuticals and auto parts to illegal copies of movies, music and digital books.

Rogue sites offer stolen, live broadcasts of sporting events and the latest movies available as digital streams in high definition. This is why we welcome the steps outlined in the national strategy to ensure our IP enforcement efforts adapt to the digital age. Determining the best way to address this problem without impeding legitimate online commerce will not be easy.

But it is clear that we must move beyond the perception held by some that if it is online, it is not a crime. We believe that a serious discussion about how to best foster continued innovation while protecting IP in the online marketplace is long overdue.

The Global IP Center and our members will continue to vigorously pursue voluntary business-to-business solutions, where practicable. However, we also believe that Congress and the Administration should examine this problem and consider new and creative efforts to fight counterfeiting and piracy online.

A reasonable starting point for addressing IP theft online is identifying and shutting down Websites, many of which are situated overseas, but many of which are also here in the United States, whose business models are indisputably centered on the sale or distribution of counterfeit and pirated products.

We look forward to working with the Committee and with the Congress to explore creative and effective methods that would make it more difficult for such sites to sustain a business model built on facilitating IP theft.

In concluding, let me reiterate that protecting IP rights is a critical component of our economic resurgence and vitally important to America's future and job creation. While we anticipate that the IP enforcement coordinator will work to further refine this plan, it is imperative that she begin implementing it now, given all that is at stake.

Thank you for this opportunity to share our perspectives on these important issues. The Global IP Center looks forward to working with you, Mr. Chairman, and the Committee and the Congress in the future.

Thank you.

[The prepared statement of David Hirschmann appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Our last witness is Caroline Bienstock, the President and CEO of Carlin America, a music publishing company that was founded by her father, Freddy Bienstock. Ms. Bienstock first joined the company in 1989. She is a member of numerous industry boards, such as the American Society of Composers, Authors and Publishers, the National Music Publishers Association.

She received her bachelor's degree from Yale College, her law degree at the Boston University School of Law, and her MBA from Wharton.

Ms. Bienstock, please go ahead.

STATEMENT OF CAROLINE BIENSTOCK, PRESIDENT AND CEO, CARLIN AMERICA, NEW YORK, NEW YORK

Ms. BIENSTOCK. Good morning, Chairman Leahy and members of the committee. I am Caroline Bienstock, President and Chief Executive Officer of Carlin America, Inc. I am also a member of the National Music Publishers Association.

I want to thank you for inviting me to testify today about oversight of the Office of the Intellectual Property Enforcement Coordinator. NMPA strongly supported the Pro-IP Act of 2008 and the appointment of Victoria Espinel as the first intellectual property enforcement coordinator.

We are encouraged by the release of the first IPEC report yesterday, which sets the stage for the development of a joint strategic plan for intellectual property. NMPA has not had a chance to analyze the report in detail, but based on a preliminary review, it reflects our views on what the government must do to effectively enforce copyright protections domestically and internationally. We will finalize our review quickly and to the extent we have additional comments, we will supplement my written testimony.

At the outset, I want to thank you, Mr. Chairman, and the members of the Committee for all you have done to protect music in your support of intellectual property. You have long recognized that the property rights of intellectual property deserve no less protection than physical property.

My company, Carlin America, is a family owned music publishing business founded by my father, Freddy Bienstock. The Carlin catalog includes more than 150,000 songs, including Body and Soul, Chantilly Lace, Dedicated to the One I Love, Fever, I Got You, I Feel Good, and the scores of "Cabaret" "Company" and "Follies."

For more than 80 years——

Chairman LEAHY. You realize, half the people in the audience, these songs are now going through their minds.

Ms. BIENSTOCK. As they should be.

[Laughter.]

Ms. BIENSTOCK. Need I say more. For more than 80 years, the NMPA has been the principal trade association representing music publishers like us, over 2,500 music publishers and their songwriter partners in the United States. To put it simply, music publishers represent the interests of the songwriter and the song.

Songwriters, in particular, are especially vulnerable to harm from online music theft, because they generally do not have the option of earning money from ancillary income streams, such as live performance, touring, merchandise sales, or acting.

The songwriter and music publisher must rely on the old-fashioned, traditional sources of revenue for their money in song, as well as while the marketplace is changing everyday.

Despite the extensive copyright laws in place right now, online digital theft is rampant. Millions of copyrighted songs have been and continue to be downloaded illegally from the Internet. We have seen at least one source that said at this time, 95 percent of downloaded music on the Internet is illegal.

For every illegal download or stream, a songwriter is denied compensation for his or her creative work. This stuff is no different in concept from the burglary of a home or shoplifting from a store.

As we move further into the digital and wireless age, music publishing can continue to flourish, but only if combating online theft remains a top priority of our government. Without strong copyright laws, music publishing companies would not risk investing in new writers or acquiring new songs; and, therefore, existing jobs would be lost and new songs and new jobs would not be created.

To safeguard the songwriter and the music publisher, the government must substantially increase their efforts to combat online digital theft. We believe the strategic plan will be a huge step in the right direction. To be effective, funding and implementation will be key. We urge the Committee to support IPEC's efforts in this regard.

The music publishing community is willing and happy to work closely with this Committee and Ms. Espinel and her staff to ensure that copyright enforcement measures are enhanced and streamlined. If Congress properly funds the initiatives and enacts the proposals recommended by IPEC, online music theft will be minimized and music will flourish well into the foreseeable future. And most importantly, songwriters will continue to write the songs that are so dear to those on this Committee and to the rest of the country.

I thank you again for this opportunity to testify, and I am happy to answer any questions you may have.

[The prepared statement of Ms. Bienstock appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

I will put in the record a submission from the Copyright Alliance, with information from all 50 states on the importance of intellectual property.

[The information appears as a submission for the record.]

Chairman LEAHY. I note that there are 114 professional photographers employed in the whole State of Vermont.

Let me ask just one question. I sat here and I have spent so much time on this over the years, I watch all the changes. You have encryption, you watch films and they will open and within a few days, somebody is selling bootleg copies, certainly in the record business, with so much online. You see the problem there.

But there are a lot of other things. It is software, medicine. I talked about the real concern I have with the Department of Defense getting material that is going to be vital for our people in the field and getting counterfeit matters.

What happens when you get counterfeit brake pads in your car? I just bring it right down to something that would affect every one of us, when you are driving to work.

Assuming the will—and I think there is the will of the bipartisan group here—assuming the will, can you believe that we can write legislation tough enough to go after this and then have the enforcement mechanism tough enough to go after this?

I realize we may not get all of it, but given the legislation and given the will and our law enforcement and our trade representative and everything, can we make a significant dent in this?

I will begin with you, Mr. Meyer. What do you think?

Mr. MEYER. Thank you, Mr. Chairman. I think that we can make a significant dent in it, and I think the first step, which has really been taken now, is the support of the government.

We are firm believers in having the private sector work cooperatively between content owners and ISPs, certainly, in the United States to try to work out whatever the proper protections are.

But key to that is a knowledge that the government is supporting all of these actions. And I do think starting with the issue of education, of making people understand what is legal and what is not legal, and what is infringing content and what is not. It will not be an easy task, especially as the technology evolves.

Starting with that educational component can make an enormous difference. And using technology to bolster that education will help to address the issue.

Chairman LEAHY. In fact, I would urge all our colleges and universities, during freshmen orientation, would not allow—they do not want to see their students going down to the local stores and stealing things off the shelf. It is also stealing if you take it off the Internet.

Mr. Almeida.

Mr. ALMEIDA. I think you are right. I think a key point is a process of educating the public. You just made the point, Caroline made the point. You would not tell your children to go in and take something off a shelf. But somehow, on the Internet, it is all right to do that.

It is all right to also pick something up off the street that is a bootleg copy of something. And there is a disconnect that what people's work for our entertainment is not views as real work. There is kind of a disconnect.

It is our entertainment when we go to a movie or when we listen to music, but it is real work for people who do that, and I think there is a disconnect there, as well, and I think we need to do that education process. And the same with products, as well, that the safety is critical to our well being.

Chairman LEAHY. Mr. Esper.

Mr. Esper. Yes, Mr. Chairman. I agree, as well. I think not only can we make a significant dent in the problem, we cannot afford not to try. There is just simply too much at stake.

As the United States continues to move up the value chain more to a knowledge-based economy, this is where our future is. This is where we are uniquely competitive in the international environment. So we really have to tackle this.

I believe that with sufficient action by the Administration, some clear legal framework from the Congress, that I think all industries, including those that we call the intermediaries, will get on board with this.

Everybody wants to solve this problem. The challenge is how. And as the colleagues here on the panel have pointed out, the big challenge is how do you deal with the culture that has emerged, has developed over the Internet, the sense that if it is online, it is not a crime.

That is going to be the real challenge to tackle.

Chairman LEAHY. Ms. Bienstock, I assume you agree, too.

Ms. BIENSTOCK. Of course, I do. I think the importance is the enhanced enforcement also sets an important tone that combats an attitude that has been developing that the Internet is somehow a superior vehicle than intellectual property and as they are balanced against one another.

We have a generation of young people that have grown up believing that music ought to be free, because it is able to be available for free. And I think increased enforcement will do something to develop the conversations in the home and at universities about what is OK to do, and, also, what you open your computer to when you bring your computer to file sharing.

So, yes, I think increased enforcement has a very important role both to actually address the problem, but also to denominate and make clear what our interests are and that we value intellectual property.

Chairman LEAHY. Thank you very much.

Senator Franken, did you have any questions?

Senator FRANKEN. Yes, thank you. Mr. Almeida, as I said before, even though I am on this committee, I am not a lawyer, but I was in show business. The entertainment—yes, I was. I know it is hard to believe, considering what a productive member of this Committee I am.

[Laughter.]

Senator FRANKEN. The entertainment industry is truly an American industry and, as you put it, one of the all too few American industries that generates a substantial trade surplus.

American culture, music, movies, TV shows, books, is one of our Nation's greatest assets, literally, and I am proud to have been a part of that industry. And I am actually a member of three of those unions that signed on to the executive council of the AFL–CIO statement. I am a member of the Writers Guild, the Screen Actors Guild, and AFTRA.

I can tell everybody firsthand that those residuals that you are talking about that you get when you are either between jobs or under-employed or over-employed, as I am now, those checks mean a lot. And I still get checks—I still get a $12 check every time they run Trading Places.

I just want to ask you what it means to artists and people in the crafts when the piracy prevents you from getting those residuals. What is the effect of that?

I would like to ask Mr. Meyer what the effect of all of that is on sort of the business plan when someone is either giving a green light or not giving a green light to a product, to a movie or to a TV show, in terms of how that figures in, because it is not only losing—I think you are not only losing money on what has already been made, but in a sense, you are basically having to make a decision, are we going to make this thing, because our ancillary income is not going to be what it should be.

Go ahead.

Mr. ALMEIDA. Thank you. I think there is also a misconception. Most people in America do not work under the business model of getting paid for part of their work up front and then waiting to get—for use and reuse, and I think it is a concept that a lot of people are just totally unfamiliar with.

An A-lister, such as yourself, probably does rather well, but the——

Senator FRANKEN. Thank you.

[Laughter.]

Mr. ALMEIDA. But the working actors who really depend on that and the writers who depend on the back-end payments, the residuals, the back-end payments, it is a huge part of their survivability. With the stage hands, in particular, that helps to fund their collective pension and health and welfare fund. It does not flow to the individual member, but goes to the collective.

So, again, I think it is a model that most of us have never worked under. They say, "What, you get paid part of it now and you get what? You wait for the checks to come?"

So I think there is a disconnect there, as well, that people do not realize this model and how it works, and I think it is an important part.

And I do not mean to answer Mr. Meyer's part of it, but if funds are not flowing, then product is not being made. And that is kind of like part of the intangible. It is like how much—would I be making another movie if the money was there. And the piracy is definitely impacting across the board with all of the entertainment unions.

Senator FRANKEN. I think Mr. Almeida just answered your question for you. No, no, go ahead. I am sorry.

Mr. MEYER. Well, I actually was going to jump in and reiterate part of what Mr. Almeida said. Employment in the motion picture and television production business is notoriously lumpy for employees. They can work great periods of time intensely and then not work for another year or two or sometimes even longer periods of time, which leads to the importance of residuals.

These payments for the reuse of the product that they have worked on is what keeps the economic model going, and it is a stabilizing factor in the economic model for so many employees, which is one of the reasons why it has been in place for—I think the first residual model came into play in 1960. So it is a very, very important consideration.

But getting back to the point about how it affects the overall economic model, to the extent that this kind of theft reduces the overall economics for any producer, financier or production company, of course, it has to affect how many new projects we make, the nature of the new projects that we make, which has a concomitant effect on all of the employment levels for people who are working on it.

There is one other point I would like to make, as long as I have the floor right now. I guess that is a Senate term.

Senator FRANKEN. Well, you are kind of using my time, but go ahead.

[Laughter.]

Mr. MEYER. Then I will get off the floor. Then I will get off the floor.

Senator FRANKEN. Well, I had hoped to say something else, but these guys just will not stop. But go ahead. Go ahead.

Mr. MEYER. Senator Whitehouse mentioned something before about the transfer of wealth. One of the things that I think we

overlook when we think about this problem in general is it is not just how it is affecting the current state of our business.

The digital technologies have provided an opportunity for so many of our businesses, maybe ours in particular, for the most robust transformational growth that anyone can imagine.

There is nothing not to like about something that is faster, less expensive, and much higher in quality. There is nothing not to like about that. The problem is it is hard to see where we could have gone, where this could have taken a great American industry were it not for the dampening effect of piracy, this effect that is holding it down.

That is why I think everybody has trouble estimating what the loss is. You do not know what it could have been were it not for this, and I think that is an important thing for us all to keep in mind.

Senator FRANKEN. I am sorry, and I know—let me just make about a 20-second comment, because you talked in your testimony about sort of all the adaptations you are making that are almost a response to piracy, and Blu-ray and the different platforms that you are doing, which I think are just amazing and are revolutionizing the way we get entertainment, are changing so fast.

In some small way, they were a response to piracy. So maybe the innovation was prompted by it. But I think that—I applaud you for all the different innovation that you are doing in terms of the kind of platforms that we are seeing. And this is going to keep transforming and revolutionizing the way we enjoy entertainment and get our information. So thank you for doing that.

Chairman LEAHY. Senator Whitehouse, and then Senator Klobuchar, and then we will be through.

Senator WHITEHOUSE. Thank you, Mr. Chairman. Mr. Meyer, you have talked about online piracy being rampant, described how sophisticated criminal enterprises are behind it. But it is also an area in which legitimate sophisticated enterprises are also deeply involved.

If I want to go and download a stolen product of yours, I get there on a search engine that is a legitimate search engine, Google, and I download it across an internet service provider, like AT&T. And if there is a way that I am asked to pay for it, it is not impossible to have Visa and MasterCard be there on that pirate Website.

So you have these very legitimate businesses that are participating in and supporting the online piracy that is degrading your asset base and stealing your revenues.

Why is this not being adequately worked out in the private sector between these industries? You say you spend tens of millions of dollars fighting this issue. I assume a lot of that goes to lawyers. Everybody knows where the courthouses are.

What are the things that are inhibiting industries like yours from bringing in Visa and MasterCard, from bringing in the ISPs, from bringing in the search engines and saying, "Look, you guys, you cannot keep supporting this in this way. We are going to ask for a court order," and hash it out through that mechanism?

What are the failures in that traditional, well established mechanism for private dispute resolution?

Mr. MEYER. Well, I think it is a great question. Having legitimate enterprises participate in the illegal activity, has a certain backhanded way of legitimizing it. If you can pay with your MasterCard, it cannot be illegal.

But in answer to your question, there is nothing. I think that we are working very hard now, especially with the ISPs in the first place, to try to make sure that they are policing their networks in a way to distinguish between illegal activity and legitimate activity.

One of the technical problems that we have, is that the illegitimate activity has gotten so facile. You referred before to taking four or five clicks to get to an illegal download. We worry that it is just one click.

But the distinction, it is so hard to make the distinction that we are trying to technically work with them to sort out how you find these distinctions.

But when we do, we are not finding an awful lot of resistance on principle. What we are finding is that there are some technical obstacles that we have to face together.

I will say this, that, clearly, in the last short period of time, a year or two or three, the involvement, the interest of the government in protecting intangible intellectual property has really, I think, weighed heavily on the industry, including those who might not have been as interested in it before.

So even though we are not specifically asking for legislation right now, the overall impact of the government's interest in protecting this industry has had an enormous effect on the conversations in the private sector.

Senator WHITEHOUSE. Well, we certainly want to help, because there is a distinct national interest, given what I consider to be the scale of this theft. I mean, I really do think that you could take Willie Sutton, Bonnie and Clyde, and the James Gang and add them all up together and they are penny ante. They are nothing compared to the scale of the theft that we are suffering as a Nation right now, and, by and large, often oblivious to it.

But I still do not—I will just leave you with the thought that it seems incongruous that with the level of effort that you have dedicated to this, with the level of stake that you have in this as a business, with the level of attention that this gets from Congress, that I could probably leave this hearing and go to my computer and within a very few clicks, use Google to get to an illegal Website, facilitated by whoever the ISP is here, AT&T, Verizon, I do not know, and Visa pops up on the thing and nobody has—you would have thought that your lawyers would be there in 30 seconds saying not—as long as I can find it, I am going to take it and shut it down, because somehow Google is getting me there.

Somehow the ISP is delivering the service. Somehow Visa is involved. And if it can be done, it can be cut off, I would think, and I do not know why it is not being cut off on a much more aggressive basis.

Mr. MEYER. Well, Senator, we do utilize the takedown notice provisions of the DMCA. We send out thousands of notices, when we notice things are up, that they be taken down.

The problem with that as a mechanism is that it is after the fact and once something is up, it is virally distributed and there is not much you can do about it.

We are talking about a process here that disables the enablers. In your example, if you could not go to Google and search for it, if that were not able to happen, all the other illegal activity would be prevented.

So that is an enabling practice that we have to look at, and we are looking at it right now.

Senator WHITEHOUSE. I think we might have just heard a goal scored, sudden shouting from the anteroom.

Senator KLOBUCHAR. And what people want to hear next are my questions, I am sure.

Maybe we can get a report, Mr. Chairman.

Chairman LEAHY. Hold on. Right here, we have got it.

Senator KLOBUCHAR. You should read it.

Senator WHITEHOUSE. This is chairman's news. If it went the other way, I would announce it.

Chairman LEAHY. On the important things, not that Senator Whitehouse's question and your answer are not. The U.S. soccer team has scored a goal and this one is being allowed to count. So it is U.S.–1, Algeria–0.

[Applause.]

Chairman LEAHY. This is somewhat unprecedented for me. Is this the last minute? Is the game over? Can somebody find out if the game is over?

[Laughter.]

Senator KLOBUCHAR. You can spruce up my questions if you could announce that in the middle.

Chairman LEAHY. Ten minutes left in the game. Take all the time you want, Senator Klobuchar.

I might note, on a more serious thing, Senator Klobuchar and Senator Whitehouse and I are all former prosecutors, and I have got to tell you, it is not just closing it down, and important that is. It is not just bringing suits.

I would like to see a few people go to jail. It is theft. If you steal $1 million, you go to jail. If you steal $10,000, you are going to go to jail.

I would like to see a few people go to jail for stealing this stuff. It may focus the attention.

I am sorry. Senator Klobuchar, go ahead, please.

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman.

And thank you very much, Mr. Almeida, for going through all those numbers, which it will help me when we are in these discussions with the Canadians, which I was referencing earlier, because I think sometimes it just seems like big corporations and when you start talking about the individual people and what the residuals mean.

I was also harkening back to my law school days. My senior essay got published and I would get about—I think like $200 a year for royalties for Uncovering the Dome, which Mr. Meyer—my book on the politics behind the building of the Metrodome in Minneapolis and never got picked up as a movie. But I am still getting those royalties.

Mr. MEYER. Is it still available?

Senator KLOBUCHAR. Yes, it is. That would be probably be an ethical violation that I do not want to commit here.

But I wanted to, first, maybe follow-up with what the Chairman was talking about with the criminal. We actually had a case set. I think Warner Brothers was aware of it. But a case in Minnesota where they actually prosecuted someone, I think it might have been music, for illegally downloads, an individual, who was just a person that did it, and a jury verdict came in. I cannot remember what happened on appeal.

But the funny part about the story was my daughter was in middle school in Arlington, Virginia. We pick her up 1 day and she said, "Mom, did you hear what happened in Duluth? You can get prosecuted." The librarian had called them all in and told them about it.

So I was just wondering if what the Chairman was talking about here with the prosecution, as difficult as it is and so many multiple violations that are going on right now, do you think that is helpful; if education efforts along those lines are helpful?

Ms. BIENSTOCK. I do think it is helpful. I think it is helpful, because it enables the conversations to occur in people's households, like you had in the car, about the possibility of prosecution for an individual.

While we, as an industry, had issues about suing our own customers, because these are people who, in theory, wanted music and, therefore, would have been customers, the net result of litigation was that there were many conversations not only in the home, but in schools, and there was an education process that occurred at a university level about what it meant to provide bandwidth to college students and then not pay attention to what they did with it.

So I think that the prosecution efforts have been useful, but they are limited. It's a game of whack-a-mole. You have to work with the ISPs to get them to acknowledge that they are something other than a dumb pipe, and I think that has been a challenge for us.

They are not—because those people are their customers, I think there has been an unwillingness on the part of the ISPs to take responsibility for self-policing without pressure from the private sector, but that pressure would be greatly enhanced from the government.

So we are looking for pressure on the ISPs, to address Senator Whitehouse's point, because we have not been able to do that alone. We have met with pushback. So getting the government involved in working with the ISPs would be very useful for us.

Senator KLOBUCHAR. That would be a much bigger way to do it, and, also, these organized efforts that we have been referring to, which are much bigger prosecutions.

Mr. Meyer, I know that the movie industry took a slightly different approach to going atfer some of this piracy. The music industry was the first hit by it, just because it was easier to steal.

Could you talk about what you did, what was the difference in the approach, and the changes you are seeing when it was, say, peer-to-peer, which I referenced the bill I have with Senator Thune,

and now it is more about these streaming sites or Cyberlockers or some of the new ways that people are stealing things?

Mr. MEYER. Well, peer-to-peer piracy was really basically a method of trading files and downloading those. So we were always concerned about download times and at what point it became inconvenient for people to steal as opposed to buying legitimate product at—actually, really in answer to your question, Senator, one of the things that we tried to do was some of the things I talked about earlier, which is just making our product available on a wide variety of different platforms and at very reasonable price points. The price points of the product that we have produced have really come down in many of these venues.

So we have, in a certain way, tried to compete with the pirates in the peer-to-peer world, that required downloading and time and effort, by making the product more available legitimately, more useable on a wide variety of platforms.

As the world migrates into a streaming and now a Cyberlocker world where one or two clicks away and you can have something that requires no downloading time, that just streams in real time, and for a small subscription fee to an illegal subscription site, you can get an unlimited number of illegally obtained movies.

Our efforts in adjusting our business models and adjusting our use of the technology to put our product out there are becoming impaired. So we are now looking for—we are going to now have to look for government help and more help from the technology enablers to allow us to really deal with this, because it has gotten to a brand new level now.

Senator KLOBUCHAR. Are you familiar with the Canadian situation? Because I think people always think about China and other countries, but that they do not have good enough intellectual property laws right now.

While you guys make movies up there sometimes, they have not put into place the protections. I think people would be surprised by that.

Mr. MEYER. Well, we were aware a number of years ago. Our industry has done a lot of production in Canada, motion picture production, especially television production, and we were aware a number of years ago that our good neighbors to the north did not really have in place a camcording law, an anti-camcording law.

And frankly, thanks to Senator Feinstein and Senator Cornyn, two members of this committee, in a very, very strongly worded letter to the appropriate Canadian governmental official, they put one in place relatively quickly.

Our impression is that they are moving along in that direction, continuing to move along in that direction, but are not yet there. I do not have anymore specifics about it, though.

Senator KLOBUCHAR. Mr. Esper.

Mr. ESPER. Yes, Senator. I just wanted to add one point, as well, to build on what was said here, and that is this problem is only increasing and increasing exponentially.

As more and more people gain access to the Internet and as Internet speeds increase, the problem will just continue to escalate. And it is not just movies and music. I would bet a good deal of money right now that somebody is online streaming the FIFA

Webcast that you are watching right now, that staff is watching in the back room.

That signal is being stolen and you cannot capture it, as Barry said a little while ago, in some of these cases. And that is happening across industries, across our own sports leagues. And the problem is also now moving into publishing houses and e-books across the board.

So when you see the confluence of all these factors, you really become worried that the 18 million Americans that depend on IP industries for their jobs and the tens of millions more that are indirectly employed by these industries, we have a lot at risk.

Senator KLOBUCHAR. I agree. And again, I really see this as the key. I commend you for the industries you are in, as we look at where we have grown and where we should focus our attention in this country, from medical device to biotech to high tech to the work in the movie/TV industry.

We have to look at those areas that are growing and exporting and those are the areas that we want to make sure that we are protecting, because it is so easy to put such a deep gash into profits by simply stealing the idea.

So I want to thank you all for what you are doing. I know I am devoted, as the rest of us are who stayed here, not just to hear your testimony, but to hear the final World Cup score.

Chairman LEAHY. We won. The U.S. won in overtime.

[Applause.]

Chairman LEAHY. The U.S. won in overtime.

Senator KLOBUCHAR. Overtime? I thought it was one out.

Chairman LEAHY. It was, but they had 2 minutes left, and they won—we won.

Senator KLOBUCHAR. We won, good.

Chairman LEAHY. It would have been two, except for one of the calls, but I am not going to suggest that anyone would make a mistake on a call in soccer.

I should also state, just for full disclosure, you talked about your residuals and Senator Franken his. I also get residuals from three Batman movies, the last being Dark Knight.

I should also add that every cent of that goes to the children's library in Montpelier, Vermont, the Kellogg-Hubbard Library, where I had my first library card when I was 4 years old, and I use that to encourage kids to read, as they should. We would be all better off if kids read better.

With that, I thank you all for being here. This has been a fascinating thing. Obviously, what I am trying to do is build support for even more and tougher legislation and enforcement by the Administration.

I applaud both the Republicans and Democrats on this Committee who have joined so well in that.

Thank you all very much.

[Whereupon, at 12:02 p.m, the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Paul Almeida, President of the Department for Professional Employees, AFL-CIO
Responses to the Written Questions of Senator Tom Coburn, M.D.
"Oversight of the Office of the Intellectual Property Coordinator"
Page 1 of 2

To All Panel II Witnesses

1. Which country is the biggest violator of American intellectual property rights and laws? Why?

Answer: The reporting of the U.S. Trade Representative (USTR), the anecdotal evidence we have from various affiliate unions of DPE, and the findings of the Congressional International Anti-Piracy Caucus suggest that China is the biggest violator of American intellectual property (IP) rights and laws. The 2010 Special 301 Report of the USTR discusses at length the outcome of World Trade Organization (WTO) dispute settlement consultations with China concerning the lack of protection and enforcement of copyright and trademark on a host of products in that country. The WTO Dispute Settlement Body adopted the investigating panel's report ruling in favor of the U.S. Many of the affiliate unions of DPE have been active on IP theft issues and have highlighted the problems presented by the lack of enforcement of IP laws in China. Leo W. Gerard, International President of the United Steelworkers, for example, testified before the Committee on Ways and Means of the U.S. House of Representatives on June 16, 2010, discussing the multitude of problems that lax enforcement of intellectual property rights in China presents to both the American public and consumer.

There is an important caveat to consider, however, when discussing IP theft. As the Congressional International Anti-Piracy Caucus's 2010 "International Piracy Watch List" illustrates, different kinds of piracy and IP theft occur in different countries. While China's lax policies protecting IP are a major cause for concern and action, Canadian law lacks sufficient provisions to protect online piracy and has become, in the words of the 2010 Watch List, "an international safe haven for Internet pirates." Downloading illegal content via peer-to-peer file sharing networks is not a crime in Spain, making enforcement of IP protections online especially difficult there. In sum, while China may be the biggest concern, it is important not to lose sight of other countries where IP theft occurs and is not aggressively dealt with by the government.

a. I realize the Joint Strategic Plan outlines the fourth critical component of the strategy as enforcing our rights internationally. However, I believe individual countries pose different threats to our rights that necessitate specific responses. From your industry perspective, what do you believe, specifically, should be done by the Intellectual Property Enforcement Coordinator (IPEC) to address the problems created by the country you indicated above as the biggest violator of our rights?

Answer: The Joint Strategic Plan approaches the issues of protection and enforcement in a robust and realistic fashion, and DPE wholly endorses the Plan's approach. As noted above, DPE agrees that different countries pose different threats requiring different types

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of action. To this point, the proposal put forth in the Joint Strategic Plan that federal law enforcement officials work with foreign law enforcement agencies and, if needed, establish formal cooperative agreements to aid enforcement is key. The use of trade policy tools (Section 301 reports, insuring IP protection is central to trade agreements, assessing whether existing treaties are adhered to, etc.) and joint trainings with other countries through international organizations, as discussed in the Joint Strategic Plan, is also crucial. This may be the most effective way to combat IP theft with larger countries (like China) or those that lack the institutional components needed for full and effective enforcement (like Chile, also on the USTR's Priority Watch List). Engaging the U.S. Department of State in diplomatic efforts with those countries unwilling or unable to enforce IP protections will also be important in reinforcing the commitment of the U.S. government to fighting IP theft. Emphasizing aggressive, strategic trade actions in response to any consistent failure to enforce or protect IP (including economic sanctions) would also be an effective means of communicating the U.S. commitment to IP protection.

b. How should that response differ from the U.S. response to violations by other countries which may create different and more nuanced problems related to American intellectual property protection?

Answer: As noted above, the response offered by the U.S. to countries whose policies or practices do not effectively protect IP will need to be tailored to the country in question based on its membership status with various international organizations (WTO, etc.) and relevant treaty responsibilities. In the case of China, every possible tool of policy should be used by the U.S. to bring China into accordance with its WTO commitments.

To truly stop IP theft in a country like China, the U.S. will need to address the underlying incentives to steal IP; namely the poor state of human rights and labor rights in China. When people live in desperate circumstances and most workplaces are without the most basic of protections, businesses see no reason to play fair and the average person sees no point in abiding by the rules. A part of U.S. effort to combat IP theft abroad must therefore be strong support for efforts to better working conditions, living standards and human rights in China. While this would not be a panacea for IP theft, supporting such efforts as an element of IP enforcement would certainly lessen the incentives to violate IP protections.

Paul Almeida, President of the Department for Professional Employees, AFL-CIO
Responses to the Written Questions of Senator Chuck Grassley
"Oversight of the Office of the Intellectual Property Coordinator"
Page 1 of 3

Questions for Panel II Witnesses

1. Have you had an opportunity to review the Joint Strategic Plan on Intellectual Property Enforcement ("the Plan") and what are your thoughts? What areas of the Plan could be improved?

Answer: Yes, we at DPE have reviewed the Joint Strategic Plan and find it to be a major step towards effectively combating the theft of intellectual property (IP). The Plan, which is a testament to the careful thought and intense effort Victoria Espinel and her staff have put into representing the positions of a diverse group of stakeholders, is both comprehensive and realistic about the challenges faced in combating IP theft.

There are three areas, however, where the Plan might be improved. First, it is vital for the success of the Plan that the Intellectual Property Enforcement Coordinator (IPEC) has the capacity to achieve what has been laid out. The Plan outlines 33 distinct action items, which range from establishing a U.S. government-wide working group to prevent the U.S. government from purchasing counterfeit goods to the identification and inclusion of foreign pirate websites in the Special 301 process. This ambitious but much needed set of action items will necessitate the IPEC and other relevant agencies be given more resources and staff, something which is not explicitly called for in the Plan. We urge that the Committee invite Ms. Espinel to discuss what additional resources and staffing Congress may be able to appropriate. Second, the range of agencies and governmental bodies that will need to coordinate and cooperate for the Plan to succeed will require leads – individuals with the authority to coordinate action and hold those involved accountable – for each enforcement area, something which is not discussed in the Plan. Finally, with the exception of the establishment of the U.S. government-wide working group to prevent the purchase of counterfeit products, timelines are not a feature of the action items. The Plan would benefit greatly from clear timelines to convey the pressing nature of IP theft and the importance of combating it.

2. What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the United States?

Answer: There are two impediments that stand out as especially challenging to enforcing IP laws in the U.S. The first, as Senator Whitehouse discussed during the June 23rd Senate Judiciary oversight hearing, is the apparent willingness of otherwise legitimate businesses to profit by providing services to IP thieves. Internet Service Providers (ISPs) and payment services, for example, should not assist illegal practices and should actively participate in enforcement. DPE has heard from our affiliate unions how troubled they are to see major firms be complicit in theft of IP, be it major credit card companies allowing for the purchase of stolen IP or providers of Internet access being aware of websites that traffic in stolen IP but doing nothing to stop consumers from using them. Strict penalties should be put in place for businesses found to be providing services that aid or facilitate IP theft.

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The second impediment is the lack of a coordinated national campaign to educate consumers and Internet users that taking IP without paying is theft. The Internet and ready access to media (both legal and illegal) have been a central feature in the lives of most young people, which developed into a resounding lack of knowledge about the difference between legitimate vendors and illicit ones and the impact of downloading stolen IP. The government has engaged in national information campaigns in the past with the intent of changing behavior (e.g., "seatbelts save lives;" anti-smoking campaigns; "don't drink and drive"). While not 100% effective, these campaigns have made great strides in changing behavior among a broad swath of the population.

3. What do you see as the greatest impediment to effective enforcement of intellectual property laws abroad?

Answer: The greatest impediment to effective enforcement of IP laws abroad is the lack of stringent conditions for the export of U.S. innovation and technology. It is helpful to think of agreements affecting IP in three ways: contracts between private parties and private parties and governments, laws inside a country, and international treaty obligations. The U.S. government is able to set or influence policy in different ways in each of these areas and should do so with respect to countries which do not effectively enforce IP law. For example, within a trade agreement a foreign government could be required to alter domestic laws to bolster the enforcement of IP protections. While there are international agreements and trade pacts that must be taken into account, it is important that any trade negotiations carefully examine any provisions that require the transfer of IP and include clear responses if trading partners are found to have infringed any IP protections. To this end, the U.S. government should develop strategies for conditioning international trade agreements on enforcement of IP protection. Additionally, foreign governments have often made the transfer of underlying technology a condition of subsidizing a company's operations within their borders; the U.S. should make clear that such agreements should not be made in countries that do not have strong enforcement of IP laws.

4. Have efforts to improve coordination between government agencies been successful so far? What do you see to be are the biggest obstacles to a smooth working relationship between government agencies?

Answer: Establishing point people – consistent points of contact – in each agency will greatly improve coordination among agencies as it allows for clear lines of authority and responsibility. While it seems that this process is underway in some agencies working with Ms. Espinel to implement the Plan, we cannot underscore the importance of clarity in these coordinating efforts.

5. The PRO IP Act provided for a number of additional resources, including U.S. Attorneys and FBI agents, to bolster our law enforcement efforts against copyright infringement and piracy. Have those resources been effective?

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Answer: First, allow me to note that the passage of the PRO IP Act was a major first step in the fight against IP theft. Its provisions increasing penalties for IP theft are crucial to fighting the practice and the establishment of the IPEC is an important element in the success of any unified efforts by the U.S. government. As the IPEC position has only been filled since December 2009, however, it is the sense of DPE that it is too early to tell if the resources included in the PRO IP Act have been effective. Two of the three areas outlined in our response to question one relate to resources, however, and may present problems as the implementation of the Plan moves forward.

6. In your opinion, has the Obama Administration been supportive of IPEC and the goals of the PRO IP Act?

Answer: The Obama Administration has been extremely supportive of the IPEC and the goals of the PRO IP Act. The nomination of Victoria Espinel, who has led a small but dedicated staff to produce the most comprehensive strategy on combating IP theft to date, is the first major point of evidence. Her extensive outreach to labor, business, and other parties with IP interests during the development of the Plan is a testament to the consideration and careful thought the Obama Administration put into nominating someone truly capable to the IPEC post. Additionally, the presence of Obama Administration officials, including Vice President Biden, Attorney General Holder, and U.S. Trade Representative Kirk, at the release of the Plan on June 22nd, 2010, is further evidence of the commitment the Obama Administration has shown to protecting IP.

7. How effective has the National Intellectual Property Rights Coordination Center ("IPR Center") been the effort to combat copyright infringement and piracy? Are you working with the IPR Center? Can the IPR Center's efforts be improved, and if so, how? Do you believe the IPR Center has enough resources?

Answer: DPE does not work with the IPR Center and therefore offers no comment on the Center's operations and resources.

8. How can the private sector better assist government efforts to crack down on intellectual property crimes?

Answer: The private sector, as we briefly discussed in the answer to question two, can best aid the government by ending its complicity in IP theft. When an ISP is made aware of users visiting sites that sell or transfer illegally obtained content, it should issue a warning to that user to cease the practice. When credit card firms or Internet payment services are made aware that their services are being used to purchase illegally obtained material, they should refuse to do further business with the offending merchant or website.

Questions of Senator Tom Coburn, M.D.

"Oversight of the Office of the Intellectual Property Coordinator"

United States Senate Committee on the Judiciary

June 28, 2010

To All Panel II Witnesses

1. Which country is the biggest violator of American Intellectual property rights and laws? Why?

   - **While China appears to be the biggest violator of American IP rights, mostly because of its size and explosion of online traffic, smaller countries pose just as much of a concern. Some prevent or greatly inhibit copyright enforcement and others engage in allowing jurisdictional "off-shore" protection to infringers, e.g., Vanuatu. Nevertheless, we agree with and applaud the IPEC report's focus on China.**

     a. I realize the Joint Strategic Plan outlines the fourth critical component of the strategy as enforcing our rights internationally. However, I believe individual countries pose different threats to our rights that necessitate specific responses. From your industry perspective, what do you believe, specifically, should be done by the Intellectual Property Enforcement Coordinator (IPEC) to address the problems created by the country you indicated above as the biggest violator of our rights?

   - **Regarding China, the problem is best addressed at a macro level (i.e., direct bi-lateral negotiations between governments). China seems to be open to this approach, as the recently signed bi-lateral agreement on intellectual property protection between Taiwan and China clearly shows. But the US should also engage in multi-lateral approaches through WIPO and regional approaches with the help of other regional economic powers committed to stronger copyright laws and enforcement, e.g., South Korea and Japan.**

b. How should that response differ from the U.S. response to violations by other countries which may create different and more nuanced problems related to American intellectual property protection?

- **Smaller countries systematically violating American IP rights as a result of lax enforcement and laws, as well as by allowing for undisturbed hosting of illegal off-shore websites or hosting ("leeching") sites, should be confronted in a number of different creative ways:**

  1. **Bi-lateral negotiations resulting in mutual assistance treaties and preferable trade benefits.**
  2. **Multi-lateral pressure through WIPO.**
  3. **Greater inclination to impose trade sanctions.**
  4. **Enhanced 301 trade designation.**
  5. **Focusing on using domain name enforcement, like the recent bittorrent DOJ/Homeland Security enforcement action in California.**
  6. **Expansion of extraterritorial jurisdiction which will allow US copyright owners to better enforce their rights in other countries.**
  7. **Increased cooperation with INTERPOL**
  8. **Support for an International Criminal Court with jurisdiction over intellectual property claims and disputes.**

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Written Questions of Senator Grassley for Judiciary Committee Hearing on Oversight of the Office of the Intellectual Property Enforcement coordinator

Questions for Panel II Witnesses

1. Have you had an opportunity to review the Joint Strategic Plan on Intellectual Property Enforcement ("The Plan") and what are your thoughts? What areas of the plan could be improved?'

   Yes, I reviewed The Plan, and my initial reaction is that it is very comprehensive and thoughtful. However, it seems there should be greater emphases on online piracy and enforcement issues, as this is the greatest threat to the music industry.

2. What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the United States?

   The greatest impediment may be the indifferent or outright hostile attitude toward copyright stakeholder interests by the technology industries, consumer groups, the legal community (including the legal academic community), and the public. This private sector push- back at times leads to a lack of commitment on the part of the government and the courts to protect the interests of copyright owners. The by-product of this intellectual confusion, among other things, is the lack of recognition of the extent of the economic damage of piracy to the content industry, and a growing belief that copyright is not a property right.

   There is also great uncertainty about key provisions of the Copyright Law. This has lead to a misapplication and/or misinterpretation of the DMCA by the legislature, the courts, and the users.

3. What do you see as the greatest impediment to effective enforcement of intellectual property laws abroad?

   The greatest impediment to effective enforcement of intellectual property laws abroad is the lack of uniformity of copyright laws and a commitment to better enforcement. Copyrights are distributed globally, but yet the copyright law and the attendant commitment to enforce those laws vary greatly country by country. In some countries, the commitment is stronger (e.g., France, South Korea), but in others the commitment is

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sporadic or downright tepid (e.g., Canada, Spain, Brazil). Sometimes this soft attitude is a result of political opposition to strengthening copyright laws and enforcement, e.g the rise of the Pirate Party in some countries.

This divergence in approach results in lack of cooperation and coordination efforts between countries, as well as a lack of commitment to education.

4. Have efforts to improve coordination between government agencies been successful so far? What do you see to be are the biggest obstacles to a smooth working relationship between government agencies?

It is too soon to tell if efforts have been successful, but I do have concern about the perceived lack of inter-agency consensus and vision on copyright. At times, this results in agencies working to some extent at cross purposes.

Influence of powerful tech-oriented corporate interests like Google may impede the development of inter-agency and government wide consensus on copyright policy. Their influence should be minimized as much as possible.

5. The PRO IP Act provided for a number of additional recourses, including U.S. Attorneys and FBI agents, to bolster our law enforcement efforts against copyright infringement and piracy. Have those resources been effective?

I have no direct knowledge, but as a general matter I strongly believe that increased resources will definitely bolster enforcement efforts

6. In your opinion, has the Obama Administration been supportive of IPEC and the goals of the PRO IP Act?

All indications are that the Obama Administration is very supportive of both the PRO-IP Act and IPEC. If I have any criticism, there still appears to be some vacillation on overall copyright philosophy, and how much the tech industry and consumer group interests will influence the ultimate execution of a copyright enforcement plan.

7. How effective has the National Intellectual Property Rights Coordination Center ("IPR Center") been the effort to combat copyright infringement and piracy? Are

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you working with the IPR Center? Can the IPR Center's efforts be improved, and if so, how? Do you believe the IPR Center has enough resources?

I have no knowledge of the IPR Center.

8. How can the private sector better assist government efforts to crack down on intellectual property crimes?

There should be constant and meaningful consultation between the private sector and the government on the means and depth of piracy, including information on the extent of damage. The creation of a clearinghouse which would facilitate communication between aggrieved content owners and government agencies could be a positive development.

Questions of Senator Tom Coburn, M.D.
"Oversight of the Office of the Intellectual Property Coordinator"
United States Senate Committee on the Judiciary
June 28, 2010

Victoria Espinel, IPEC

1. During the hearing, Senator Hatch asked you what your annual budget is, but I did not hear you provide an exact answer. What is your budget for the salaries and expenses of your office?

    a. How many staff have you hired to-date?

I have hired a confidential assistant and the Departments of Justice, Homeland Security, and Commerce have generously provided four temporary detailees.

    b. What do you anticipate your FY2011 budget to be? What is the basis for that request?

In FY 2011, the OMB funding level was maintained at the FY 2010 level of $176,000. Also, similar to FY 2010, OMB will absorb the additional costs for office space, some travel, and a confidential assistant in FY 2011.

2. Which country is the biggest violator of American intellectual property rights and laws? Why?

There are several countries of key concern. However due to the scale and scope of manufacturing, its industrial policies and its potential as an export market, it is fair to say that China raises a particularly troubling set of issues. Through public outreach including numerous meetings and the review of public responses to the Federal Register Notice issued by my office, many different industry sectors raised China as their country of top concern, including specific cases of patent and trademark infringement of manufactured products, consumer products, pharmaceuticals, and high tech goods that could pose serious health and safety concerns.

As highlighted in United States Trade Representative's (USTR) 2010 Special 301 Report, while the U.S. Government is encouraged by some positive steps taken by the Chinese government, such as an increase in civil intellectual property cases in the courts, the United States is still concerned with high levels of intellectual property theft in China, a non-deterrent enforcement regime, and domestic policies that may disadvantage U.S. rightholders, such as a number of China's indigenous innovation measures. Further, China is the primary exporter of intellectual property-infringing goods (based on U.S. and EU border enforcement statistics) and, as such, exerts an extremely negative influence over U.S. interests in other markets.

    a. I realize your Joint Strategic Plan outlines the fourth critical component of the strategy as enforcing our rights internationally. However, I believe individual

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countries pose different threats to our rights that necessitate specific responses. In your role as Intellectual Property Enforcement Coordinator (IPEC), what do you plan to do, specifically, to address the problems created by the country you indicated above as the biggest violator of our rights?

Addressing intellectual property infringement abroad, including in China, is a significant part of our enforcement efforts.

Specifically, the Strategic Plan puts forth action items aimed at reviewing and improving our efforts to support U.S. companies overseas, and in particular in China, developing a strategy to address foreign-based websites including those in China, using all the available tools of trade policy as well as our market access and trade agreement compliance efforts to address the intellectual property related challenges that place U.S. businesses at a competitive disadvantages in China, and in other markets as a result of Chinese exports, and coordinating personnel in China responsible for intellectual property enforcement.

b. How should that response differ from the U.S. response to violations by other countries which may create different and more nuanced problems related to American intellectual property protection?

The U.S. response to intellectual property infringement by other countries is tailored based on the specific concerns posed by these countries. In addressing these concerns, the U.S. Government utilizes all available tools of trade policy, including bilateral dialogues and problem-solving, communicating U.S. concerns clearly through reports such as the Special 301 Report, proactively monitoring and seeking improvement in foreign government compliance with intellectual property provisions in existing trade agreements, committing our trading partners to protect American intellectual property through trade agreements currently under negotiation, such as the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership, and, when necessary asserting our rights through the World Trade Organization dispute settlement process.

Furthermore, the Strategic Plan establishes action items to enhance foreign law enforcement cooperation and to better coordinate personnel stationed overseas as well as international capacity building and training. These steps will help tailor the U.S. response and ensure that countries of concern are given the priority, time, and resources necessary to strengthen intellectual property enforcement.

c. According to its October 2009 Report to Congress, as part of its requirements under the PRO-IP Act of 2008, the FBI, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) are "conducting an extensive domain analysis" which "will identify the most significant organizations and individuals posing the greatest threat to the intellectual property of the United States." The Report states "this joint effort will serve as the foundation of the United States Government's law enforcement investigative strategy for IPR."

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i. What is the status of this "domain analysis?" If it is complete, will you forward that information to this committee?

Through the FBI-led Intelligence Fusion Group, the National Intellectual Property Rights Coordination Center (IPR Center) assembled a team solely dedicated to conducting a National/International Domain Threat Assessment. The team collaborated on a baseline intelligence assessment, established Health and Safety field threat tasking packages and will deploy teams of analysts and agents to Delhi and Beijing for the aforementioned in-country intellectual property domain assessment.

To complete the National/International Domain Threat Assessment, the dedicated team will intake, process, and analyze information from a variety of sources such as IPR Center investigative and seizure data, field threat tasking packages, Delhi and Beijing in-country threat information, open source reporting, industry input, existing data base information, intelligence products, and previous intellectual property related studies. The current target for completion of this assessment is November 30, 2010.

ii. What countries and organizations did the analysis show as the "greatest threat" to U.S. IP? Do you agree with that assessment? Why or why not?

The goal of the National/International Domain Threat Assessment is to determine the countries and organizations presenting the "greatest threat" to U.S. intellectual property. The current target for completion of this assessment is November 30, 2010.

iii. Was there any disagreement among FBI, ICE and CBP regarding the countries and organizations that should receive the most scrutiny?

The National/International Intellectual Property Domain Threat Assessment is a collaborative IPC Center joint product. The ranking and prioritization of threats will be the judgment of the combined agencies.

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Questions of Senator Tom Coburn, M.D.
"Oversight of the Office of the Intellectual Property Coordinator"
United States Senate Committee on the Judiciary
June 28, 2010

3. During the hearing, I asked you which agencies have made the most progress in strengthening intellectual property enforcement. You generally commented that all of the key agencies have shown a great deal of commitment. I am glad to hear that, but I also realize one of the reasons Congress passed this legislation and created your position was because more coordination among agencies was needed in order to better protect and enforce American intellectual property rights. So, I want to know whether you believe there is any improvement needed within particular agencies in order to make intellectual property enforcement a priority, and the implementation of your Plan's six categories of focus an attainable goal. Please respond.

    a. Do any agencies need to improve internal efforts to prioritize intellectual property enforcement? Why or why not? If so, which ones?

    b. What are your recommendations to those agencies that need improvement?

    c. Have these agencies been given a timeline in which to implement those recommendations?

Federal agencies that are responsible for enforcing intellectual property rights have made significant progress on coordination and prioritization in recent months. For instance, the Department of Justice (DOJ) has re-launched their Intellectual Property Enforcement Task Force which is being chaired by the Deputy Attorney General and is coordinating intellectual property efforts within the Department. U.S. Immigration and Customs Enforcement (ICE)of the Department of Homeland Security continues to host the National Intellectual Property Rights Coordination Center (IPR Center), which coordinates intellectual property theft investigations across 11 different agencies and with two international partners (INTERPOL and the Government of Mexico). ICE has also created 22 state and local partnerships nationwide to more effectively investigate these crimes at the local level.

With that said, my office will constantly assess ways to improve coordination and prioritization of intellectual property enforcement across the U.S. Government. I believe that all of the relevant agencies support and are firmly committed to implementing the Strategic Plan. I will report back to you in December about the progress we have made. In the meantime, the Administration is committed to implementing this Strategic Plan and we have already started that work.

4. Do you believe there is a connection between intellectual property theft and criminal activity? How?

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Yes. Criminal infringement of intellectual property inflicts significant economic harm on rightholders, decreases incentives for artists, authors, and technological innovators, erodes confidence in the marketplace, defrauds consumers, and can pose serious dangers to the public's health and safety. The lucrative nature of intellectual property crime has also made it an attractive target for organized crime groups seeking to use such illicit proceeds to fund other illegal activities.

a. What role do you believe the Justice Department should play in combating criminal IP activity?

DOJ has two roles, one as criminal investigators (primarily handled through the Federal Bureau of Investigation (FBI)) and the second as criminal prosecutors (primarily handled through the U.S. Attorneys' Offices and DOJ's Computer Crime and Intellectual Property Section (CCIPS)).

First, the law enforcement personnel within DOJ, primarily the FBI, have a strong role in investigating intellectual property crimes. The FBI will soon have 51 Special Agents focused exclusively on intellectual property crimes (20 one of which are in the process of being put in place) and it has additional Special Agents who also work intellectual property cases. Although the FBI is not the only law enforcement agency that investigates intellectual property crimes, its focus on those cases is important as we move forward to implement the Strategic Plan.

Second, DOJ prosecutors are responsible for filing criminal cases alleging intellectual property infringement. DOJ has a number of prosecutors who focus on intellectual property enforcement. CCIPS, in Washington, D.C., has 14 attorneys dedicated to intellectual property enforcement. Moreover, DOJ has more than 220 Computer Hacking and Intellectual Property (CHIP) Unit attorneys stationed at the 94 U.S. Attorney's Office throughout the country, with at least one CHIP Assistant U.S. Attorney at each office (although most of these CHIP attorneys do not work full time on intellectual property cases). DOJ's prosecutors thus play a strong role in intellectual property enforcement and will continue to do so.

DOJ and other federal law enforcement agencies are aware of the dangers posed by involvement of organized crime in counterfeiting and piracy, and have taken steps to better understand and address the links between intellectual property theft and organized crime. For example, DOJ sought to ensure that prosecutors and agents involved in intellectual property investigations and prosecutions are coordinating their efforts with agents and prosecutors targeting organized crime, including sharing investigative intelligence and collaborating to develop cases and provide cross training. DOJ has incorporated intellectual property crime into its existing International Organized Crime Strategy and has assigned a prosecutor to serve as counsel to the Organized Crime Intelligence and Operations Center (IOC-2). DOJ's Criminal Division, FBI, DHS, and other relevant participating federal agencies are coordinating their efforts through IOC-2 and working to

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ensure that critical intellectual property-related intelligence and case information is contributed to its data pool.

b. Do you believe it is carrying out its responsibilities in this area effectively? Why or why not?

I believe that DOJ has been effective in investigating and prosecuting intellectual property cases and I hope that that effectiveness will further increase under the Strategic Plan. For example:

- *In May 2010, DOJ and DHS announced the results of Operation Network Raider, a domestic and international enforcement initiative targeting the illegal distribution of counterfeit network hardware manufactured in China. The initiative resulted in 30 felony convictions and more than 700 seizures of counterfeit Cisco network hardware and labels with an estimated retail value of more than $143 million. The operation was a joint initiative by the FBI, ICE and U.S. Customs and Border Protection (CBP) working with the U.S. Attorneys' Offices around the country, the Criminal Division's Computer Crime and Intellectual Property Section and the National Intellectual Property Rights Coordination Center. The Operation included a 51-month prison sentence for a Saudi Arabian citizen who sold counterfeit Cisco products which were meant to be used by the U.S. Marine Corps to transmit troop movement, relay intelligence, and maintain security at a military base west of Fallujah, Iraq. The Operation also included a 30-month prison sentence for a defendant who ran a company in Shenzhen, China, which distributed counterfeit Cisco products in the U.S.*

- *As part of an Online Commercial Counterfeiting and Piracy Auction/Website Initiative, DOJ obtained more than 40 convictions, including: (1) a conviction for conspiring with others in China to traffic in counterfeit cancer drugs and pharmaceutical products which resulted, in January 2009, in a sentence of 78 months in prison; (2) two convictions for operating an Internet-based DVD importation and distribution business which resulted, in May 2010, in sentences of 121 months in prison and 94 months in prison; and (3) a conviction for selling pirated software to hospitals which resulted, in July 2009, in a sentence of 46 months in prison.*

- *In June 2010, DOJ obtained a conviction in a large-scale counterfeiting case involving imported counterfeit goods from China. The defendants imported more than 300,000 counterfeit luxury goods with an estimated value of more than $100 million and operated eight factories. The defendants are awaiting sentencing.*

- *In June 2010, the U.S. Attorney's Office for SDNY and DHS announced the seizure of seven domain names for websites allegedly distributing infringing movies and television shows. One of the websites, Movies-Link.tv, is the 258 most popular website in the world and has approximately 3.3 million visitors per month.*

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5. How much does your office plan to be involved in policy development in the area of intellectual property?

My office is responsible for coordinating the Administration's policy development on intellectual property matters related to enforcement. We are leading the efforts to develop, in coordination with relevant agencies and other White House offices, new policies and approaches to combating infringement. Similar to the way in which we developed the Strategic Plan, we will continue to coordinate closely with all relevant agencies and offices and ensure a transparent, inclusive process as we work toward developing those policies and implementing the Strategic Plan.

   a. Will that focus more on domestic or international intellectual property enforcement? Why?

It is difficult to distinguish between domestic and international intellectual property enforcement because advancements in technology and the global nature of the supply chain mean that enforcement efforts domestically can impact infringement overseas and enforcement overseas can have positive domestic effects. We will prioritize and focus on both domestic and international enforcement in areas of greatest concern to our economy and the country.

6. How does your Joint Strategic Plan address the different needs within the intellectual property industry, particularly since different companies have different business models?

The Strategic Plan is a comprehensive strategy for the United States Government and the U.S. economy. In developing the Strategic Plan, my office sought and considered input from a wide range of different sectors of the American economy, including software, music, film, videogame, photography, publishing, semiconductor, pharmaceutical, medical device, union, manufacturing, apparel, telecommunications, information technology, high technology, bio technology , consumer product, aviation and automotive industries. As implementation of the Strategic Plan proceeds, we will coordinate within the Administration and with private sector stakeholders to ensure maximum effectiveness of our efforts.

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Questions of Senator Tom Coburn, M.D.
"Oversight of the Office of the Intellectual Property Coordinator"
United States Senate Committee on the Judiciary
June 28, 2010

7. Do you believe there should be a balance in your Plan and its implementation between enforcing intellectual property rights, and also recognizing the need to promote, rather than stifle, innovation that leads to new technologies?

I believe that the Strategic Plan is balanced. The Strategic Plan advances U.S. intellectual property enforcement efforts consistent with our laws, which have traditionally balanced the desire to promote innovation and creativity with the public interests. Strong enforcement of U.S. intellectual property laws does not detract from the balance but rather is a critical element. In addition, strong intellectual property enforcement is one important driver of innovation and creativity in our economy.

a. Can you comment on the Administration's views on this?

The Administration's views, as set forth in the Strategic Plan, are to aggressively enforce American intellectual property rights, consistent with the laws that Congress enacted and principles of fair use. One of the reasons that the U.S. is a global leader in innovation and creativity is our early establishment of strong legal mechanisms to provide necessary economic incentives required to innovate. By the same token, fair use of intellectual property can support innovation and artistry. Strong intellectual property enforcement efforts should be focused on stopping those stealing the work of others, not those who are appropriately building on it.

b. What do you anticipate your role to be in ensuring there is an adequate balance between enforcement and strong limitations and/or exceptions to spur innovation?

Our focus is on combating infringing activities, not clamping down on innovation that is legal and legitimate. In the crafting of the Strategic Plan, I met with innovators who depend on the fair use doctrine to hear their concerns directly. I will continue to meet with representatives of sectors across the U.S. economy to ensure that all interests are considered.

8. Have you examined, in detail, the newly re-constituted IP Task Force within the Justice Department? Do you believe it has been effective in coordinating IP enforcement and prosecution within the various divisions of the Justice Department? Why or why not?

I have had the opportunity to work closely with DOJ's Intellectual Property Task Force in developing the Strategic Plan. The Task Force is chaired by Acting Deputy Attorney General Gary Grindler and is made up of high-level DOJ officials, such as Associate Attorney General Thomas Perrelli, Assistant Attorney General Tony West (Civil Division) and Assistant Attorney General Lanny Breuer (Criminal Division). The Task Force is working to strengthen DOJ's intellectual property enforcement efforts in a number of ways,

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including increasing coordination with state, local, and foreign enforcement partners, and it will continue to monitor and coordinate overall intellectual property enforcement efforts at DOJ.

My office is supportive of efforts that aim to increase U.S. Government coordination and effectiveness related to intellectual property enforcement. I have continued to be impressed by DOJ's commitment to fighting intellectual property infringement. As the Task Force was recently formed in February, I look forward to its contributions to strengthening U.S. intellectual property enforcement and to reporting back to you about its efforts as part of the implementation of the Strategic Plan. Similarly, DOJ will report on the Task Force activities in its annual Attorney General report to Congress.

9. During the hearing, I asked you for an updated report on the number of intellectual property enforcement cases the Justice Department has filed. You said you would get back to me with this information in a written response. I would also like for you to respond to the following, in addition to that request.

    a. In its October 13, 2009 Report to Congress, the Justice Department noted that it brought 197 cases related to intellectual property crime in 2008, which led to 242 defendants being convicted and sentenced on IP charges. However, this was a decrease from the number of cases charged (217) and defendants sentenced (287) in 2007. Could you respond, in detail, as to why this decrease occurred after four years of consistent increase in cases charged and defendants sentenced?

Although there was a decrease in the number of intellectual property cases charged and defendants sentenced in 2008, the number of prosecutions and convictions were relatively close to the levels of 2007. To the extent that there was a decrease, it paralleled the decrease in case referrals from the investigative agencies.

As intellectual property crime has become more complex, so have the related investigations and prosecutions. In that regard, the number of cases referred by investigative agencies and the resulting number of cases charged can provide an incomplete picture of the overall trend of criminal enforcement efforts. DOJ has worked to consistently improve the quality of criminal cases it pursues.

With the support of Congress, DOJ received funding for 51 new FBI agents dedicated to investigating intellectual crimes, as well as funding for 15 new CHIP AUSAs who will prosecute both intellectual property and computer crimes. DOJ anticipates that with these important added resources, the number of investigations and case referrals will increase in quantity and quality over time, and that should result in a corresponding increase in prosecutions.

    b. As the October 2009 report did not provide statistics for 2009 or 2010, please provide information on the investigative matters received by AUSAs, defendants charged, cases charged and defendants sentenced for 2009 and to-date in 2010.

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As compiled by DOJ's Executive Office of United States Attorneys, the FY 2009 (October 1, 2008-September 30, 2009) statistics requested are as follows:

Investigative matters received: 285
Defendants Charged: 235
Cases charged: 173
Defendants Sentenced: 223

As compiled by the Department's Executive Office of United States Attorneys, the FY 2010 to-date (October 1, 2009 - June 30, 2010) statistics requested are as follows:

Investigative matters received: 298
Defendants Charged: 188
Cases charged: 132
Defendants Sentenced: 151

Please keep in mind that some convictions reflected as occurring in a particular fiscal year may result from cases filed in earlier years.

c. Do you believe the Justice Department is adequately investigating, prosecuting and sentencing individuals and organizations who violate civil and criminal IP laws? Why or why not?

For the description of whether DOJ is adequately addressing criminal violations, please see answer 4.b above.

Although civil violations of intellectual property laws in the U.S. continue to be enforced mainly through civil lawsuits by rights holders, DOJ has pursued efforts in support of civil measures, enforced by CBP, designed to detect and seize infringing goods upon attempted importation into the U.S. and, in appropriate cases, to levy fines against the importers. For example, DOJ successfully appealed an adverse district court decision in United States v. Able Time, in a case involving the attempted importation of watches bearing counterfeit trademarks. On remand, DOJ obtained a jury verdict against the importers of counterfeit goods.

10. What is your assessment of the IPR Center at the Department of Homeland Security? Do you believe it has been effective in coordinating IP enforcement within DHS? Why or why not?

The IPR Center is a commendable effort to help increase the efficiency and effectiveness of the U.S. government's intellectual property law enforcement efforts.

As to your question, the IPR Center provides a means for two DHS components, ICE and CBP, to coordinate their intellectual property enforcement nationally, including large-scale operations. The coordination of their national efforts has led to large-scale operations such as Holiday Hoax, Spring Cleaning, Global Hoax, and In Our Sites.

We want to highlight the fact that the IPR Center is a multi-agency center that coordinates efforts beyond DHS. It helps coordinates enforcement across federal agencies. Currently, the IPR Center has the participation of two international partners (INTERPOL and the Government

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of Mexico) and 11 federal agencies/offices, only two of which are part of DHS: (1) U.S. Army, Major Procurement Fraud Unit (newly added in June 2010); (2) U.S. Department of Commerce, International Trade Administration; (3) U.S. Department of Commerce, U. S. Patent and Trademark Office; (4) U.S. Department of Defense, Defense Criminal Investigative Service; (5) U.S. Department of Health and Human Services, Food and Drug Administration, Office of Criminal Investigations; (6) DHS, CBP; (7) DHS, ICE; (8) U.S. Department of Justice, Federal Bureau of Investigation; (9) General Services Administration, Office of Inspector General; (10) Naval Criminal Investigative Service; and (11) U.S. Postal Inspection Service. I look forward to working with the IPR Center to ensure that it helps increase cooperation, and thereby minimizes duplication and waste, in law enforcement efforts across federal agencies.

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Questions of Senator Tom Coburn, M.D.
"Oversight of the Office of the Intellectual Property Coordinator"
United States Senate Committee on the Judiciary
June 28, 2010

11. The PRO-IP Act of 2008 authorized $10 million per year for 5 years for the FBI to hire additional agents to support the Computer Crime and Intellectual Property Section (CCIPS) and Computer Hacking and Intellectual Property Crime Unit (CHIP) of the Justice Department. According to the FBI's October 2009 Report required by the PRO-IP Act, the FBI received $8 million--$6.4 million went toward personnel hiring and $1.4 million went toward equipment, training and other purchases.

    a. Because of your unique position to oversee the operations of all agencies involved in intellectual property enforcement, do you believe the FBI appropriately used the funds Congress appropriated to it and assigned agents to the units most in need of additional support for IP enforcement? Why or why not?

With respect to the funds Congress appropriated to the FBI, the FBI conducted a review of its strategic and operational efforts to address intellectual property crimes. These efforts led to the strategic disbursement of resources to expeditiously identify and effectively investigate the highest priority persons and organizations threatening intellectual property, including the assignment of agents to the units most in need of additional support for intellectual property enforcement.

FY 2009 IP Enhancement

Through funding received in the FY 2009 Appropriation, and in accordance with the PRO-IP Act, the FBI designated 31 agents to work intellectual property investigations:

- *26 Field Office agents were placed in 20 Field Offices with CHIPs units as follows:*
-
    - *Atlanta (2)*
    - *Baltimore (1)*
    - *Boston (1)*
    - *Chicago (1)*
    - *Dallas (1)*
    - *Detroit (1)*
    - *Kansas City (1)*
    - *Los Angeles (2)*
    - *Memphis (1)*
    - *Miami (2)*
    - *New York (2)*
    - *Newark (1)*
    - *Philadelphia (1)*
    - *Pittsburgh (1)*
    - *Sacramento (1)*
    - *San Antonio (1)*
    - *San Diego (1)*
    - *San Francisco (2)*
    - *Seattle (1)*
    - *Washington D.C. (2)*

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- *5 FBI Headquarters (FBIHQ) Agents:*
    - *Three FBIHQ agents were assigned to the IPR Center to conduct investigations and de-conflict matters with partner agencies.*
    - *Two FBIHQ agents were designated as HQ Program Managers to provide strategic guidance, tactical assistance, develop intelligence, and oversee the field office intellectual property programs, agents, and investigations.*

The 31 intellectual property agents received three days of intellectual property training in September 2009, which included strategic programmatic briefings, DOJ-CCIPS prosecutorial guidance, briefings from the following IPR Center partner agencies: CBP, FDA, ICE, the U.S. Postal Inspection Service, and the U.S. Patent and Trademark Office. The training included current and historical case studies and presentations from industry representatives.

FY 2010 IPR Enhancement

In the FY 2010 Appropriation, the FBI received funding for 20 additional investigators dedicated to intellectual property matters:

- *Additional intellectual property Agents were assigned to enhance intellectual property Squads in four field offices:*
    - *Los Angeles (2)*
    - *New York (4)*
    - *San Francisco (4)*
    - *Washington D.C. (4)*
- *Additional intellectual property Agents to five field offices:*
    - *Chicago (1)*
    - *Detroit (1)*
    - *Houston (2)*
    - *Miami (1)*
    - *Sacramento (1)*

In September 2010, the FBI will conduct advanced training for agents working intellectual property matters in all field offices with DOJ CHIPs units, and will provide intellectual property basic training to agents designated as intellectual property coordinators in the remaining field offices.

Non-personnel related funding is also being utilized for undercover purchases of evidence, destruction of seized counterfeit goods, equipment purchases, and advanced training to develop subject matter experts in intellectual property investigations.

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Written Questions of Senator Grassley for Judiciary Committee Hearing on Oversight of the Office of the Intellectual Property Enforcement Coordinator

Questions for Victoria Espinel

1. What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the United States?

There are a number of challenges with enforcement of intellectual property infringement. Advancement in technology has created a more complex environment. Infringement has become more sophisticated, further complicating the job of enforcement officials. Further, a large percentage of infringement originates beyond the jurisdictional reach of U.S. law and the distribution chain for infringing goods is becoming increasingly global, thereby making enforcement more difficult here in the United States as well as overseas.

However, the Strategic Plan is our strategy to increase the effectiveness of enforcement. The development of the Strategic Plan occurred with robust interagency collaboration, input, and review. My office, working with the relevant agencies will continue to identify ways to improve coordination, to place a greater focus on enforcement, and to ensure strong laws.

2. What do you see as the greatest impediment to effective enforcement of intellectual property laws abroad?

There are a number of challenges with respect to intellectual property enforcement abroad, including infringement originating beyond the jurisdictional reach of U.S. law, the distribution chain for infringing goods becoming increasingly global, infringement occurring over foreign-based websites, and countries where lack of intellectual property enforcement creates a competitive disadvantage for U.S. businesses abroad.

In order to overcome these impediments, the Strategic Plan lays out several action items aimed at strengthening enforcement abroad. That includes the development of a plan to combat foreign-based and foreign-controlled websites that infringe American intellectual property rights, working with foreign authorities to increase criminal enforcement actions against intellectual property infringers in foreign countries, and promoting enforcement through all available trade policy tools such as bilateral trade dialogues, the Special 301 Report, trade agreements, and where necessary the World Trade Organization dispute settlement process. With regard to the Special 301 process, the United States Trade Representative (USTR) will work with relevant U.S. agencies to ensure that related action plans and similar documents are as effective as possible.

3. How have you ensured that limited resources are not wasted or efforts duplicated in the Joint Strategic Plan on Intellectual Property Enforcement ("the Plan")?

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Ensuring greater efficiency and coordination is a significant focus of the Strategic Plan. There are a number of action items that are designed to minimize duplication and waste. Those action items include: (1) coordinating our national law enforcement effort, including establishing a shared database(s) for law enforcement use and requiring the development of protocols for agencies to de-conflict cases (i.e., protocol for agencies to check to see whether another agency is already investigating the same case); (2) establishing local/regional working groups of federal, state, and local law enforcement and prosecutors; (3) improving the placement, direction, and coordination of personnel stationed overseas; (4) providing and coordinating training (both overseas and to state and local law enforcement). In addition, we have announced that we are creating four interagency working groups on government procurement, counterfeit pharmaceuticals, international capacity building and training, and the economic impact of intellectual property-intensive industries.

4. Do you believe that the government agencies involved in this effort to enhance intellectual property enforcement are doing all they can to make this strategy successful? Are they really coordinating with each other, or are there jurisdictional squabbles? What can be improved?

Federal agencies that are responsible for enforcing intellectual property rights have made significant progress on coordination and prioritization in recent months. For instance, the Department of Justice has re-launched their Intellectual Property Enforcement Task Force which is being chaired by the Deputy Attorney General and is coordinating intellectual property efforts within the Department. Also within the Department of Homeland Security, Immigration and Customs Enforcement (ICE) continues to host the National Intellectual Property Rights Coordination Center (IPR Center) which coordinates intellectual property theft investigations across 11 different agencies and with two international partners (INTERPOL and the Government of Mexico). ICE has also created 22 state and local partnerships nationwide, to more effectively investigate these crimes at the local level.

With that said, my office will constantly assess ways to improve coordination and prioritization of intellectual property enforcement across the U.S. Government. Ensuring greater efficiency and coordination is a significant focus of the Strategic Plan. There are a number of action items which are designed to increase efficiency and coordination. Those action items include: (1) coordinating our national law enforcement effort, including establishing a shared database(s) for law enforcement use and requiring the development of protocols for agencies to de-conflict cases (i.e., protocol for agencies to check to see whether another agency is already investigating the same case); (2) establishing local/regional working groups of federal, state, and local law enforcement and prosecutors; (3) improving

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the placement, direction, and coordination of personnel stationed overseas; (4) providing and coordinating training (both overseas and to state and local law enforcement).

We have already begun the process of implementing these action items. In addition, we have set up an interagency process that will serve to bring all of the expertise in the federal government to bear. We are establishing four new interagency working groups to address the following: (1) counterfeit pharmaceuticals, (2) capacity building and training, (3) economic contribution of intellectual property-related industries, and (4) U.S. Government procurement of counterfeits.

I believe that all of the relevant agencies support and are firmly committed to implementing the Strategic Plan. I will report back to you in December about the progress we've made. In the meantime, the Administration is committed to implementing this Strategic Plan and we have already started that work.

5. How are you utilizing the resources at the National Intellectual Property Rights Coordination Center ("IPR Center")? Are those resources adequate? Or do you believe that they could be improved?

The IPR Center is a commendable effort to help increase the efficiency and effectiveness of the U.S. Government's intellectual property efforts, specifically the U.S. Government's law enforcement efforts. By coordinating the efforts of many agencies, the IPR Center is able to leverage existing resources to pursue its mission. The U.S. Government will, however, on an ongoing basis assess its resource needs.

6. Is the current legal process capable of handling the high-volume, fluid infringement occurring online, including on social networking, locker or linking sites? Is it practical or reasonable to require copyright owners to respond to every incidence of infringement on these sites, or do you believe is it appropriate to require more proactive responsibility on the part of the sites, particularly to prevent repeat infringements of the same work and by the same users?

We agree that online infringement is a significant threat to industries that create works in digital form or that may be digitized, and it does appear that infringers are turning to new technologies to continue their illicit and aggressive infringement activities, including using cyber lockers and linking sites. As stated in the Strategic Plan under "Facilitating Cooperation to Reduce Intellectual Property Infringement Occurring Over the Internet," we believe it is essential that rightholders, Internet service providers, advertising brokers, payment processors, search engines and others work cooperatively to address high volume illegal activity. In addition to encouraging cooperation among stakeholders, the Administration will continue to pursue additional solutions to these problems, including vigorously investigating

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and prosecuting such criminal activity. In that regard, we note the recent enforcement activity by the Department of Homeland Security (DHS)/ICE and the Southern District of New York against seven websites engaged in illegal infringing activity.

In addition, to assess whether our existing intellectual property laws continue to be effective in combating infringement, particularly in light of such changes in technology and the increasing sophistication of mechanisms to infringe, we have committed to review our existing laws to ensure they are effective to combat infringement.

7. How does the Plan enhance and raise the profile of U.S. government efforts to combat intellectual property crime abroad?

The Strategic Plan includes a number of recommendations to enhance U.S. Government efforts to combat intellectual property crimes overseas.

For example, the Administration has committed to use the tools of trade policy to seek strong intellectual property enforcement. We have also committed to focus on the threat posed by foreign-based websites or web services that provide or provide access to products or works that infringe U.S. intellectual property rights.

We are establishing a working group to strengthen interagency coordination of international capacity building and training. The working group will create a forum in which agencies will share plans, information and best practices, focus efforts in those countries in which enforcement is a high priority, develop agency strategic plans based on need assessments, establish mechanisms to evaluate effectiveness of these efforts, establish a shared database for storing training materials, ensure materials are consistent with U.S. intellectual property laws and policy goals and explain the relevant balance between a creator's right in a work and legal limitations on that right, and coordinate efforts with international organizations and the business community.

The Strategic Plan also highlights the important role U.S. personnel stationed abroad play in combating intellectual property crimes overseas and commits to improving their effectiveness. In addition, we, in coordination with the Department of Commerce and other agencies, will review the existing efforts of the U.S. Government to support U.S. businesses in certain overseas markets, including China.

8. What is the status of the state and local law enforcement grants for training, prevention, enforcement and prosecution of intellectual property theft and infringement cases? Have any grants been issued, and if so, are these programs working?

While no funding has been appropriated under the PRO-IP Act for state and local law enforcement task forces, the Department of Justice's Bureau of Justice Assistance (BJA) has

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leveraged Byrne and Judge Advocate General (JAG) funding to support state and local intellectual property task force efforts. In FY 2009, BJA made 10 grant awards for a total of $2,005,692. In FY 2010, DOJ increased this amount to $4 million. BJA released a second Intellectual Property Enforcement Solicitation, providing funding for state and local law entities to enforce intellectual property violations. Seventeen applications were received and are currently being reviewed.

Overview of 2009 Grants

Eight grants were awarded to state and local agencies ($1,105,692):

- *North Carolina Department of the Secretary of State*
- *Mississippi Attorney General's Office*
- *Los Angeles County Sheriff's Department (CA)*
- *City of Los Angeles Police Department (CA)*
- *Chesterfield County Police Department (VA)*
- *Bronx County District Attorney (NY)*
- *New York City Mayor's Office*
- *Virginia Office of the Attorney General*

Two grants were awarded to provide national training and technical assistance ($900,000):

- *National White Collar Crime Center (NW3C)*
- *National Association of Attorneys General (NAAG)*

State and Local Agency Grantees

The following bullet points represent a summary of FY09 grant-related activity:

- *The North Carolina Department of State is using grant funds to purchase equipment to assist task force members in developing investigative leads concerning interrelationships among suspects selling counterfeit trademark goods. One objective is to gather data from cell phones and hand-held electronic devices recovered or surrendered by suspects at the time of interdiction. Data analysis can then uncover commonalities and reveal patterns among suspects.*

- *The Mississippi Attorney General's Office (AGO) used grant funds to establish its intellectual property Task Force with members from all over the state. Local law enforcement in conjunction with the AGO have made significant arrests. These arrests have resulted in the forfeiture of substantial amounts of counterfeit goods. Additionally, the community outreach has generated tips that have lead to meaningful*

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arrests and seizures.

- *Utilizing grant funds, the Los Angeles County Sheriff's Department took down a multistate counterfeit purse ring with the assistance of the Beaverton, Oregon Police Department and Los Angeles Police Department. In addition, the Sheriff's Department developed a close working relationship with brand owners and their representatives. To date, it has seized in excess of $80 million worth of counterfeit items and arrested and prosecuted over 40 individuals.*

- *The Los Angeles Police Department used grant funding to support its Anti-Piracy unit with the intention of coordinating and involving themselves in a multi-agency, multi-area response to the enforcement of intellectual property crimes.*

- *The Chesterfield County (Virginia) Police Department had great success in arresting and dismantling numerous criminal groups operating in the county along with connecting several investigations with an overseas nexus. The Police Department has seized millions of dollars worth of counterfeit clothing, arrested over 20 top targets, and identified cases now being worked by the local Joint Terrorism Task Force.*

- *The Virginia Office of the Attorney General has used grant funds to educate over sixty Virginia law enforcement officers and prosecutors about the serious and widespread nature of intellectual property crimes and has taught them how to investigate and prosecute these cases. The program has received extremely positive reviews and has been an eye-opening experience for many attendees. Attendees suggested this training program be included in the annual training for all Virginia prosecutors, hosted by the Virginia Association of Commonwealth's Attorneys.*

- *With the assistance of grant funds, the New York Bronx District Attorney's Office used funding to address counterfeiting of Underwriters Laboratory trademark items as well as prescription drugs. They have forged a strong alliance with Underwriters Laboratories, and intend to target stores suspected of selling counterfeit goods. Success will be measured not merely by prosecutions, but by getting dangerous products off shelves and identifying warehouses (whether in Bronx County or elsewhere). This effort includes creation of a working group with the U.S. Food and Drug Administration and the U.S. Postal Inspection Service.*

The New York City's Mayor Office IP Enforcement Grant program focuses on a specific facet of intellectual property crime: use of mini-storage facilities in New York City as distribution and point-of-sale centers for counterfeit merchandise. The Office of Special Enforcement, which is

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managing the mini-storage investigation, is responsible for much of the intellectual property enforcement in the City of New York; it has been highly successful in general in investigating, pursuing, and assisting with the prosecution of offenders.

National Training and Technical Assistance Grantees

Also under the "Intellectual Property Enforcement, Training, and Technical Assistance Program" two training and technical assistance (TTA) grants were awarded. The recipients, as stated above, are:

- *NW3C*
- *NAAG*

BJA encouraged NW3C and NAAG to form a partnership and collaborate to (1) raise the awareness level and (2) improve the quantity and quality of enforcement of intellectual property laws and prosecution of intellectual property crimes. This approach resulted in jointly developing and delivering TTA to state and local officials. The primary goal of this partnership is to develop an intellectual property curriculum to be presented to federal, state, local, and tribal law enforcement and prosecutors at 10 regional locations throughout the United States.

- *On January 26, 2010, a subject matter expert (SME) meeting was held in Washington, D.C. Top individuals from corporate America representing a large portion of America's innovative sectors were brought together to explore how to increase law enforcement effectiveness dealing with intellectual property crime. Groups represented included the entertainment, software, pharmaceutical, transportation manufacturing industries, and others including electrical manufacturers as well as representatives of the United States Chamber of Commerce.*

- *On April 14, 2010, the second SME focus group meeting was held with the addition of local, state, and federal law enforcement representatives. Federal representatives included the FBI, the Computer Crimes and Intellectual Property Section (DOJ), and ICE (DHS).*

- *Based on the information received from the two SME focus groups, the one-day training curriculum has been developed and the first delivery is expected to be presented in the Baltimore City area in mid-September. The remaining nine trainings will be scheduled within the next 30–60 days with the intention to augment locations*

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receiving grant funds under the Intellectual Property Enforcement Program or regions with high reported incidence of intellectual property Crime.

- *With grant funds, NW3C in partnership with NAAG and BJA, will be hosting an Intellectual Property Enforcement Summit to be held in Pasadena, CA, on September 30, 2010. This will be a full day awareness session for federal, state, local, and tribal law enforcement focusing on intellectual property as a violation of the law, elements of intellectual property crimes, and what communities can do to enforce and prosecute intellectual property crimes.*

9. The PRO-IP Act increased FBI and U.S. Attorney resources to investigate and prosecute intellectual property theft and infringement cases. Could you provide me a status of their activities?

FBI

The FBI initiated and leads the Intelligence Fusion Group (IFG) at the National Intellectual Property Rights Coordination Center (IPR Center). The IFG consists of members of FBI, ICE, Customs and Border Protection (CBP) and other IPR Center agencies and its mission is to define and prioritize the most significant threats to our intellectual property.

The FBI collaborated on a baseline intelligence assessment, established Health and Safety field threat prioritizations and will deploy teams of analysts and agents to Delhi, India and Beijing, China for in-country intellectual property domain assessments.

To complete the National/International Domain Threat Assessment, the IFG will collect and analyze information from a variety of sources such as the IPR Center investigative and seizure data, field threat tasking packages, Delhi and Beijing in-country threat information, open source reporting, industry input, existing data base information, intelligence products, and previous intellectual property related studies. The current target for completion of this assessment is November 30, 2010.

Following the increase in resources to address intellectual property crimes, the FBI conducted extensive analysis of the intellectual property caseload, and threat information from its partners in industry associations, international and domestic law enforcement, and the intelligence community. This analysis provided the foundation for the strategic placement of these resources to support Computer Hacking and Intellectual Property units at US Attorney's Offices around the country and the consolidation of certain intellectual property investigative capacity into four enhanced squads in Los Angeles, New York, San Francisco, and Washington

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D.C. The enhanced squads will facilitate the development of subject matter experts in priority intellectual property areas, allow for the surging of resources and greater use of complex investigative techniques in penetrating, disrupting, and dismantling criminal organizations which thrive from the counterfeiting of goods.

The staffing and training of these resources was executed as follows:

FY 2009 IPR Enhancement

Through funding received in the FY 2009 Appropriation, and in accordance with the PRO-IP Act, the FBI designated 31 agents to work intellectual property investigations:

- *26 Field Office agents were placed in 20 Field Offices with CHIPs units as follows:*
  - *Atlanta (2)*
  - *Baltimore (1)*
  - *Boston (1)*
  - *Chicago (1)*
  - *Dallas (1)*
  - *Detroit (1)*
  - *Kansas City (1)*
  - *Los Angeles (2)*
  - *Memphis (1)*
  - *Miami (2)*
  - *New York (2)*
  - *Newark (1)*
  - *Philadelphia (1)*
  - *Pittsburgh (1)*
  - *Sacramento (1)*
  - *San Antonio (1)*
  - *San Diego (1)*
  - *San Francisco (2)*
  - *Seattle (1)*
  - *Washington D.C. (2)*

- *5 FBI Headquarters (FBIHQ) Agents:*
  - *Three FBIHQ agents were assigned to the IPR Center to conduct investigations and de-conflict matters with partner agencies.*

  - *Two FBIHQ agents were designated as HQ Program Managers to provide strategic guidance, develop intelligence, and oversee the field office intellectual property programs, agents, and investigations.*

The 31 intellectual property agents received three days of intellectual property training in September 2009, which included strategic programmatic briefings, DOJ-CCIPS prosecutorial guidance, briefings from the following IPR Center partner agencies: CBP, the U.S. Food and Drug Administration, ICE, the U.S. Postal Inspection Service, and the U.S. Patent and Trademark Office. The training included current and historical case studies and presentations from industry representatives.

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FY 2010 IPR Enhancement

In the FY 2010 Appropriation, the FBI received funding for 20 additional investigators dedicated to intellectual property matters:

- *Additional intellectual property Agents to enhance intellectual property Squads in four field offices:*
  - *Los Angeles (2)*
  - *New York (4)*
  - *San Francisco (4)*
  - *Washington D.C. (4)*

- *Additional intellectual property Agents to five field offices:*
  - *Chicago (1)*
  - *Detroit (1)*
  - *Houston (2)*
  - *Miami (1)*
  - *Sacramento (1)*

In September 2010, the FBI will conduct advanced training for agents working intellectual property matters in all field offices with DOJ CHIPs units, and will provide intellectual property basic training to agents designated as intellectual property coordinators in the remaining field offices.

Non-personnel related funding is also being utilized for undercover purchases of evidence, destruction of seized counterfeit goods, equipment purchases, and advanced training to develop Subject Matter Experts in intellectual property investigations.

With these additional intellectual property resources, the FBI is able to address intellectual property crimes, to include its highest intellectual property priorities of theft of trade secrets and counterfeit health and safety products. The FBI's strategic objective is to disrupt and dismantle international and domestic manufacturers, distributors, and organizations engaged in intellectual property crime. The FBI aggressively pursues intellectual property enforcement through liaison with industry, domestic and foreign law enforcement partners, and its partnership with the IPR Center.

Investigative Accomplishments

During the first eight months of FY 2010 (October 1, 2009 – May 31, 2010), the following statistical accomplishments were recorded for FBI resources investigating intellectual property cases:

150 Investigations initiated
50 Arrests
56 Information/Indictments

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51 Convictions

U.S. Attorney's Offices

The PRO-IP Act did not include an appropriation of resources to the United States Attorneys.

Recently, however, the United States Attorneys did receive an appropriation of $2 million as part of the Fiscal Year 2010 appropriation. Specifically, in the December 2009 supplemental appropriations, Congress provided funding for 15 new CHIP positions. In April 2010, the Department announced that these positions will be located in U.S. Attorney's Offices in California, the District of Columbia, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Texas, Virginia and Washington. The respective U.S. Attorney's Offices are currently filling those positions. The additional CHIP attorneys will be specially trained to work on the entire range of intellectual property and cybercrime issues that the CHIP program was created to combat.

10. In your letter transmitting the Plan, you mention six areas for improvement. One was "We will improve coordination and thereby increase the efficiency and effectiveness of law enforcement at the Federal, state and local level, of personnel stationed overseas and of the U.S. Government's international training efforts."
    A) Could you discuss the Department of Justice's program that places individuals with U.S. law enforcement experience in foreign countries to assist foreign law enforcement in the prosecution of IPR cases? I understand that this program has proven to be very effective and that the IP Law Enforcement Coordinators (IPLECs) play a complementary role to the State Department/PTO IPR attaches.

Effective international criminal intellectual property enforcement requires cooperation between U.S. law enforcement and their foreign counterparts. The Intellectual Property Law Enforcement Coordinator (IPLEC) program is one of the cornerstones of DOJ's overseas efforts to build law enforcement capacity and foster key relationships in the area of IP enforcement.

The IPLECs are experienced federal prosecutors who provide training and assistance on intellectual property cases to prosecutors and investigators in their respective regions. The IPLECs' ability to provide targeted instruction on specific enforcement issues has yielded concrete results, including improvements in the number and quality of cases brought in each region. Their presence has also created more opportunities to share evidence informally between countries.

Currently, there are two IPLECs, one stationed in Bangkok, Thailand, who is responsible for all of Southeast Asia, and the other is stationed in Sofia, Bulgaria, covering all of Eastern Europe.

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B) If the Justice Department program has been successful in assisting foreign law enforcement on IPR cases abroad, do you believe that it should be expanded?

The IPLEC program has been effective and I believe it would be beneficial to expand it, resources permitting. For example, the IPLEC stationed in Eastern Europe helped Ukrainian investigators and prosecutors build criminal cases against groups selling counterfeit goods and against administrators of major online piracy sites, including one Ukrainian internet piracy site with approximately 100,000 registered users. The IPLEC in Bangkok has, over the past four years, participated in well over 50 regional training programs, spearheaded the creation of an Intellectual Property Crimes Enforcement Network (IPCEN) in Asia, and was integral to U.S. efforts to extradite an individual later convicted and sentenced in the Southern District of Texas to 20 months in prison for his role in importing and distributing more than three-quarters of a million dollars worth of counterfeit pharmaceuticals in the U.S.

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Senator Orrin G. Hatch
Oversight of the Office of the Intellectual Property Enforcement Coordinator
Wednesday, June 23, 2010

Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

Last Congress, I introduced with Finance Chairman Max Baucus the International Intellectual Property Protection and Enforcement Act of 2008.

We hope to re-introduce this bill in the near future.

Among other things, the bill would provide funds to increase USTR's capability to work with developing countries to improve IP protection and enforcement and give the President additional enforcement tools to deal with countries that refuse to fight widespread theft of U.S. IP.

I read with great interest the section of your report regarding the improvement of overseas personnel assigned to combat IP infringement.

How are things going with the current IP specialists overseas?

Our existing U.S. intellectual property specialists stationed overseas have contributed to the effort to combat intellectual property infringement including supporting enforcement activities, building contact with foreign counterparts, and aiding in capacity building and training efforts.

For example, the Department of Commerce's Intellectual Property Rights Attaché stationed in Brazil (a USPTO attorney posted under the International Trade Administration's authority) organized the first-ever intellectual property enforcement training for Brazilian judges in Parana, a Brazilian State boarding the notorious Tri-Border Area shared with Paraguay and Argentina, and spoke before a Brazilian Senate Committee on the consequences of weak intellectual property enforcement. Additional intellectual property Attaches, stationed in China, Russia, Thailand and India, have conducted and supported a wide variety of enforcement-related activities in their host countries. The Department of Justice's Intellectual Property Law Enforcement Coordinator (IPLEC) stationed in Eastern Europe (and funded by the State Department) helped Ukrainian investigators and prosecutors build criminal cases against groups operating counterfeit hard goods rings and against administrators of major online piracy sites, including one Ukrainian internet piracy site with approximately 100,000 registered users. In the past four years, the IPLEC in Bangkok has participated in well over 50 regional training programs, spearheaded the creation of an Intellectual Property Crimes Enforcement Network (IPCEN) in Asia, and was integral to U.S. efforts to extradite an individual later convicted and sentenced in the Southern District of Texas to 20 months in prison for his role in importing and distributing more than three-quarters of a million dollars worth of counterfeit pharmaceuticals in the U.S.

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What do we need to be doing to improve their effectiveness?

Recognizing their importance to successful enforcement both here and abroad, the Administration will assess and prioritize stationing of these personnel in countries where they are most needed. We have, in the Administration's Strategic Plan, committed to a plan of action to increase effectiveness that involves a number of steps including developing embassy work plans, establishing working groups to carry out those plans and improving coordination of our efforts in those embassies. In addition, we will improve communication with overseas personnel and implement procedures to measure the effectiveness of USG personnel working overseas on intellectual property issues.

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Senator Orrin G. Hatch
Oversight of the Office of the Intellectual Property Enforcement Coordinator
Wednesday, June 23, 2010

Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

I commend you for spearheading an ambitious Strategic Plan.

You are going to need a lot of support from the many Federal agencies involved, Congress, and industry stakeholders in order to implement the Plan successfully.

What are your first steps in implementing your Plan?

In order to implement the Strategic Plan, we have set up an interagency process that will leverage the resources and expertise of the federal government on all aspects of intellectual property enforcement. In addition, we have established four new interagency committees on specific issues: (1) counterfeit pharmaceuticals, (2) capacity building and training, (3) economic contribution of intellectual property-related industries, and (4) U.S. Government procurement of counterfeits.

We will continue to seek input from the public as we move forward on implementation, and have already begun the process of meeting with relevant stakeholders on implementation. We will continue to build a process that is open, transparent and takes into account the views and concerns of a wide range of participants in our economy.

Lastly, we welcome and look forward to working cooperatively with you and your staff as we implement the Strategic Plan.

Does your office have the tools necessary to achieve this plan?

One of the benefits of my office is that we can leverage the resources and expertise of agencies across the U.S. Government. The development of the Strategic Plan was a very collaborative process and I am confident that the agencies support and are committed to implementing the Strategic Plan. Furthermore, the Departments of Justice, Homeland Security, and Commerce were generous to provide temporary detailees to assist with the development and implementation of the Strategic Plan. That said we have an ambitious task at hand. As a new office, we will re-assess our needs on an ongoing basis.

How will you ensure that the many stakeholders are effectively working toward the end goal?

During the development of the Strategic Plan, we received numerous comments and recommendations from the public in response to the Federal Register Notice we published. Further, we met with many organizations and industry groups to hear their concerns and ideas.

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Similar to the way in which we developed the Strategic Plan, we will work to implement the Strategic Plan in a transparent way, including through public outreach.

Further, as outlined in the Strategic Plan, we are encouraging cooperation among private sector interests. For example, the Administration believes it is essential for the private sector to work together cooperatively to seek practical and efficient solutions to address infringement occurring over the internet.

With regard to physical goods, the Strategic Plan also includes several items which call for public-private cooperation. For example, we will act to encourage importers to voluntarily come forward if they find that counterfeit goods have infiltrated their supply chains.

As noted in the Strategic Plan, effectively addressing intellectual property infringement will require strong and decisive government action, transparency, and cooperation from rightholders, importers, exporters and entities that currently benefit from infringement.

I want you to be successful.

What can we as Members of Congress do to help you in your role?

I very much appreciate the support that I have received from Members of Congress in my new role. Your continued efforts to bring attention to the issue of intellectual property enforcement is very helpful.

I look forward to working with you as we implement the Strategic Plan. If you have suggestions or concerns as we move forward, please let me know. Effectively improving our enforcement of intellectual property will take some time to accomplish, and I look forward to working together cooperatively in the future.

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Senator Orrin G. Hatch
Oversight of the Office of the Intellectual Property Enforcement Coordinator
Wednesday, June 23, 2010

Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

Senator Whitehouse and I, along with Representatives Schiff and Goodlatte, serve as co-chairmen of the Congressional International Anti-Piracy Caucus.

Just last month our Caucus unveiled the 2010 International Piracy Watch List, which listed Canada, China, Mexico, Russia, and Spain as countries of concern due to the scope and depth of their piracy problems.

For the first time, we also released a list of the most notorious piracy websites whose business models are premised on the illegal exchange of movies, music, and other copyrighted works.

Six illegal websites were identified by the Caucus, including China's *Baidu* , Canada's *isoHunt* , Ukraine's *mp3fiesta*, Sweden's *Pirate Bay*, Germany's *RapidShare*, and Luxembourg's *RMX4U.com*.

These websites are making hundreds of millions of dollars off of American IP.

It is troubling that many of these websites are providing direct profit to organized crime groups and narcotics traffickers.

It seems that we need a coordinated effort across the sectors ranging from content owners, payment processors, advertising networks, and Internet service providers to work together to take down sites that are profiting from illegal content.

What are your thoughts?

We agree that private sector cooperation is essential to reduce acts of intellectual property theft now occurring on the Internet. As stated in the Strategic Plan under "Facilitating Cooperation to Reduce Intellectual Property Infringement Occurring Over the Internet," we believe it is essential that rightholders, Internet service providers, advertising brokers, payment processors, search engines and others work cooperatively to address high volume illegal activity. In addition to encouraging cooperation among stakeholders, the Administration will continue to pursue additional solutions to these problems, including vigorously investigating and prosecuting such criminal activity. Additionally, USTR will continue to identify foreign pirate websites as part of its annual Special 301 process and will, in coordination with my office, initiate an interagency process to determine how that can be made more effective. We look forward to working with you to address this and other developing issues related to intellectual property enforcement.

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Senator Orrin G. Hatch
Oversight of the Office of the Intellectual Property Enforcement Coordinator
Wednesday, June 23, 2010

Question to Ms. Victoria Espinel, Intellectual Property Enforcement Coordinator:

As you are aware, a number of countries have enacted legislation requiring cooperation between copyright owners and Internet service providers.

Ideally, it would be best to have industry stakeholders resolve these matters.

It seems that our foreign counterparts believe that doing nothing is not an option.

Do you think that such legislation enacted overseas has been an effective deterrent?

As demonstrated in the Strategic Plan, the Administration is committed to protecting American intellectual property rights. We encourage cooperation among private sector parties to address online infringement, while we continue to explore the many options available to the U.S. Government, including vigorously investigating and prosecuting criminal activity. With respect to legislation passed abroad, for example in the United Kingdom and France, our understanding is that that legislation has not yet been tested. The Administration has been and will continue to monitor legislation, policies and practices in other countries related to online infringement of intellectual property rights.

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Chamber Responses to Questions for the Record from Senator Coburn

1. Which country is the biggest violator of American intellectual property rights and laws? Why?

Answer: *We agree with your statement at the hearing that the U.S. government, including the IPEC, needs to increase its efforts to protect and enforce our IP rights internationally. While this is a truly global challenge, China, India, Russia, and Brazil are all priority markets that pose significant IP challenges for our member companies. The U.S. Chamber has been working in each of these countries over many years to address the dual challenges of weak laws and lax IP enforcement and protection. The scale and scope of this problem threatens consumers and economic development in each of these nations.*

China: *The U.S. Customs and Border Protection (CBP) estimates that the share of IPR-infringing products seizures at the U.S. border that were of Chinese origin was 79% in 2009, a small decrease from 81% in 2008. Copyright infringement in China of unlicensed software by businesses, is estimated at a staggering 79% of all software installed in 2009, and the piracy levels for video, audio, and entertainment software in optical disc format continue to range between 90-95%. In addition, China's newfound leadership in global internet has made China's digital piracy the principal concern for our members in the film, television, music, and publishing industries. China is also an increasing source for the theft of digital signals of live sporting and other events. 99% of music files downloaded or streamed in China are pirated and user-generated content sites ("UGC sites") in China have become leading hosts of infringing, full-length copies of copyrighted content. In the area of pharmaceuticals, China's manufacture of counterfeit medicine and its failure to enforce regulatory data protection are significant challenges.*

China is also pursuing an aggressive strategy to undermine and displace U.S. and other patent- and brand-holders via a growing web of discriminatory indigenous innovation and industrial policies, including in the areas of investment, government procurement, antitrust, standards setting, tax, and information security policy. Many of these policies focus on protecting and supporting domestic companies in their efforts to "re-innovate" or "co-innovate" U.S. and other foreign technologies to sell and market not only in the China market, but also to export to markets around the world. Addressing China's industrial policies in their many forms, which seek to disadvantage foreign IP owners and/or compel transfer of innovation capacity to China, are a top priority for the American business community.

India: *The scale of counterfeit drugs sold within India and exported from India is enormous, with estimates suggesting that up to 80% of the world's counterfeit drugs have origins there. This is a major health threat to all Indians as well to consumers across the Globe who unknowingly are taking medicines that are either ineffective or outright harmful. The media and entertainment industry is also threatened: according to a 2008 U.S. Chamber report prepared by Ernst & Young India, the media entertainment industry within India's borders loses some 800,000 jobs and revenue equivalent to about USD 4*

billion each year to piracy and counterfeiting. U.S. media conglomerates are disproportionately impacted by this rampant theft.

Equally worrying are India's policies with regard to IP protection for pharmaceuticals, policies which are designed to foster the growth of Indian industry at the expense of U.S. and multi-national industry. For example, India's patent laws are being interpreted in a way which precludes valuable incremental pharmaceutical innovation from being patented, freeing Indian firms to unfairly introduce copycat drugs into the Indian market and thereby decimating the market share and profits of innovator companies. Similarly, India presently affords no period of regulatory data protection for clinical trial and test data, allowing Indian companies to unfairly rely on an innovator's proprietary and valuable regulatory data to secure their own marketing approval. To add insult to injury, those innovators who are granted a patent oftentimes see its value immediately undermined, since India presently has no system linking patent ownership to marketing approval.

a) I realize the Joint Strategic Plan outlines the fourth critical component of the strategy as enforcing our rights internationally. However, I believe individual countries pose different threats to our rights that necessitate specific responses. From your industry perspective, what do you believe, specifically, should be done by the Intellectual Property Enforcement Coordinator (IPEC) to address the problems created by the country you indicated above as the biggest violator of our rights?

Answer:

Create and Utilize New Policy Tools and Frameworks: *The IPEC should continue its work with USTR and others in the Administration to conclude a robust ACTA. This agreement will help ensure the developed countries are following the highest standards of IP enforcement and it will provide the U.S. and many of its trading partners an opportunity to lead by example. An example we hope countries, such as China, India, Russia, and Brazil will eventually follow.*

Leverage 301 and Existing Policy Tools to Highlight Challenges and Drive Improvement Globally: *The IPEC should continue to be aggressive in utilizing the USTR Special 301 report as a tool for encouraging the compliance of those countries listed herein. Specifically, the IPEC should endeavor to (in coordination with relevant U.S. agencies and departments) work with the priority watch list countries to develop and implement an improvement plan to bring them into compliance with their obligations.*

Increase Communication Between and Among Government and Private Sector Stakeholders: *The IPEC, working with US Patent and Trademark Office and others in the interagency, should also work to enhance communication across the U.S. government and between the U.S. government and the private sector in highlighting the current state of IP enforcement and protection matters in priority countries, with a focus on increasing communication among our embassies, the interagency in Washington and the private sector. By facilitating increased outreach among all parties, the IPEC can play a critical role in*

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helping the U.S. government to prioritize its IPR enforcement and protection policy priorities in key markets and to improve its capacity to provide targeted technical assistance in a more efficient and coordinated manner that supports those policy priorities. Increased outreach to the private sector by our embassies and the interagency in Washington will help the U.S. private sector to better support the U.S. government in achieving its policy objectives.

Ensure the Consistency of U.S. Domestic and International IP Policies Affecting IP Protection and Enforcement: *The IPEC should also work across the interagency to ensure that all who have a role in protecting, enforcing, or promulgating domestic policies that affect the treatment of IPR do so in a manner that is consistent with the U.S. government's international economic and commercial policy, which rooted, in part, on a strong defense of the IPR of American companies. Actions and even debates at home in policy areas such as patent policy, standards setting and antitrust can be misinterpreted or in many instances perverted by foreign governments to undermine the IP of American rights holders. In the instance that a policy decision is taken domestically that may undermine the IPR of American firms, the IPEC should play a leading role in efforts to ensure that the decision is placed in appropriate context and does the least damage possible to the IPR of American companies internationally.*

Increasing coordination among the Executive Office of the President (to include the National Economic Council, the National Security Council, the Office of Management and Budget, the Office of Science and Technology Policy, and the Office of the United States Trade Representative), the Department of Justice, the Department of Homeland Security, the Department of Commerce (to include the U.S. Patent and Trademark Office and the National Institute of Standards), the Department of State, and the Federal Trade Commission, to ensure the consistency of our domestic and international IP protection and enforcement policies is more essential now than ever as countries around the world accelerate implementation of ever more sophisticated discriminatory behind-the-border measures to compel transfer of American and other foreign-held IP.

Without unprecedented levels of coordination, there is an exponentially growing risk that foreign governments will justify their actions to undermine or expropriate U.S.-held IP based on real or perceived actions by the U.S. government.

b) How should that response differ from the U.S. response to violations by other countries which may create different and more nuanced problems related to American intellectual property protection?

Answer: *China is currently one of our largest trading partners and China and India represent two of the most promising potential markets for U.S. exports as their economies continue to evolve and their people demand and can afford to purchase goods and services that are more technologically advanced. It is therefore particularly important to pursue a sustained, multi-pronged approach to ensure that they take meaningful steps to continue improving their IP laws, and – more importantly – effectively enforce their laws.*

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You are right to suggest that each nation poses a different threat that requires tailored strategies and solutions. However, at this point no country, including the United States, can say it is effectively dealing with this challenge. The problem is rampant and enforcement across the board has been either weak or non-existent. And yet, there as signs of progress here in the United States, within the European Union and in developing nations who increasingly understand protecting IP is a fundamental element of having a successful economy.

Written Questions of Senator Grassley for Judiciary Committee Hearing on Oversight of the Office of the Intellectual Property Enforcement Coordinator

Questions for Panel II Witnesses

1. Have you had an opportunity to review the Joint Strategic Plan on Intellectual Property Enforcement ("the Plan") and what are your thoughts? What areas of the Plan could be improved?

   Answer: *In the short time she has held the position of Intellectual Property Enforcement Coordinator, Ms. Espinel has led an effort across the executive branch to produce a thoughtful and ambitious national strategy. Both the Administration and the Congress should build upon this important first step. We are particularly pleased that the plan recognizes the need to address IP theft on the internet, including identifying foreign pirate websites as part of the Special 301 Process. We recognize that this Plan is just a starting point and most of the recommendations it contains are currently in conceptual form. In the coming weeks we look forward to working with the IPEC to gain a better understanding of the specifics of the proposal and how the administration plans to achieve these objectives. We are also eager to review the suggested legislative recommendations from Ms. Espinel's office when they are released.*

2. What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the United States?

   Answer: *There are a multitude of federal agencies responsible for some component of IP enforcement. At the same time IP enforcement must compete with many other critical priorities at each of these agencies. As a result, federal agencies have not been able to develop and implement clear, bold plans to measurably address the problem and personnel are often unable to dedicate sufficient man hours and/or develop necessary specialized expertise to effectively carry out IP enforcement. The PRO IP Act attempted to address this by authorizing additional Justice Department personnel focused specifically on IP crimes. Congress should look to extend the model laid out in the PRO IP Act to provide IP-dedicated personnel at other agencies, such as Customs Border Protection and Immigration and Customs Enforcement. And, the Congress should provide expanded funding to ensure the Office of the Intellectual Property Enforcement Coordinator has the necessary resources to ensure that each of the agencies responsible for a piece of the enforcement puzzle are effectively working together.*

3. What do you see as the greatest impediment to effective enforcement of intellectual property laws abroad?

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Answer: *Despite increased diplomatic efforts by our government, there remains a lack of cooperation and willingness by foreign governments to effectively enforce the IP rights of U.S. businesses operating abroad. To address IP theft abroad, Congress should provide the administration with additional tools – both carrots and sticks – to help our trading partners improve their IP enforcement regimes and implement meaningful consequences for countries that fail to do so.*

4. Have efforts to improve coordination between government agencies been successful so far? What do you see to be are the biggest obstacles to a smooth working relationship between government agencies?

   Answer: *Yes, we believe that the Congress and the administration have established an effective mechanism in the IPEC, who – as an IPR focal point within the government – can substantially improve coordination. The establishment of the IPEC not only serves as a basis for communication across agencies, but more importantly has increased awareness at the highest levels of government that IPR enforcement is a White House priority, which helps foster agencies' willingness to act in concert.*

   Establishing the IPEC has helped overcome the biggest obstacle for coordinated action – inertia. We are pleased that there is an unprecedented willingness by the agencies to work together to address this national challenge. We trust the IPEC can continue to serve as an effective intermediary who can pull agencies together to work out areas of jurisdiction and common action. The remaining obstacle is to maintain this intensified focus to ensure that this sense of common purpose across agencies produces clear results and does not lapse.

5. The PRO IP Act provided for a number of additional resources, including U.S. Attorneys and FBI agents, to bolster our law enforcement efforts against copyright infringement and piracy. Have those resources been effective?

   Answer: *The GIPC is pleased that the enactment of the PRO IP Act and subsequent appropriations made by Congress has allowed the Justice Department to recently hire additional agents and prosecutors. We believe that these resources can have a significant impact going forward. However, because these resources were just recently allocated, it is difficult to assess their efficacy to date.*

6. In your opinion, has the Obama Administration been supportive of IPEC and the goals of the PRO IP Act?

   Answer: *We believe that the Obama Administration has generally been a strong advocate for more effectively enforcing intellectual property rights, consistent with the goals of the PRO IP Act. We commend the Vice President for his consistent efforts on behalf of the Administration to ensure the success of the IPEC and ensure this issue is a*

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Cabinet-level priority for each of the agencies. We strongly believe that going forward the Administration and Congress must ensure that the IPEC has the requisite resources and authority – including full-time staff – to implement and build upon this initial plan.

7. How effective has the National Intellectual Property Rights Coordination Center ("IPR Center") been the effort to combat copyright infringement and piracy? Are you working with the IPR Center? Can the IPR Center's efforts be improved, and if so, how? Do you believe the IPR Center has enough resources?

   Answer: *The IPR Center has ramped up its efforts to combat counterfeiting and piracy. Thanks largely to ICE's leadership, industry has come to see the IPR Center as the central clearinghouse for counterfeiting and piracy leads. With the recent expansion of the FBI's presence at the IPR Center we expect it to be even more successful in the future. The IPR Center recently announced a joint effort which led to the shutting down of nine rogue websites that were responsible for facilitating blatant copyright theft. This is an important step in the fight against counterfeiting and piracy and we hope the IPR Center will continue to expand this effort. The Chamber and its members work closely with the IPR Center. Congress should ensure that the IPR Center has the resources it needs to expand their efforts to match the growth of the problem. We look forward to the day when the IPR Center's efforts contribute to disrupt the distribution of billions of dollars of illicit products.*

8. How can the private sector better assist government efforts to crack down on intellectual property crimes?

   Answer: *Some in the private sector do not share information with the government, in part, because there is a perception among many in the business community that information they shared with the government was frequently never acted upon. Despite these past experiences, it is important that businesses make a concerted effort to share actionable information with the government going forward.*

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Questions of Senator Tom Coburn, M.D.
"Oversight of the Office of the Intellectual Property Coordinator"
United States Senate Committee on the Judiciary
June 28, 2010

To All Panel II Witnesses

1. **Which country is the biggest violator of American intellectual property rights and laws? Why?**

    a. **I realize the Joint Strategic Plan outlines the fourth critical component of the strategy as enforcing our rights internationally. However, I believe individual countries pose different threats to our rights that necessitate specific responses. From your industry perspective, what do you believe, specifically, should be done by the Intellectual Property Enforcement Coordinator (IPEC) to address the problems created by the country you indicated above as the biggest violator of our rights?**

    b. **How should that response differ from the U.S. response to violations by other countries which may create different and more nuanced problems related to American intellectual property protection?**

Challenges in enforcing IP laws abroad vary widely. Some countries lack effective legal regimes to address IP crimes while others lack the political will to enforce existing IP laws. The impact of copyright infringement also differs depending on the location. In some countries, widespread piracy significantly reduces consumer demand for legitimate content. Other countries serve as a safe-haven for the manufacture and worldwide export of pirated goods.

In terms of specific examples of particular countries where we face distinct challenges, I would direct you to the submission made by the International Intellectual Property Alliance (IIPA) to the U.S. Trade Representative (USTR) as part of USTR's Annual Special 301 process (which can be found at: http://www.iipa.com/2010_SPEC301_TOC.htm). In its filing, IIPA provides detailed information and recommendations to address the significant IP enforcement challenges facing the copyright industries in a number of countries.

The U.S. Government has multiple tools it can employ to encourage countries to improve their IP enforcement regimes. For example, the federal government should continue to adopt a high standard for IP in its international trade negotiations. This will be especially important as USTR works to negotiate the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership (TPP) agreement. The U.S. Government should also stress to foreign leaders the importance of strong IP protection to their bilateral relationships – specifically in those on the USTR Special 301 list. As in domestic IP enforcement, coordination among the various agencies with jurisdiction over international IP efforts is vital and to this end the Joint Strategic Plan provides an ambitious blueprint to strengthen the government's enforcement activities.

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Written Questions of Senator Grassley for Judiciary Committee Hearing on Oversight of the Office of the Intellectual Property Enforcement Coordinator

Questions for Panel II Witnesses

1. **Have you had an opportunity to review the Joint Strategic Plan on Intellectual Property Enforcement ("the Plan") and what are your thoughts? What areas of the Plan could be improved?**

   The Plan represents a positive step forward in achieving a higher level of cross-agency collaboration on intellectual property (IP) issues, and does an excellent job in cataloging many of the IP enforcement challenges we currently face. We are particularly encouraged that the Plan calls for greater cooperation with the business community in reducing the spread of online infringement and recommends a comprehensive initiative to pursue foreign-based websites that infringe and steal American IP.

   The Plan also provides a good framework for IP owners to work closely with the IPEC to combat copyright infringement domestically and abroad, and we look forward to offering our Company's expertise as appropriate.

   With respect to areas where the Plan could be improved, it currently suggests that U.S. Government to work with search engine operators, advertising brokers and payment processors to "explore methods to prohibit paid advertising for online illegal pharmaceutical vendors." The U.S. Government should consider a similar effort to engage with intermediaries including advertisers and payment processors that participate with pirate sites that offer infringing content or circumvention devices. And as the IPEC undertakes a review of current laws to determine if legislative changes are necessary, a full evaluation is warranted of the penalties for pirate streaming.

2. **What do you see as the greatest impediment to effective enforcement of the intellectual property laws here in the United States?**

   Cases involving online IP infringement are often complex and require a deep understanding of the multifaceted and intricate online ecosystem. In order to successfully prosecute complicated online infringement violations, law enforcement officials need to better understand how to identify appropriate targets and how to build strong cases. Our industry is already very active in identifying and referring cases for prosecution as appropriate, and we stand ready to offer our services in public training programs or elsewhere pursuant to DOJ guidelines to ensure prosecutors have the background and resources they need to try these cases.

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3. **What do you see as the greatest impediment to effective enforcement of intellectual property laws abroad?**

   Challenges in enforcing IP laws abroad vary widely. Some countries lack effective legal regimes to address IP crimes while others lack the political will to enforce existing IP laws. The impact of copyright infringement differs depending on the location. In some countries, widespread piracy significantly reduces consumer demand for legitimate content. Other countries, like China, serve as a safe-haven for the manufacture and worldwide export of pirated goods.

   One specific example of a global challenge we face in the online environment is the insufficiency or lack of availability of WHOIS data, which can make it difficult to identify the owners and operators of online pirate websites. Even where strong laws exist, enforcement efforts can be stymied if accurate data regarding who owns and operates websites is not being maintained as required pursuant to registry agreements, or is not accessible.

4. **Have efforts to improve coordination between government agencies been successful so far? What do you see to be are the biggest obstacles to a smooth working relationship between government agencies?**

   Coordination among government agencies has increased, but information sharing among the various IP agencies can still be enhanced significantly. We hope implementation of the Plan will result in more information sharing, which will in turn improve the success of enforcement efforts overall.

5. **The PRO IP Act provided for a number of additional resources, including U.S. Attorneys and FBI agents, to bolster our law enforcement efforts against copyright infringement and piracy. Have those resources been effective?**

   Because of the amount of time required to investigate and prosecute IP crimes, it is still too early to determine whether the resources provided by the PRO IP Act have made a significant difference. However, enforcement agencies are increasingly reaching out to the private sector and accepting referred cases, which indicates that the additional resources are spurring an increase in enforcement activity. In order to measure improved effectiveness, the commitment to these resources must be multi-year and sustained.

6. **In your opinion, has the Obama Administration been supportive of IPEC and the goals of the PRO IP Act?**

   Yes. President Obama and Vice President Biden have provided strong and consistent leadership in support of the IPEC's work to promote and cross agency collaboration and increased enforcement of intellectual property laws. We encourage the Administration and Congress to continue to provide the IPEC with the resources and support necessary to

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implement her ambitious blueprint for further strengthening the government's coordinated IP enforcement activities.

7. **How effective has the National Intellectual Property Rights Coordination Center ("IPR Center") been the effort to combat copyright infringement and piracy? Are you working with the IPR Center? Can the IPR Center's efforts be improved, and if so, how? Do you believe the IPR Center has enough resources?**

   Working through the MPAA to refer cases, our industry regularly provides the IPR Center with critical information regarding large-scale infringement activity. As the government steps up its efforts to enforce and prosecute IP crimes, the IPR Center will likely need additional resources to ensure a functional and coordinated effort among all relevant agencies.

8. **How can the private sector better assist government efforts to crack down on intellectual property crimes?**

   Warner Bros. does everything it can to help combat the piracy of our motion pictures, television programs, games and other entertainment products, and we spend tens of millions of dollars annually directly on our own anti-piracy activities in addition to the millions spent on the anti-piracy work of our trade association, the MPAA. We work actively through the MPAA to provide law enforcement with the most accurate information possible and strive to assist the government by speaking with one voice, prioritizing referrals and providing deep and consistent supporting information. We stand ready to continue to assist the government in these issues which are so crucial to our industry in any way that is deemed appropriate and helpful.

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SUBMISSIONS FOR THE RECORD

STATEMENT OF
PAUL E. ALMEIDA,
PRESIDENT,
DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on

OVERSIGHT OF THE OFFICE OF THE
INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

June 23, 2010

Good morning, Chairman Leahy, Ranking Member Sessions, and distinguished Members of the Committee. My name is Paul Almeida. I am the President of the Department for Professional Employees (DPE), a coalition of 23 national unions affiliated with the AFL-CIO. I am honored to speak today on behalf of the more than four million professional and technical people whom our affiliated unions represent.

On their behalf, permit me to commend and thank you. Many of you participated in passing the Prioritizing Resources and Organization for Intellectual Property Act of 2008, the PRO IP Act. Many of you have worked on a bipartisan basis with business and labor over many years to combat digital theft, piracy of intellectual property, and counterfeiting. I am pleased to acknowledge your expertise and effectiveness. Without them, there would be no Intellectual Property Enforcement Coordinator for Congress to oversee.

My message is simple. Intellectual property equates to jobs and income for American workers. Theft of intellectual property raises unemployment and cuts income.

For too many workers in the United States today, both jobs and income are hard to come by. If the United States allows attacks on intellectual property to go unanswered, it puts good livelihoods at risk.

Intellectual property fuels the most vibrant sectors of the United States economy. Permit me to focus on two examples. The first involves the arts, entertainment and media. The second focuses on manufacturing.

With regard to the arts, entertainment, and media industries, I am especially pleased to deliver today a statement that the Executive Council of the American Federation of Labor and Congress of Industrial Organizations, the AFL-CIO,

unanimously adopted in March. I would ask that this statement, "Piracy Is a Danger to Entertainment Industry Professionals," be made a part of the hearing record.

As you will see, the Department for Professional Employees proposed this statement on behalf of its nine affiliated unions representing professionals, both performing artists and craft workers, in the arts, entertainment, and media industries. Those unions include the Actors' Equity Association, the American Federation of Musicians, the American Federation of Television and Radio Artists (AFTRA), the American Guild of Musical Artists, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts (IATSE); the International Brotherhood of Electrical Workers, the Office and Professional Employees International Union, the Screen Actors Guild (SAG), and the Writers Guild of America, East (WGAE).

At the core of this statement is a recognition that digital theft imperils jobs and income. In the words of the statement, "Combating online theft and the sale of illegal CDs and DVDs is nothing short of defending U.S. jobs and benefits." Estimates of the number of jobs lost to piracy *in this one sector alone* run to the hundreds of thousands. While exact numbers are difficult to find, there can be no question about the magnitude of the problem for the entire United States: billions of dollars in lost revenues for U.S. industries and millions of lost U.S. jobs.

Online access continues to accelerate and expand. As it does so, it increasingly displaces traditional models for distributing content and thus heightens the potential for digital theft. The efforts of SAG, AFTRA and the Motion Picture Association of

America to conclude an international treaty that will protect the economic and moral rights of audio-visual performers will provide additional support in this battle.

The losses of income arise because entertainment professionals depend on compensation at two points: first when the professionals do the work, and later when others use and reuse the intellectual property that the professionals created. In the words of the statement:

"Entertainment professionals may work for multiple employers on multiple projects and face gaps in their employment. Payment for the work they have completed helps sustain them and their families through underemployment and unemployment. For AFTRA recording artists in 2008, 90 percent of income derived from sound recordings was directly linked to royalties from physical CD sales and paid digital downloads. SAG members working under the feature film and TV contract that same year derived 43 percent of their total compensation from residuals. Residuals derived from sales to secondary markets funded 65 percent of the IATSE [Motion Picture Industry] Health Plan and 36 percent of the SAG Health and Pension Plan. WGAE-represented writers often depend on residual checks to pay their bills between jobs; in some cases, the residual amounts can be as much as initial compensation. Online theft robs hard-earned income and benefits from the professionals who created the works."

My second example is manufacturing. Among the unions affiliated with the Department for Professional Employees are the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Federation of Professional and Technical Engineers, and the United Steelworkers. Again, the estimates of losses from counterfeiting run to billions of

dollars. Again, the victims include workers, who face lost jobs and income. From auto parts to circuit breakers, counterfeiting endangers all of us with unreliable products. It then taints the original products with the inferior quality of the counterfeits. As with the arts, entertainment, and media industries, the consequences include a diminished incentive to invest and a downward spiral for U.S. workers and our economy.

So digital theft and counterfeiting threaten U.S. jobs and incomes. That's the bad news. The good news is that you have taken action – and had the wisdom to confirm Victoria Espinel to fill the position that you created. I have witnessed first-hand the energy, expertise, and intellect that she has brought to reaching out to business and labor. I have seen the urgency she brings to addressing the crucial dilemmas that you identified. I am hopeful that the workers whom I have the honor to represent today will benefit from her work coordinating federal efforts and developing a strategic plan. The leaders of the unions affiliated with the Department for Professional Employees and I look forward to seeing the fruits of your and her labors.

Permit me to add a final observation. Arts, entertainment, and media, and aerospace are among the all-too-few U.S. industries that generate substantial trade surpluses in the midst of growing U.S. trade deficits. As a former president of the International Federation of Professional and Technical Engineers, I worked closely with its Local 2001, the Society of Professional Engineering Employees in Aerospace, or SPEEA.

Professionals in both arts, entertainment, and media, and in aerospace, organized in labor unions at rates far above the private sector generally. These facts belie the ill-founded and thoughtlessly repeated misconception that unions somehow undercut

industry competitiveness. Years of research at the Department for Professional Employees show that professional and technical people want a chance to do their jobs right. The unions that these people organize help them to achieve that chance. With innovation through intellectual property, heavily unionized industries not only compete globally, but enable the United States to lead the world.

Thank you for inviting me to participate in this hearing. I would be happy to answer any questions you may have.

AFL-CIO Executive Council Statement
Orlando, Florida
March 2, 2010

PIRACY IS A DANGER TO ENTERTAINMENT PROFESSIONALS

Submitted by the Department for Professional Employees, AFL-CIO (DPE) for the Arts, Entertainment and Media Industries Unions Affiliated with DPE

Motion pictures, television, sound recordings and other entertainment are a vibrant part of the U.S. economy. They yield one of its few remaining trade surpluses. The online theft of copyrighted works and the sale of illegal CDs and DVDs threaten the vitality of U.S. entertainment and thus its working people.

The equation is simple and ominous. Piracy costs the U.S. entertainment industry billions of dollars in revenue each year. That loss of revenue hits directly at bottom-line profits. When profits are diminished, the incentive to invest in new films, television programs, sound recordings and other entertainment drops. With less investment in future works comes less industry activity that directly benefits workers: fewer jobs, less compensation for entertainment professionals and a reduction in health and pension benefits.

Combating online theft and the sale of illegal CDs and DVDs is nothing short of defending U.S. jobs and benefits. In the case of music, experts estimate that the digital theft of sound recordings costs the U.S. economy $12.5 billion in total output and costs U.S. workers 71,060 jobs.[1] In the motion picture industry, piracy results in an estimated $5.5 billion in lost wages annually, and the loss of an estimated 141,030 jobs that would otherwise have been created.[2]

Illegal CDs and DVDs have afflicted even live theatre. Websites sell illegal DVDs of Broadway shows, which reduces sales of tickets and authorized CDs and DVDs. Selling illegal CDs or DVDs of plays, musicals and other shows not only steals the work of the entertainment professionals, but makes quality control impossible.

Most of the revenue that supports entertainment professionals' jobs and benefits comes from the sale of entertainment works including sales in secondary markets—that is, DVD and CD sales, legitimate downloads, royalties and, in the case of TV shows or films, repeated airings on free cable or premium pay television. Roughly 75 percent of a motion picture's revenues comes after the initial theatrical release, and more than 50 percent of scripted television production revenues are generated after the first run.

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[1] Siwek, Stephen. (8/21/07). *The True Cost of Sound Recording Piracy to the U.S. Economy*. Retrieved from: http://www.ipi.org/IPI/IPIPublications.nsf/PublicationLookupFullText/5C2EE3D2107A4C228625733E0053A1F4

[2] Siwek, Stephen. (9/20/06). *The True Cost of Sound Recording Piracy to the U.S. Economy*. Retrieved from: http://www.ipi.org/IPI/IPIPublications.nsf/PublicationLookupFullText/E274F77ADF58BD08862571F8001BA6BF

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In most work arrangements, a worker receives payment for his or her effort at the completion of a project or at set intervals. The entertainment industry, however, operates on a longstanding unique business model in which compensation to workers—pay and benefit contributions—comes in two stages. Film, television and recording artists, as well as film and television writers, receive an initial payment for their work and then residuals or royalties for its subsequent use. Those payments also generate funds for their health and pension plans. The below-the-line workers, the craft and technical people who manage equipment, props, costumes, makeup, special effects and other elements of a production, also receive compensation for their work, while payment for subsequent use goes directly into their health and pension plans.

Motion picture production is a prime example. The professionals involved with the initial production of a film—the actors who perform, the craftspeople behind the scenes, the musicians who create the soundtrack and the writers who craft the story—each receive an initial payment for their work. When that work is resold in the form of DVDs or CDs, or to cable networks or to airlines or in foreign sales, a portion of these "downstream revenues" are direct compensation to the film talent or recording artists who were involved in those productions or recordings.

These residuals help keep entertainment professionals afloat between projects. Entertainment professionals may work for multiple employers on multiple projects and face gaps in their employment. Payment for the work they have completed helps sustain them and their families through underemployment and unemployment. For AFTRA recording artists in 2008, 90 percent of income derived from sound recordings was directly linked to royalties from physical CD sales and paid digital downloads. SAG members working under the feature film and TV contract that same year derived 43 percent of their total compensation from residuals. Residuals derived from sales to secondary markets funded 65 percent of the IATSE MPI Health Plan and 36 percent of the SAG Health and Pension Plan. WGAE-represented writers often depend on residual checks to pay their bills between jobs; in some cases, the residual amounts can be as much as initial compensation. Online theft robs hard-earned income and benefits from the professionals who created the works.

There are tools that can be used to fight digital piracy. Internet service providers (ISPs) have the ability to find illegal content and remove or limit access to it. To be truly effective, these sanctions must depart from the costly and ineffective legal remedies traditionally employed to counter theft of copyrighted material. The European Union is developing and implementing model policies for which the trade union movement is providing strong and critical support. These policies illustrate that there are answers that make sense in a digital age.

At the core of any effort to combat digital theft is reasonable network management, which should allow ISPs to use available tools to detect and prevent the illegal downloading of copyrighted works. With respect to lawfully distributed content, ISPs should not be allowed to block or degrade service so that both consumers and copyright would be protected.

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The unions of the AFL-CIO that represent professionals in the Arts, Entertainment and Media Industries (AEMI) include Actors' Equity Association (AEA), the American Federation of Musicians (AFM), the American Federation of Television and Radio Artists (AFTRA), the American Guild of Musical Artists (AGMA), the International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts (IATSE), the International Brotherhood of Electrical Workers (IBEW), the Office and Professional Employees International Union (OPEIU), the Screen Actors Guild (SAG) and the Writers Guild of America, East (WGAE). The AEMI unions are wholly in support of the widest possible access to content on the Internet and the principles of net neutrality, so long as intellectual property rights—and the hundreds of thousands of jobs that are at stake—are respected.

Some would like to portray the debate over Internet theft as one in which a few wealthy artists, creators and powerful corporations are concerned about "giving away" their "product" because they are greedy and cannot change with the times to create new business models. The hundreds of thousands of people represented by the AEMI unions of the AFL-CIO are a testament to the falsity of that proposition.

Online theft and the sale of illegal CDs and DVDs are not "victimless crimes." Digital theft costs jobs and benefits. It is critical, at this important moment in the evolution of the Internet and potential Internet policy, for union members and leaders to publicly and visibly engage in a sustained effort to protect members' livelihoods, the creation and innovation that are the hallmark of their work and the economic health and viability of the creative industries in this country. The AEMI unions and other unions in U.S. entertainment stress that pirated content is devastating to the entertainment professionals who create the underlying works.

The AFL-CIO strongly supports the efforts of the AEMI unions and the Department for Professional Employees, AFL-CIO, to combat piracy. It commends their work with government and industry to develop workable solutions to protect the interests of their members. The AFL-CIO urges its affiliate unions to educate their members about the adverse impact of piracy; to support efforts to ensure that government officials and lawmakers are aware of, and support the protection of, entertainment industry jobs that will be lost to online theft; to encourage their members to respect copyright law; and to urge their members, as a matter of union solidarity, to never illegally download or stream pirated content or purchase illegal CDs and DVDs.

# # #

Written Statement of Caroline Bienstock
President and Chief Executive Officer
Carlin America, Inc.

Before the Senate Judiciary Committee

Oversight of the Office of the Intellectual Property Enforcement Coordinator

June 24, 2010

Good morning, Chairman Leahy, Ranking Member Sessions and Members of the Committee. I am Caroline Bienstock, President and Chief Executive Officer of Carlin America, Inc. ("Carlin America"). Carlin America was founded in 1966 by my father, Freddy Bienstock. I have been with the company since 1989.

Carlin America represents the history of American Popular Music at its finest. The Carlin catalog includes more than 150,000 titles, including such song classics as Body and Soul, Chantilly Lace, Dedicated To the One I Love, Fever, Happy Together, I Got You (I Feel Good), Malaguena, Manhattan, The Twist, Under the

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Boardwalk and What A Wonderful World, as well as the musical scores of Cabaret, Company and Follies.

I am also a Board Member of the National Music Publishers' Association ("NMPA"). For more than 80 years, NMPA has been the principal trade association representing the interests of over 2,500 music publishers and their songwriter partners in the United States.

A music publisher is a company or individual that represents songwriters by promoting songs, licensing the use of songs, and protecting the property rights of the songwriter. Put simply, the role of the music publisher is to represent the interests of the songwriter and the song.

Thank you for inviting me to testify today about Oversight of the Office of the Intellectual Property Enforcement Coordinator (IPEC). NMPA strongly supported both the creation of the IPEC by the Pro-IP Act of 2008, and the appointment of Victoria Espinel in this position. While this is a hearing about the IPEC Coordinator and the development of a Joint Strategic Plan for intellectual

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property enforcement, I must also thank you, Mr. Chairman, and the Members of this committee for all you have done to help music through your efforts to protect intellectual property. You have long recognized that the property rights in intellectual property deserve no less protection than physical property. It is an important value, and one that is relevant to this hearing.

Many organizations, corporations, and individuals have already submitted written comments regarding the development of a Joint Strategic Plan for intellectual property enforcement to the Honorable Victoria Espinel, the United States Intellectual Property Enforcement Coordinator. The comments are detailed and offer thoughtful recommendations. I do not have time to address all of the issues raised in the comments, but I want to join and support, in particular, the issues, concerns and recommendations submitted respectively by the International Intellectual Property Alliance, the Copyright Alliance, and six stakeholder associations identified as the Creative Community Organizations. The groups in the Creative Community Organizations include the American

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Federation of Television and Radio Artists (AFTRA), the Directors Guild of America (DGA), the International Alliance of Theatrical and State Employees (IATSE), the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and the National Music Publishers' Association (NMPA).

Online digital theft has had, and continues to have, a profound negative economic impact on the music publishing industry, as it has on all industries that rely on copyright protection and enforcement.

Despite the extensive copyright regime for songwriters and music publishers, online digital theft is rampant. Millions of copyrighted songs have been and continue to be downloaded illegally from the Internet. Every illegal download or stream means that a copyright owner is denied compensation for his or her creative work. This theft is no different in concept than the burglary of a home, the pirating of a master work or shoplifting from a local store. Each such activity is unlawful.

Financial losses from the online theft of music are enormous:

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- Data collected by the International Federation of Phonographic Industries ("IFIP") shows that worldwide, more than 40 billion songs were illegally downloaded via file sharing in just 2008, which translates into a global online music piracy rate of more than 95%.[1]
- IFPI data also shows that global recorded music sales dropped precipitously from $30 billion in 2000 to $18.4 billion in 2008.[2]
- An analysis by the Institute for Policy Innovation concludes that global music piracy causes $12.5 billion of economic losses every year, 71,060 U.S. jobs lost, a loss of $2.7 billion in workers' earnings, and a loss of $422 million in tax revenues, $291 million in personal

[1] 2 IFPI, "Digital Music Report 2009," at 22, available at http://ww.ifpi.org/content/section_resources/dmr2009.html.

[2] Id.

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income tax and $131 million in lost corporate income and production taxes.[3]

- According to the Bureau of Labor Statistics, songwriter mechanical royalty income dropped 32% between 2003 and 2006.

Thus, the authorized transmission of copyrighted works, including illegal peer-to-peer (P2P) file sharing of copyrighted musical works, continues to grow at an unprecedented level. To safeguard the sanctity of copyrighted works, government must substantially increase their efforts to combat online digital theft.

Songwriters and music publishers, in particular, are especially vulnerable to harm. Songwriters generally do not have the option of earning money from ancillary income streams like live performance, acting, merchandise, or endorsements. The songwriter and music publisher must rely on the traditional sources of revenue for the use of the song, even while the marketplace is changing every day.

[3] www.ipi.org

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Effective intellectual property protection, therefore, is inextricably linked to the survival of the music publishing business. Without it, publishing companies would not risk investing in catalogs, new writers or new songs; existing jobs would be lost; and new jobs would not be created – all to the detriment of the American economy and our culture, of which music is a central part.

As a general matter, the Committee should focus its attention on how the IPEC will coordinate a more effective and efficient intellectual property enforcement effort by means of the Strategic Plan. The IPEC should promote a program that is flexible, comprehensive, and balanced in its approach.

While there are numerous worthwhile suggestions incorporated within the stakeholders' comments, I believe the Committee and IPEC must focus on and address four areas of specific concern:

- First, the IPEC office must strive for greater coordination between government agencies, on the one

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hand, and between government and private industry on the other. Presently, there is less than desirable inter-agency coordination. Interaction between agencies like the Departments of Justice, Homeland Security, Commerce, and Customs is essential for improved and effective enforcement, both in the United States and in foreign countries. Just as important is developing better interaction between those in government engaged in criminal and civil copyright enforcement actions, and those in the private sector directly impacted by those enforcement actions. Private industry would gain by better understanding the status of ongoing enforcement actions, and the process and procedure for such actions.

- Second, the US government should promote adoption of stronger and more uniform foreign copyright laws, and improved international cooperation and judicial process. Copyright owners in the United States often find it remarkably frustrating when trying to enforce

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their copyrights abroad. Judicial process should be streamlined and expansion of extraterritorial jurisdiction should be seriously considered. We should not accept the status quo whereby copyright infringers, especially in the digital and wireless worlds where online theft proliferates, side-step liability by escaping to foreign jurisdictions that are proponents or standard bearers of weak copyright law. This approach will sometimes necessitate negotiating or re-negotiating bi-lateral or multi-lateral trade agreements and mutual assistance treaties.

- Third, we must make education a top priority. The IPEC should focus on coordinating domestic anti-theft educational initiatives for users of all ages, and for corporations of all sizes. The IPEC should also provide increased and better coordinated training for those engaged directly in the enforcement process – whether in government or in private industry.

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- Fourth, adequate funding is imperative. Congress must fund initiatives that will improve education, cooperation, and enforcement throughout the copyright industries. Simply put, without proper funding, the ideas and goals set forth in the Strategic Plan will be unattainable.

As we move further into the digital and wireless age, music publishing has a chance to flourish, but only if combating online theft remains a top priority of our government. Cooperation, education, and modernization of the entire copyright enforcement process will ensure success – but only by means of coordinated and effective measures undertaken by the IPEC office and other agencies of government, in coordination and cooperation with the private sector.

The music publishing community is willing to work closely with this Committee and the IPEC office to ensure that copyright enforcement measures are enhanced and streamlined. If Congress properly funds the initiatives, and seriously considers enacting

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and/or implementing the proposals submitted to IPEC in a serious manner, the scourge of online music theft will be minimized, and music will flourish well into the foreseeable future. And most importantly, songwriters will continue to write the songs that are so dear to those on this Committee and to the rest of the country.

I thank you again for this opportunity to testify, and look forward to answering your questions.

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June 23, 2010

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

The Copyright Alliance would like to thank you for conducting today's hearing on "Oversight of the Office of U.S. Intellectual Property Enforcement Coordinator." We appreciate your leadership and years of support of intellectual property rights that led to the creation of the Office of the United States Intellectual Property Enforcement Coordinator and the Pro-IP Act.

The Copyright Alliance, in response to the Office of the USIPEC's request for public comment, submitted comments on March 24th strongly supporting the Obama Administration's effort to increase enforcement of copyright owners' rights while emphasizing the importance of education in helping individuals understand the importance of copyright. We ask that our 23-page filing, outlining the significant contributions of copyright owners to the U.S. economy, be submitted for the record.

The Copyright Alliance believes that copyright law promotes creativity and job creation and strengthens the U.S. economy. As such, we have also attached copyright facts and figures from each of the 50 states.

Those who create, render, and publish copyrighted works rely on the copyright law and its enforcement, for their creative and financial success. Without it, these creators would likely cease to exist, or at the very least, cease to produce these important works that are enjoyed by billions of people around the world. We are committed to promoting the cultural and economic benefits of copyright, providing information and resources on the contributions of copyright, and upholding the contributions of copyright to the fiscal

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health of this nation and for the good of creators, owners and consumers around the world.

We thank you again for your continued strong support of intellectual property rights and stand ready to work with the Committee and the USIPEC to achieve our shared goals.

Sincerely,

Patrick Ross
Executive Director
Copyright Alliance

cc: Sen. Jeff Sessions, Ranking Member, Committee on the Judiciary

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TO: Victoria Espinel, U.S. Intellectual Property Enforcement Coordinator and Colleagues
Office of Management and Budget, Executive Office of the President

RE: Coordination and Strategic Planning of the Federal Effort Against Intellectual Property Infringement: Request of the Intellectual Property Enforcement Coordinator for Public Comments Regarding the Joint Strategic Plan

DATE: March 24, 2010

This filing is in response to the U.S. Intellectual Property Enforcement Coordinator's (USIPEC) request for public comments concerning the development of a strategic plan against intellectual property infringement. See 75 Fed. Reg. 8137-39 (Feb. 23, 2010). The Copyright Alliance appreciates the opportunity to present its views in this important inquiry.

The Copyright Alliance is a nonprofit, nonpartisan 501(c)(4) educational organization dedicated to promoting copyright as an engine for creativity, jobs, and growth. It is a membership organization comprised of individual artists and institutions, including guilds and unions, corporations, trade associations, and sports leagues. Its members come from a full range of creative industries including musical composition, music publishing, performing rights organizations and sound recordings; book, magazine and newspaper publishing; business and entertainment software; visual arts, including illustration, graphic arts and photography; and motion pictures and broadcasting.

The Copyright Alliance has over forty institutional members, consisting of the Advertising Photographers of America; American Federation of Musicians; American Federation of Television & Radio Artists; American Intellectual Property Law Association; American Society of Composers, Authors and Publishers; American Society of Media Photographers; Association of

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American Publishers; Association of Independent Music Publishers; AT&T; Broadcast Music, Inc.; Business Software Alliance; CBS Corporation; Church Music Publishers Association; Directors Guild of America; Entertainment Software Association; Graphic Artists Guild; Langley Productions; Magazine Publishers of America; Motion Picture Association of America; National Association for Stock Car Auto Racing (NASCAR); National Association of Broadcasters; National Collegiate Athletic Association; National Music Publishers' Association; National Basketball Association Properties, Inc.; NBC Universal; News Corporation; Newspaper Association of America; Picture Archive Council of America; PPL and VPL; Professional Photographers of America; Professional School Photographers Association; Recording Industry Association of America; Reed Elsevier; SESAC; Software & Information Industry Association; Sony Pictures Entertainment; Time Warner; Universal Music Group; Viacom; The Walt Disney Company; and Writers Guild of America, West.

The Copyright Alliance was a strong supporter of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Public Law 110-403) or PRO-IP Act, which created the USIPEC position within the Executive Office of the President. The Copyright Alliance in several public statements has also commended the Administration for appointing Victoria Espinel as the first USIPEC, which reflects the Administration's commitment to the enforcement and preservation of U.S. intellectual property rights.

We applaud U.S. President Barack Obama for his recognition of the inherent value of intellectual property to our nation. It was welcome to hear his strong and vocal commitment to intellectual property protection in a recent address, in which he said:

> [W]e're going to aggressively protect our intellectual property. Our single greatest asset is the innovation and the ingenuity and creativity of the American people. It is essential to our prosperity and it will only become more so in this century.[1]

We also applaud U.S. Vice President Joseph Biden, Jr., for his many decades of commitment to copyright owners. The Vice President is forceful on the subject, last year saying of copyright piracy:

> It's pure theft, stolen from the artists and quite frankly from the American people as consequence of loss of jobs and as a consequence of loss of income.[2]

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[1] See "Remarks by the President at the Export-Import Bank's Annual Conference," at the Omni-Shoreham Hotel in Washington, D.C., March 11, 2010 (http://www.whitehouse.gov/the-press-office/remarks-president-export-import-banks-annual-conference).

[2] The Vice President spoke at a dinner at the "Business of Show Business" at the U.S. National Portrait Gallery, April 21, 2010. See the White House press pool report (http://thepage.time.com/pool-report-of-biden-remarks-at-mpaa-event/) and the

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These statements echo the commitment to intellectual property protection espoused by leaders across the Obama Administration.[3]

The Copyright Alliance agrees with the President and the USIPEC that it is critical for all agencies of government, led by the federal government, to recognize the key role intellectual property (IP) plays in the U.S. economy, and that these agencies protect IP accordingly. The breadth of IP's importance is reflected in the fact that so many U.S. government agencies in both the Executive and Legislative branches are critical in ensuring the

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summary of the address on the Copyright Alliance blog (http://blog.copyrightalliance.org/2009/04/live-from-business-of-show-business-2-vp-biden-and-the-administrations-commitment-to-ip-protection/).

[3] The number of strong endorsements of intellectual property and enforcement made by Obama Administration officials is too large to list in its entirety, but we will highlight a few: 1) President Obama addressing a Town Hall Meeting in Elyria, Ohio, January 22, 2010 (http://www.whitehouse.gov/the-press-office/remarks-president-during-town-hall-meeting-elyria-ohio). 2) President Obama speaking on "innovation and sustainable growth" at Hudson Valley Community College in Troy, New York, September 21, 2009 (http://www.whitehouse.gov/the-press-office/remarks-president-innovation-and-sustainable-growth-hudson-valley-community-college). 3) Vice President Biden February 15, 2010, in a statement endorsing the Department of Justice Task Force on Intellectual Property created by U.S. Attorney General Eric Holder (http://www.toplawyernews.com/TopLegalNews/IntellectualPropertyRights/id_102817/). 4) Attorney General Holder speaking at the Rio De Janeiro Prosecutor General's Office in Rio De Janeiro February 24, 2010 (http://www.justice.gov/ag/speeches/2010/ag-speech-100224.html). 5) U.S. Trade Representative Ron Kirk speaking September 30, 2009, before the Global Intellectual Property Center Annual Summit in Washington, D.C. (http://www.ustr.gov/about-us/press-office/speeches/transcripts/2009/september/remarks-ambassador-ron-kirk-global-intelle). 6) USTR Kirk addressing the American Chamber of Commerce in Sao Paulo, Brazil, September 16, 2009 (http://www.ustr.gov/about-us/press-office/speeches/transcripts/2009/september/remarks-ambassador-ron-kirk-american-chamb). 7) David J. Kappos testifying at his nomination hearing to be U.S. Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office before the U.S. Senate Judiciary Committee July 29, 2009 (http://judiciary.senate.gov/pdf/07-29-09KapposTestimony.pdf). 8) U.S. Secretary of Commerce Gary Locke January 13, 2010, in Los Angeles offering "Remarks to Entertainment Industry Officials on Protecting Intellectual Property," (http://www.commerce.gov/NewsRoom/SecretarySpeeches/PROD01_008799). 9) Commerce Secretary Locke December 15, 2009 "Commends European Union and Member State Ratification of WIPO Internet Intellectual Property Treaties" (http://www.commerce.gov/NewsRoom/PressReleases_FactSheets/PROD01_008732). 10) Commerce Secretary Locke October 27, 2009 in Guangzhou, China offering "Remarks at International Forum on Innovation and Intellectual Property" (http://www.commerce.gov/NewsRoom/SecretarySpeeches/PROD01_008556). 11) U.S. General Accountability Office Director of International Affairs and Trade Loren Yager in testimony December 9, 2009 before the U.S. Committee on Oversight and Government Reform Subcommittee on Government Management, Organization, and Procurement (http://www.gao.gov/new.items/d10219t.pdf).

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continued protections of the rights of copyright owners, and recognize the central importance of doing so as a matter of economic necessity.

This submission provides a snapshot of the economic vitality of the creative industries and their importance to the American economy. We do so because that very vitality is greatly threatened by unabated theft, and we will not allow our contributions to the economy and our culture to be dissipated in the face of a threat left unchallenged.

The Copyright Alliance is committed to assisting the USIPEC fulfill the assigned mission to "develop an Administration strategy for enforcement against intellectual property infringement,"[4] including by submitting these comments. Our submission is organized into two parts. Part I provides a literature survey of the latest data on the contributions copyright makes to the U.S. economy and job creation, while also highlighting the harms resulting from infringement of the rights of copyright owners. Part II offers recommendations for improving enforcement of IP rights.

Accompanying this filing is a letter signed by more than 11,000 artists and creators urging the Administration to "pursue policies supportive of the rights of artists and the encouragement of our creative efforts."[5] We are also aware that hundreds of individual artists and creators who are part of the Copyright Alliance *one voi©e* advocacy network are filing personal comments in this proceeding, and they are extremely grateful for the opportunity to be heard.

The Copyright Alliance invites USIPEC and all policymakers focused on IP rights enforcement to engage with it and its members in further discussion of this critical issue.

PART I: Analysis of the Role of Intellectual Property Enforcement in the Performance of the U.S. Economy

A. U.S. Economic Growth Statistics

Copyright industries are significant contributors to the U.S. economy, to its Gross Domestic Product (GDP), and to job creation. In addition, as a whole the economic contribution of copyright industries has been growing, a trend that must be encouraged and fostered in tough economic times.

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[4] See *Federal Register*, February 23, 2010 (Volume 75, Number 35, pages 8137-8139).

[5] That letter was delivered November 16, 2009 to the White House by the Copyright Alliance and several artists and creators. Artists and creators continue to sign the letter on the Copyright Alliance web site, and that total now exceeds 12,000 (http://www.copyrightalliance.org/letter/).

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However, every copyright industry is being hard hit by rampant counterfeiting and piracy, which leads to lost sales and challenges in exports. In some cases, total industry revenues and jobs are in decline.

A recent study by economist Stephen E. Siwek, sponsored by the International Intellectual Property Alliance, demonstrated convincingly that intellectual property is a major contributor to real U.S. economic growth and GDP.[6] The comprehensive study conducted using the same statistical approach of the World Intellectual Property Organization found that in each year from 2004 to 2007, real annual growth rates from both core and copyright industries were more than twice that of the total U.S. economy. In 2004, 2005, 2006 and 2007, the real annual growth rates achieved by both the core and total copyright industries were more than twice the real growth rates achieved by the U.S. economy as a whole.[7]

This significantly positive contribution by copyright industries to real U.S. growth was demonstrated in 2006-2007, the most recent period with current available data. In that period, core copyright industries contributed 22.74% of the U.S. economy's real growth; for the total copyright industries the contribution was 43.06% of total real U.S. growth.[8] The value added in 2007 by core copyright industries was $889.1 billion, approximately 6.44% of U.S. GDP, with the value added for total copyright industries rising to $1.52 trillion, or 11.05% of GDP.[9]

The data on jobs and GDP contributions in the Siwek study produce very similar results to a new study released on March 17, 2010 by the independent Paris-based economics firm TERA Consultants. That study concluded if European leaders do not implement significant changes to improve IP enforcement, by 2015 EU nations could lose 1.2 million jobs and 240 billion euro in retail revenues.[10]

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[6] See "Copyright Industries in the U.S. Economy: The 2003-2007 Report" prepared for the International Intellectual Property Alliance (IIPA) by Stephen E. Siwek of Economists Incorporated, 2009 (http://www.iipa.com/pdf/IIPASiwekReport2003-07.pdf).

[7] Core copyright industries are those that create copyrighted works as their primary product. These industries include the motion picture industry, recording industry, music publishing industry, book, journal and newspaper publishing industry, computer software industry, legitimate theater, advertising, and the radio, television and cable broadcasting industries. Total copyright industries include those whose revenues are dependent on core copyright industries. See World-Information.org, *The Copyright Industry,* http://world-information.org/wio/infostructure/100437611725/100438658710/?ic=100446326381

[8] Siwek, "Copyright Industries in the U.S. Economy: The 2003-2007 Report," IIPA, 2009.

[9] Siwek, "Copyright Industries in the U.S. Economy: The 2003-2007 Report," IIPA, 2009.

[10] See "Building a Digital Economy: The Importance of Saving Jobs in the EU's Creative Industries," prepared for the International Chamber of Commerce/BASCAP

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The TERA Consultants study, titled "Building a Digital Economy: The Importance of Saving Jobs in the EU Industries," found that just as in the U.S., copyright industries in EU countries — the study focused on film, TV, recorded music and software — were found in 2008 to contribute 558 billion euro value-added to the EU economy (4.5%) and 8.5 million jobs (3.8% of total jobs), with non-core but related industries combining to total 862 billion euro value-added (6.9%) and 14.4 million jobs (6.5%).[11]

The TERA Consultants study did not quantify direct losses affecting all creative industries. For example, major industries such as publishing (book, magazine, newspaper and journal publishing) and visual arts (photography and graphic arts) were not included. In addition, some segments of the markets of those industries included also were not calculated, such as total piracy losses experienced by TV sports broadcasters and sports interests throughout the EU. The researchers noted that the addition of these piracy rates would have resulted in even more devastating figures both in job losses and revenues.[12]

An earlier study by Siwek documented total IP industries achieving an annual value-added growth rate twice that of the U.S. GDP as a whole, representing about 20% of U.S. GDP in 2003 but responsible for nearly 40% of its growth. Ten-year growth estimates of U.S. GDP based on this data would be approximately 30% lower without IP industry contributions.[13]

Not surprisingly, an analysis of a decade's worth of data compiled by the U.S. Bureau of Labor Statistics' Bureau of Economic Analysis demonstrates that personal consumption of creative works is steadily rising. Analyzing among other data sales of books, recorded audio, and video media, the National Arts Index 2009 from Americans for the Arts found a growth in expenditures in current dollars from $108 billion in 1998 to $169 billion in 2007, a 44% growth rate. Calculating for inflation at a constant dollar rate, the growth over 10 years is an impressive 16%.[14]

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by TERA Consultants, March 2010 (http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20TERA%281%29.pdf).

[11] See executive summary for TERA Consultants "Building a Digital Economy: The Importance of Saving Jobs in the EU's Creative Industries," March 2010 (http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20Exec%20Summary.pdf.

[12] TERA Consultants "Building a Digital Economy," March 2010.

[13] See "Engines of Growth: Economic Contributions of the U.S. Intellectual Property Industries," prepared for NBC Universal by Stephen E. Siwek of Economists Inc., 2005 (http://www.nbcuni.com/About_NBC_Universal/Intellectual_Property/pdf/Engines_of_Growth.pdf).

[14] See "National Arts Index 2009: An Annual Measure of the Vitality of Arts and Culture in the United States" for Americans for the Arts by Roland J. Kushner of

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The newspaper industry is among the copyright industries affected by online infringement. As described more fully in comments by the Newspaper Association of America, in a study released in December 2009, Attributor, Inc. and the Fair Syndication Consortium tracked 100,000 articles from 157 American newspapers for one month. Over a 30-day period, more than 75,000 unlicensed websites reused U.S. newspaper content, including 112,000 unlicensed near-exact copies reproducing more than 80 percent of the original article.[15]

The photographic industry is subject to significant online infringement, which costs photographers and photo licensing agencies significant revenues every year. Once an image is online, it is often just a right-click away from appearing elsewhere – online or offline – in an unauthorized display. In one study, approximately nine out of every ten images found online were unauthorized.[16]

A follow-up to that study was conducted in which 20,000 images from major stock photo distributors were identified across the Internet. The sample was limited to images not previously licensed for website use and not subject to royalty-free licensing, and infringements were tracked in only three countries, including the United States. Over a four-month period, 1,200 infringements were identified. Eighty percent of those images were licensed by Getty Images, and those images were infringed about one out of every fifteen appearances. Based on that ratio and Getty's total image collection and an average license fee of $600, Getty faced an annual loss in just those three markets of $42 million per year.[17] That is particularly significant when one considers there are thousands of stock image sites across the United States, many of them managed by non-profits such as museums and educational institutions.

A recent follow-up to that study conducted for the Picture Archive Council of America (PACA) by PicScout found that in 2009 levels of infringement were more than three times that of 2006. Of an estimated 5,000,000 or more rights-managed images found on commercial web sites, about 80% were not properly licensed.[18]

Muhlenberg College and Randy Cohen of Americans for the Arts, January 2010 (http://www.americansforthearts.org/information_services/arts_index/001.asp).

[15] See "How U.S. newspaper content is reused and monetized online," Fair Syndication Consortium Research Brief, December 2009 (http://fairsyndication.org/guidelines/USnewspapercontentreusestudy.pdf).

[16] See "Infringements of Stock Images and Lost Revenues," Stock Artists Alliance, September 2007 (http://www.stockartistsalliance.org/files/SAA_Infringements_Report_2007a.pdf).

[17] "Infringements of Stock Images and Lost Revenues," Stock Artists Alliance, September 2007.

[18] PicScout works with stock agencies to track non-legitimate usage of rights-managed images using advanced visual recognition technology. This data was provided by PicScout to PACA on March 19, 2010.

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The online music industry internationally grew about 27% to $4.2 billion in 2009, with digital platforms now totaling about 27% of recorded music sales. Single track downloads globally rose 10% to 1.5 billion units.[19] But that promise is undercut by piracy, with the IFPI estimating that there were more than 40 billion files illegally file-shared in 2008, a piracy rate of 95%.[20] The percent of the U.S. Internet population participating in illegal file-trading reached 19% in 2007, with P2P music sharing continuing to grow among teens.[21] More than one-fourth of U.S. children ages 9 to 14 that year were found to share infringing files on a popular P2P site.[22]

Internet video is in high demand, totaling 22% of global consumer Internet traffic in 2007, with that percentage expected to reach 90% by 2012.[23] The number of U.S. online video viewers reached 137.5 million in 2007, and is expected to reach 190 million by 2012.[24] However, the Organisation for Economic Co-Operation and Development noted that online video piracy is on the rise, from peer-to-peer technology to infringing use of "cyberlockers," often with the infringed video available for instant streaming.[25] Consumers "subscribe" to these sites through credit card transactions on the site, and the sites are also funded by advertisers. These offerings help to make the infringing sites appear legal, and put consumers at risk of identity theft, as the Federal Trade Commission has noted.[26]

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[19] See "IFPI Digital Music Report 2010," International Federation of the Phonographic Industry, January 2010 (http://www.ifpi.org/content/library/DMR2010.pdf).
[20] See "IFPI Digital Music Report 2009," IFPI, January 2009 (http://www.ifpi.org/content/library/DMR2009-summary.pdf).
[21] See "NPD's Digital Music Study and NPD MusicWatch," NPD Group, 2008 (press release at http://www.npd.com/press/releases/press_080226a.html), via "The Digital Economy Fact Book: Tenth Edition," Grant Eskelson, Adam Marcus, and W. Kenneth Ferree, The Progress & Freedom Foundation (PFF), 2009 (http://www.pff.org/issues-pubs/books/factbook_10th_Ed.pdf).
[22] See 2008 survey by NPD Group of 3,376 completed surveys of U.S. parents with kids age 2 to 14 living in the household, focusing on children between the ages of 9 and 14 (press release at http://www.npd.com/press/releases/press_080130b.html) via "The Digital Economy Fact Book: Tenth Edition," PFF, 2009.
[23] See "Cisco Visual Networking Index – Forecast and Methodology, 2007–2012," Cisco, June 16, 2008 (http://newsroom.cisco.com/dlls/2008/ekits/Cisco_Visual_Networking_Index_061608.pdf).
[24] See "The Kelsey Group's US Local Video Forecast (2007-2012)," The Kelsey Group, June 25, 2008 (press release at http://www.kelseygroup.com/press/pr080625.asp).
[25] See "Economic Impact of Counterfeiting and Piracy," Organisation for Economic Co-Operation and Development, June 2008 (http://www.oecd.org/document/4/0,3343,en_2649_33703_40876868_1_1_1_1,00.html).
[26] See "Widespread Data Breaches Uncovered by FTC Probe: FTC Warns of Improper Release of Sensitive Consumer Data on P2P File-Sharing Networks," Federal Trade Commission alert from February 22, 2010. The FTC notified nearly 100 organizations that the private data of their organizations, employees and customers may have

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The business software industry in 2008 saw revenue losses due to unlicensed software at a retail value exceeding $50 billion. Worldwide losses that year increased 11% to $53.0 billion. Worldwide PC software piracy rose in 2008 to 41% of all software, driven by high piracy rates in large markets such as China and India.[27]

A recent study by the Entertainment Software Association (ESA) documents the extent to which online piracy is affecting the computer and video game industry. The ESA study estimated the number of pirated copies made of roughly 200 member game titles through popular peer-to-peer networks (BitTorrent, eDonkey, Gnutella, and Ares) during December, 2009. The total number of successful game downloads detected during this one-month period was 9.78 million – with year-round impact obviously being many times greater. It should also be noted that this figure under-represents the true magnitude of online game piracy as it reflects downloads of a small selection of ESA member titles. In addition, these figures do not reflect illegal downloads that occur from "cyberlockers" or "one-click" hosting sites, which continue to account for high volumes of infringing downloads.[28]

Online piracy has joined physical counterfeiting as a daunting economic challenge to all copyright industries and to the U.S. economy. According to a study conducted for the Institute for Policy Innovation, piracy costs the U.S. economy $58 billion annually in total output, including revenue and related measures of gross economic performance.[29] A conservative estimate of 2005 data from four major U.S. copyright industries – motion pictures, sound recordings, business software and entertainment software/video games – demonstrate at least $25.6 billion in lost revenue. This results in federal, state and local governments forfeiting at least $2.6 billion in tax revenues annually, with $1.8 billion of that total lost personal income taxes and $0.8 billion lost corporate income and production taxes.[30]

B. Exports and International Trade

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been compromised through data breaches caused by use of peer-to-peer file-sharing sites (http://www.ftc.gov/opa/2010/02/p2palert.shtm).

[27] See "Sixth Annual BSA-IDC Global Software 08 Piracy Study," commissioned by the Business Software Alliance, May 2009 (http://global.bsa.org/globalpiracy2008/studies/globalpiracy2008.pdf).

[28] See "IIPA Special 301 Letter to USTR" of February 18, 2010 (http://www.iipa.com/rbc/2010/2010SPEC301COVERLETTER.pdf). The ESA data is cited on pages 11-12.

[29] See "The True Cost of Copyright Industry Piracy to the U.S. Economy," prepared for the Institute for Policy Innovation by Stephen E. Siwek of Economists Inc., October 2007 (http://www.copyrightalliance.org/files/siwekcopyrightpiracy_studypdf.pdf).

[30] Siwek, "The True Cost of Copyright Industry Piracy to the U.S. Economy," IPI, 2007.

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U.S. copyrighted works are valued around the world. U.S. copyright industries historically have posted positive balances of trade with U.S. trading partners. Copyright industries face challenges in other countries, however, when there is insufficient respect for and enforcement of intellectual property rights. U.S. copyright owners, particularly Small and Medium Enterprises (SMEs), do not have the full resources or means to ensure legal markets for U.S. copyrighted works abroad. A proactive approach by all U.S. government agencies is essential in this area.

Sales of U.S. copyrighted works continue to expand overseas. The total core copyright sales in foreign markets increased 8% from $116 billion in 2006 to nearly $126 billion in 2007. Not only are foreign sales of U.S. copyrighted goods on the rise, total foreign sales surpass those of other leading U.S. industries, including aircraft ($95.6 billion), automobiles ($56.8 billion), agricultural products ($48.1 billion), food ($39.4 billion) and pharmaceuticals ($27.9 billion).[31] Total IP industries make up about 40% of the GDP of U.S. exportable products and services, while contributing nearly 60% of the growth of U.S. exportable high-value-add products and services.[32]

The United Nations Conference on Trade and Development (UNCTAD) concluded that "creative industries are among the most dynamic sectors in world trade."[33] UNCTAD found that from 2000 to 2005 creative industries achieved an "unprecedented" annual growth rate in international trade of 8.7%, with the value of total exports in creative goods and services reaching $424.4 billion in 2005. UNCTAD concluded that "[n]owadays in the most advanced countries, the creative industries are emerging as a strategic choice for reinvigorating economic growth, employment and social cohesion."[34]

International trade has a significant impact on SME copyright owners. Just as the digital age empowers these SMEs to reach new international markets, new technologies also enable massive infringement of their works.

There has been a significant growth in the U.S. in what the Americans for the Arts calls "independent artist-entrepreneurs," from 509,000 in 2000 to 680,000 in 2007.[35] Approximately 84% of motion picture and video firms and

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[31] Siwek, "Copyright Industries in the U.S. Economy: The 2003-2007 Report," IIPA, 2009.
[32] Siwek, "Engines of Growth," NBC Universal, 2005.
[33] See "Creative Economy Report 2008," United Nations Conference on Trade and Development (UNCTAD), 2008 (http://www.unctad.org/en/docs/ditc20082cer_en.pdf).
[34] "Creative Economy Report 2008," UNCTAD, 2008.
[35] Kushner and Cohen, "National Arts Index 2009," Americans for the Arts, 2010.

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60% of all software publishing firms in 2004 employed fewer than ten workers.[36]

Business is also booming for those involved in international trade of pirated goods, however. According to a recent study by the Organisation for Economic Co-Operation and Development (OECD), global trade in counterfeit and pirated goods could have been as high as $200 billion in 2005.[37] According to World Bank data for that year, that amount exceeds the GDP of approximately 150 separate economies. The OECD further estimates that this total would be several more hundreds of billions of dollars larger if purely domestic counterfeiting and piracy were included.[38]

A follow-up study by the OECD found the problem is continuing to grow. The study estimates the share of counterfeit and pirated goods in world trade – again, not including domestic counterfeiting or piracy in any country - to have grown from 1.85% in 2000 to 1.95% in 2007. From 2005 to 2007, trade in counterfeit and pirated goods grew more than 25%, to as much as $250 billion.[39]

There is a documented correlation between respect for private property rights in a given country and respect for IP rights, as demonstrated by the 2010 International Property Rights Index.[40] What is particularly striking, however, is that outside of North America and Western Europe, enforcement of IP rights significantly trails the lackluster levels of enforcement of physical property rights in those countries and regions.[41] That is a significant indicator of the challenges U.S. copyright industries face in competing in global markets with IP exports.

C. IP Enforcement and U.S. Employment

Given the significant contributions by copyright industries to the U.S. economy and international trade, it is not surprising that copyright industries are not only a source of significant U.S. employment, but are perhaps the nation's best hope for near- and long-term job growth.

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[36] U.S. Census Bureau, *Statistics of U.S. Businesses – 2004*, for NAICS 5121- Motion Pictures and Video Industries and NAICS 5112 – Software Publishing Industry – via Siwek, "The True Cost of Copyright Industry Piracy to the U.S. Economy," IPI, 2007.
[37] "Economic Impact of Counterfeiting and Piracy," OECD, June 2008.
[38] "Economic Impact of Counterfeiting and Piracy," OECD, June 2008.
[39] See "Magnitude of Counterfeiting and Piracy of Tangible Products: An Update," OECD, November 2009 (http://www.oecd.org/dataoecd/57/27/44088872.pdf).
[40] See "International Property Rights Index," prepared for the Property Rights Alliance (PRA) by PRA Hernando de Soto Fellow Victoria Strokova, February 2010 (http://www.internationalpropertyrightsindex.org/).
[41] "International Property Rights Index," PRA, 2010.

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The core copyright industries in the U.S. employed nearly 5.6 million workers in 2007, more than 4% of the U.S. workforce, while total copyright industries employed 11.7 million, or more than 8.5% of the U.S. workforce.[42]

Jobs in U.S. copyright industries pay more than those in other sectors. In 2007, annual compensation for core copyright workers was $73,554, exceeding the average annual compensation of all U.S. workers, $56,817, by 30%. Compensation was also higher in total copyright industries, which averaged $66,498 annually, 18% higher than average annual compensation across all forms of employment.[43] Compensation paid to employees in IP industries in 2003 exceeded $1.1 trillion, approximately 22% of total compensation paid by all U.S. private industry employees.[44] A recent study by IDC estimates that for every $1 of PC software sold in a given country, $3 to $4 of revenue for local IT service and distribution firms is generated, leading to more jobs.[45]

The benefits of copyright enforcement enhance employment not just in large corporations but with individual artists, union members and SMEs.

There has been a significant increase in the number of professionals belonging to arts unions over the last decade. Based on data from the Office of Labor Management Standards in the U.S. Department of Labor, from 2004 to 2008, total arts union membership in the United States rose 26.4% from 431,869 to 545,932.[46]

Similar growth has been seen in the broader area of commercial and professional independent artists, writers and performers. Based on numbers compiled by the U.S. Census Bureau, there has been a 33.6% increase in individual artists in the U.S. from 508,608 in 2000 to 679,247 in 2007.[47]

U.S. composers have seen an increase in the collection of royalties for live performance of their compositions over the last decade, according to data provided by the two largest U.S. performing rights organizations, the American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). Even after adjusting for inflation, royalties to composers belonging to ASCAP and BMI grew from $1.09 billion in 2003 to $1.37 billion in 2008, a 20% increase.[48]

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[42] Siwek, "Copyright Industries in the U.S. Economy: The 2003-2007 Report," IIPA, 2009.
[43] Siwek, "Copyright Industries in the U.S. Economy: The 2003-2007 Report," IIPA, 2009.
[44] Siwek, "Engines of Growth," NBC Universal, 2005.
[45] "Sixth Annual BSA-IDC Global Software 08 Piracy Study," BSA, 2009.
[46] Kushner and Cohen, "National Arts Index 2009," Americans for the Arts, 2010.
[47] Kushner and Cohen, "National Arts Index 2009," Americans for the Arts, 2010.
[48] Kushner and Cohen, "National Arts Index 2009," Americans for the Arts, 2010.

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Another indicator of increased importance of copyright to all copyright owners is an increase in registrations for copyrights with the U.S. Copyright Office in the Library of Congress. After copyright registration fees increased in 2006 there was a drop in applications, but registrations have begun to increase in that time, up from 541,212 in 2007 to 561,428 in 2008.[49]

As with U.S. economic growth, the positive story of copyright and jobs is tempered by the harm resulting from copyright piracy. One study estimates that the U.S. economy loses annually 373,375 jobs due to piracy. Nearly 124,000 of those jobs would have been added in copyright industries or in downstream retail industries, with nearly 250,000 additional jobs not otherwise added to related U.S. industries.[50]

This piracy directly costs American workers. The loss of jobs results in a loss of $16.3 billion in earnings, $7.2 billion from copyright industries and related retail industries, and an additional $9.1 billion by workers in other U.S. industries.[51]

D. Returns on Federal IP Enforcement

There are few economic stimulus initiatives in which the U.S. government can engage that yield larger economic rewards than increased IP enforcement. The U.S. Government Accountability Office has produced numerous analyses of the direct correlation between U.S. spending on anti-counterfeiting and anti-piracy efforts and increases in U.S. GDP and tax revenue.[52]

The U.S. Congress took note in the 110th Congress of a significant study by LECG on the economic return on investment by U.S. government spending

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[49] Kushner and Cohen, "National Arts Index 2009," Americans for the Arts, 2010.
[50] Siwek, "The True Cost of Copyright Industry Piracy to the U.S. Economy," IPI, 2007.
[51] Siwek, "The True Cost of Copyright Industry Piracy to the U.S. Economy," IPI, 2007.
[52] See GAO reports and testimony including "Intellectual Property: Enhancements to Coordinating U.S. Enforcement Efforts," December 2009 (http://www.gao.gov/new.items/d10219t.pdf); "Overseas U.S. Government Personnel Involved in Efforts to Protect and Enforce Intellectual Property Rights," February 2009 (http://www.gao.gov/new.items/d09402r.pdf); "Intellectual Property: Federal Enforcement Has Generally Increased, but Assessing Performance Could Strengthen Law Enforcement Efforts," March 2008 (http://www.gao.gov/new.items/d08157.pdf); "Intellectual Property: Risk and Enforcement Challenges," October 2007 (http://www.gao.gov/new.items/d08177t.pdf); and "Intellectual Property: Strategy for Targeting Organized Piracy (STOP) Requires Changes for Long-term Success," November 2006 (http://www.gao.gov/new.items/d0774.pdf).

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on IP enforcement.[53] The LECG study was cited repeatedly during the development and passage of the PRO-IP Act of 2008 and some of its recommendations are now part of U.S. law.

LECG found that following the recommendations of the Coalition Against Counterfeiting and Piracy (CACP) would increase U.S. economic output from $27 billion to $54 billion annually, and boost U.S. employment by about 174,000 to 348,000 after three years. In present value terms, total federal tax revenues during this three-year period would increase $1.4 billion to $2.8 billion.[54]

In other words, for every dollar spent by the U.S. government on increased IP enforcement, federal tax revenues would increase by as little as $2.90 to as much as $9.70. This increase in tax revenue would stem from increased economic output per dollar of federal IP enforcement spending of anywhere from $38 to $127. That boost in economic output would also reward state and local governments with as much as $1.5 billion in additional revenues over three years.[55] Reducing business software piracy by 10 percentage points over four years would create an additional 600,000 jobs, according to a recent IDC study, while generating $24 billion in additional government revenues.[56]

It must also be noted that counterfeiting and piracy have been linked with organized crime and terrorism around the world. In a 2009 study by the RAND Corporation's Safety and Justice Program and the Global Risk and Security Center[57], researchers identified film piracy as a key source of income for all manner of organized criminal behavior, with millions of dollars documented flowing to Hezbollah, a group designated as a foreign terrorist organization (FTO) by the U.S. State Department. Seventeen separate organized crime rings in the U.S., Canada, Hong Kong, Italy, Japan, Malaysia, Mexico, Pakistan, Paraguay, Russia, Spain, and the U.K. were found to be profiting from motion picture piracy.[58]

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[53] See "Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative," prepared for the Coalition for Counterfeiting and Piracy (CACP) by LECG Directors Laura Tyson, Ph.D., Tapan Munroe, Ph.D., and George Schink, Ph.D., November 2007 (http://www.lexisnexis.com/documents/pdf/20080610072737_large.pdf).
[54] See "Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative," CACP, 2007.
[55] See "Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative," CACP, 2007.
[56] "Sixth Annual BSA-IDC Global Software 08 Piracy Study," BSA, 2009.
[57] See "Film Piracy, Organized Crime, and Terrorism," prepared for the Motion Picture Association of America by by Gregory F. Treverton, Carl Matthies, Karla J. Cunningham, Jeremiah Goulka, Greg Ridgeway, Anny Wong of The RAND Corporation Safety and Justice Program and the Global Risk and Security Center, 2009 (http://www.rand.org/pubs/monographs/2009/RAND_MG742.pdf).
[58] "Film Piracy, Organized Crime, and Terrorism," RAND, 2009.

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Perhaps the greatest return on IP enforcement is one that is of immeasurable value. Copyrighted works embody our culture. As our Founding Fathers envisioned when enshrining copyright in the U.S. Constitution, copyright provides an incentive to allow creative minds in the U.S. to pursue their expression, to the benefit of all of society. There is a tremendous amount of creativity within the copyright industries, whether one is employed with a producer of copyrighted works, is an arts union member working on a creative project, or is an individual artist or creator. All contribute to the economy, but all also create our enviable and invaluable arts culture.

More than 11,000 individual artists and creators recognized this, when in a November 16, 2009, letter to the U.S. President and Vice President they emphasized the fact that "[o]ur work brings significant cultural and economic value to our society."[59] In addition, we encourage the USIPEC to read carefully the hundreds of submissions being made in this proceeding by individual artists and creators in the Copyright Alliance *one voi©e* network, who are sharing why copyright is important to them both as a component of our economy as well as a contributor to our culture.

Part II: Policy Recommendations

Many Copyright Alliance members are filing separate comments in this proceeding, and we strongly advise the USIPEC to closely examine their data and recommendations.

The Copyright Alliance would like to offer recommendations in two key areas relevant to the USIPEC and its mission – enforcement and K-12 education.

A. Increased Domestic and International Enforcement of Copyright

The Copyright Alliance welcomes the commitment to domestic and international copyright enforcement by the Obama Administration. As highlighted in Footnote 3 (above), many Administration officials have spoken out in support of copyright and enforcement of domestic law and international treaty commitments. Those words, however, have accompanied strong domestic and international action.

We welcomed the February 12th, 2010, announcement by U.S. Attorney General Eric Holder of the creation Department of Justice Task Force on

[59] As noted above, that letter was distributed by the Copyright Alliance and several artists and creators to the White House on November 16, 2010, and a copy of the letter and signatures is included with this filing. The letter can be found on the Copyright Alliance web site with signatures, and those signatures now total well over 12,000 (http://www.copyrightalliance.org/letter/).

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Intellectual Property, intended as "part of a Department-wide initiative to confront the growing number of domestic and international intellectual property (IP) crimes."[60] The Task Force – which the U.S. Department of Justice noted followed a "summit meeting convened last December by Vice President Biden, a long-standing champion of U.S. intellectual property rights-holders" – is a very positive development for all copyright owners.[61]

The Copyright Alliance and its members will work closely with the Task Force chairman - the U.S. Attorney General – and its representatives from the offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General; the Criminal Division; the Civil Division; the Antitrust Division; the Office of Legal Policy; the Office of Justice Programs; the Attorney General's Advisory Committee; the Executive Office for U.S. Attorneys and the FBI.[62] We are also pleased the Task Force is committed to working closely with the USIPEC.

The Copyright Alliance urges the USIPEC and the U.S. Department of Justice to act quickly on this broad policy commitment by the Obama Administration to "step up policy engagement with foreign law enforcement partners, develop a plan to expand civil IP enforcement efforts, and leverage existing partnerships with federal agencies and independent regulatory authorities such as the Department of Homeland Security and the Federal Communications Commission."[63]

As Congress and the U.S. Government Accountability Office identified during deliberations on the PRO-IP Act, the dedicated federal employees fighting for the rights of copyright owners are in need of more resources – both financial and human -- for domestic and international enforcement. The U.S. government faces tough choices in its allocation of federal spending, but as highlighted above, data shows that for every dollar spent on IP enforcement, federal revenues from increased taxes exceed that dollar spent.[64]

International piracy of physical goods such as software, DVDs and CDs is widespread, often easily identifiable, and connected in some cases to international organized crime and terrorism.[65] There are various measures that the USIPEC and the interagency advisory committee should consider building into its intellectual property enforcement strategy in order to target physical piracy abroad, as well as entry of counterfeit goods into the U.S. These measures should promote coordination among and provide more resources to law enforcement agencies such as the U.S. Department of

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[60] See February 12, 2010, U.S. Department of Justice (US DoJ) announcement -- http://www.justice.gov/opa/pr/2010/February/10-ag-137.html
[61] February 12, 2010 US DoJ.
[62] February 12, 2010 US DoJ.
[63] February 12, 2010 US DoJ.
[64] "Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative," LEGC, 2007.
[65] "Film Piracy, Organized Crime, and Terrorism," RAND, 2009.

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Justice, the U.S. Department of Homeland Security and U.S. Customs, and state governments.

Online piracy is also rampant. As documented by the OECD, there is a growth in web sites offering unlicensed video through peer-to-peer technology, funded by user subscriptions transacted by credit card companies as well as hosted advertising.[66] These sites profit from infringement while putting consumers at risk of identity theft, as the Federal Trade Commission noted.[67]

The Copyright Alliance welcomes the strong commitment to intellectual property enforcement made by U.S. trading partners across the globe, but is dismayed by the frequent lack of strong adherence to those commitments by many countries. We urge the USIPEC to closely examine the data provided by U.S. copyright industries on international piracy in the annual Special 301 proceeding and to consider how this data might also inform ongoing strategic planning efforts.[68]

The USIPEC should work closely with the USTR and other federal agencies in promoting strong IP language in future trade treaties. The USIPEC should also assist the USTR in its commitment to advancing the Anti-Counterfeiting Trade Agreement (ACTA) with U.S. trading partners committed to improvement in coordination and implementation related to enforcement of copyright enforcement obligations.[69] It is critical that this country serve as a role model abroad as our officials work with other governments to encourage more IP enforcement within the borders of those countries.

It is imperative that copyright owners be able to counter piracy by operating in a marketplace that supports and encourages legal licensing models. In addition, it should be noted that content creators are just one part of the ecosystem. The decisions and behaviors of third parties -- ISPs, advertisers, search engines, financial processers, and device makers -- all affect that ecosystem, and produce an environment that is more or less conducive to legitimate commerce.

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[66] OECD Piracy of Digital Content p. 28-32

[67] See "Widespread Data Breaches Uncovered by FTC Probe: FTC Warns of Improper Release of Sensitive Consumer Data on P2P File-Sharing Networks," Federal Trade Commission alert from February 22, 2010. The FTC notified nearly 100 organizations that the private data of their organizations, employees and customers may have been compromised through data breaches caused by use of peer-to-peer file-sharing sites (http://www.ftc.gov/opa/2010/02/p2palert.shtm).

[68] See "International Intellectual Property Alliance 2010 Special 301 Report," IIPA, 2010 (http://www.iipa.com/2010_SPEC301_TOC.htm).

[69] See statement by U.S. Trade Representative Ron Kirk reiterating the Obama Administration's commitment to continuing ACTA negotiations -- http://www.ustr.gov/about-us/press-office/press-releases/2009/june/ambassador-ron-kirk-announces-plan-move-forward-negot.

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We hope that the Joint Strategic Plan will recognize this reality, and encourage all parties to work together, using commercially reasonable efforts, to impede infringement and promote legitimate commerce.

B. Education

Enforcement of IP rights is critical to the continued creativity and production of creators and copyright industries. However, as significant as enforcement, the critical role of education on the importance of copyright and its essential role in encouraging the production of creative works cannot be overstated. IP education that promotes awareness and understanding of, and respect for, copyright among children can serve to pre-empt infringing behavior as these children mature and begin using computers and the Internet. Not only the U.S. economy but our culture is fueled by copyright.

Since its launch, the Copyright Alliance has dedicated itself to education of the positive role of copyright in our economy and our culture. In 2009 we launched the Copyright Alliance Education Foundation (CAEF), a 501(c)(3) charitable non-profit.[70] CAEF provides a wide cross-section of free curricula for K-12 schools on the value of copyright as well as other critical tools to ensure the nation's youth are responsible digital citizens, enjoying empowerment of their own creativity.

Curricula provided by CAEF come from numerous sources, including Copyright Alliance members – the American Society of Composers, Authors and Publishers (ASCAP) Foundation; the Business Software Alliance; the Directors Guild of America (through The Film Foundation); the Entertainment Software Association; the Motion Picture Association of America; and the Recording Industry Association of America -- and other organizations including i-SAFE, the Close Up Foundation, the National Association for Music Education, Microsoft, Weekly Reader, Young Minds Inspired!, the U.S. Patent and Trademark Office, and the World Intellectual Property Organization.[71]

CAEF has also partnered with Young Minds Inspired! to produce a robust Teach-the-Teacher program to assist K-12 principals, librarians and media specialists to assist teachers in incorporating this wide variety of curricula into the classroom.[72] To date CAEF materials have been distributed to more than 25,000 K-12 librarians and media specialists, with a favorable feedback rating from U.S. educators of 97%.

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[70] The launch of the Copyright Alliance Education Foundation was announced on May 21, 2009 (see press release -- http://www.copyrightalliance.org/news.php?id=65) and can be found online at http://www.copyrightfoundation.org/.
[71] See a complete chart of free curricula distributed by the Copyright Alliance Education Foundation at http://www.copyrightfoundation.org/library_of_classroom_curricula.
[72] Find a list of curricula distributed by the Copyright Alliance Education Foundation at http://www.copyrightfoundation.org/curriculum.

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While educators across the U.S. are finding value in the free curricula distributed by CAEF, one driver of adoption of these materials is a growing trend in U.S. states to establish digital citizenship education standards. A majority of U.S. state governments have legislated or regulated digital citizenship education requirements, ensuring our nation's youth understand the benefits and risks inherent in our online world.

Respect for copyright and the rights of copyright owners - and the ways in which respect for copyright benefits society and individual creators such as our nation's youth – plays a prominent role in many of these state standards.

One positive model was put in place in the state of Tennessee. Tennessee's Computer Technology Standards begin in Kindergarten.[73] Commencing in the 3rd grade is a focus on "the ethical, cultural, and societal issues related to Technology," including expectations that students will "[o]bey the copyright laws," "adhere to software licensing agreements," and learn how to properly cite sources.[74] Beginning in 4th grade, students are expected to "[l]ist ways of obtaining permission for using copyrighted material.[75] The standards expand in 6th grade by calling on students to "[d]iscuss copyright laws/issues and model ethical acquisition and use of digital information, citing sources using established methods" as well as "[d]escribe the consequences regarding copyright violations including, but not limited to, computer hacking, computer piracy, intentional virus setting, and invasion of privacy."[76] Beginning in 9th grade, a computer literacy course has students "[c]ollaborate with peers, experts, and others" in producing original creative works while incorporating the lessons on copyright learned in previous grades.[77]

There are many ways the USIPEC can work to promote similar initiatives throughout public, private and parochial schools across the United States. For example, we would encourage the USIPEC to coordinate with the U.S. Department of Education. U.S. Secretary of Education Arne Duncan on March 5th unveiled a draft National Educational Technology Plan. The Copyright Alliance was pleased to see this among its top five goals: "All learners will have engaging and empowering learning experiences both in and outside of

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[73] See State of Tennessee Standards, Learning Expectations and Performance Indicators for Computer Technology at http://www.state.tn.us/education/ci/computer/index.shtml
[74] See State of Tennessee 3rd grade standards at http://www.state.tn.us/education/ci/computer/grade_3.pdf
[75] See State of Tennessee 4th grade standards at http://www.state.tn.us/education/ci/computer/grade_4.pdf
[76] See State of Tennessee 6th grade standards at http://www.state.tn.us/education/ci/computer/grade_6.pdf
[77] See State of Tennessee Computer Literacy course for 9th and 10th graders at http://www.state.tn.us/education/ci/computer/compliteracy.pdf

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school that prepare them to be active, creative, knowledgeable, and ethical participants in our globally networked society."[78]

This welcome approach by the U.S. Secretary of Education mirrors the objectives of the state of Tennessee in its guidelines outlined above. The Tennessee model could be promoted to the U.S. Department of Education by the USIPEC as a way to ensure all U.S. students receive all the tools they need to be productive and safe in our digital 21st Century.

We also call upon the Department of Education to actively enforce the portions of the Higher Education Opportunity Act of 2008 (HEOA) and the promulgated regulations that require that all institutions of higher learning that receive federal student aid to certify that, among other things, they have "developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network." It is important for the Department of Education to signal the university community that it takes this matter seriously, and that failure to devise such a plan could subject the university to serious sanctions.[79]

Additionally, on March 16th the Federal Communications Commission (FCC) issued an ambitious National Broadband Plan.[80] It notes that the legal distribution of copyrighted works is a driver of broadband adoption, and contains proposals related to education. The USIPEC should remain apprised of FCC initiatives in the area of education and accommodate them appropriately into the strategic planning process.

The Copyright Alliance noted that President Obama on March 13th pledged to send to the U.S. Congress a "blueprint for an updated Elementary and Secondary Education Act that will overhaul No Child Left Behind. The plan will set the ambitious goal of ensuring that all students graduate from high school prepared for college and a career, and it will provide states, districts and schools with the flexibility and resources to reach that goal."[81] We would encourage the USIPEC to participate in this effort to seek ways that digital literacy education, including education on copyright, be a part of educational offerings in every U.S. school.

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[78] See "Transforming American Education: Learning Powered by Technology," Draft National Educational Technology Plan, U.S. Department of Education Office of Educational Technology, March 5, 2010 (http://www.ed.gov/sites/default/files/NETP-2010-final-report.pdf).
[79] See the Higher Education Opportunity Act 2008 fact sheet on the U.S. Department of Education site at http://www2.ed.gov/policy/highered/leg/hea08/index.html
[80] See "National Broadband Plan: Connecting America," by the Federal Communications Commission, released March 16, 2009 (http://www.broadband.gov/).
[81] See "Weekly Address: President Obama to Send Updated Elementary and Secondary Education Act Blueprint To Congress on Monday," President Obama, March 13, 2010 (http://www.whitehouse.gov/the-press-office/weekly-address-president-obama-send-updated-elementary-and-secondary-education-act-).

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The Copyright Alliance agrees with the President that it is critical our students develop the tools to be productive members of the U.S. work force. Many of those students will find themselves employed in copyright industries, and the understanding of technology and copyright they learn in school will be of great use to them. The U.S. Department of Education cited one example in its recent announcement of its draft National Educational Technology Plan: "Filmmakers use everyday computers and affordable software for every phase of the filmmaking process – from editing and special effects to music and sound mixing."[82]

The Copyright Alliance welcomes the many initiatives occurring at the federal and state level to help the nation's children thrive in our digital world, respect the rights of copyright owners, and achieve the maximum benefit from their own creativity. The USIPEC can play a critical role in encouraging and fostering the spread of digital citizenship education across the U.S.

Conclusion

The Copyright Alliance was a strong supporter of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Public Law 110-403) or PRO-IP Act, and welcomed the creation of the USIPEC position within the Executive Office of the President. We also welcomed the appointment of Victoria Espinel who, in a post on the White House Blog, wrote the following:

> Intellectual property are the ideas behind inventions, the artistry that goes into books and music, and the logos of companies whose brands we have come to trust. My job is to help protect the ideas and creativity of the American public. One of the reasons that I care about this is because I believe it is enormously important that the United States remain a global leader in these forms of innovation – and part of how we do that is by appropriately protecting our intellectual property. Our intellectual property represents the hard work, creativity, resourcefulness, investment and ingenuity of the American public. Infringement of intellectual property can hurt our economy and can undermine U.S. jobs. Infringement also reduces our markets overseas and hurts our ability to export our products. Counterfeit products can pose a significant threat to the health and safety of us all. Imagine learning that the toothpaste you and your family have used for years contains a dangerous chemical. U.S. Customs officials have seized several shipments of counterfeit toothpaste containing a dangerous amount of diethylene glycol, a chemical used in brake fluid, and that in sufficient doses is believed to cause kidney failure. All of

[82] "Transforming American Education," U.S. Department of Education, 2010.

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> these are reasons why your government has renewed its efforts to challenge this illegal activity.
>
> My job is to help coordinate the work of the federal agencies that are involved with stopping this illegal behavior. We are going to work together to develop a strategy to reduce those risks to the public, the costs to our economy and to help protect the ingenuity and creativity of Americans. We want to be able to reduce the number of infringing goods in the United States and abroad. The examples are almost endless: counterfeit car parts, illegal software, pirated video games, knockoff consumer goods, dangerous counterfeit medicines, and many other types of products – including very sophisticated technology. Our goal is to better use taxpayer dollars and other government resources to be more effective in reducing any threat to our economy and our safety.[83]

The goal of the USIPEC is the goal of the Copyright Alliance. Our guilds and unions, corporations, trade associations and individual artists and creators have come together as a resource for the USIPEC and the Administration in its efforts to better protect, as Ms. Espinel wrote, the "hard work, creativity, resourcefulness, investment and ingenuity of the American public."

It is clear that copyright industries contribute significantly to U.S. economic growth, exports and job creation. It is also clear that counterfeiting and piracy erodes considerably the legal market domestically and internationally for copyrighted works, harming U.S. artists and creators and creative industry workers, those industries, and the U.S. economy.

There are positive steps being taken in the area of education by policymakers across the United States. The Copyright Alliance strongly supports those efforts, and encourages the USIPEC to encourage those efforts and coordinate U.S. government resources and activities with those educational outreach efforts.

The Copyright Alliance also supports more active enforcement, both domestically and internationally, to target counterfeiting and piracy. The USIPEC is in an important position to encourage the dedication of resources to this effort, particularly when there is a demonstrated positive return to the U.S. economy and job creation for every dollar spent on federal enforcement.

We encourage the USIPEC to consider these comments, as well as the strong endorsement of protecting the copyrights of artists and creators expressed in

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[83] Victoria Espinel, "Intellectual Property and Risks to the Public," White House Blog, February 23, 2010 (http://www.whitehouse.gov/blog/2010/02/23/intellectual-property-and-risks-public).

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the attached letter to the President and Vice President from more than 11,000 artists and creators.

We also urge you to consider the hundreds of comments filed by individual artists and creators who belong to the Copyright Alliance *one voi©e* advocacy network. You will see that many of them are including their affiliation with the Copyright Alliance in their comments. These individual artists and creators are sharing their personal stories – in their own words -- of what copyright means to their creativity and their production of creative works, as well as their ability to support themselves and contribute to the U.S. economy. They are also sharing how piracy has harmed them and their efforts to contribute to our economy and culture.

The Copyright Alliance and all of its members thank the Obama Administration and USIPEC for this opportunity to comment in this important proceeding, and looks forward to working with this Administration in pursuing stronger protection of intellectual property rights.

Sincerely,

Patrick C. Ross
Executive Director
Copyright Alliance

Attachment: November 16, 2009, Letter to President Obama and Vice President Biden from more than 11,000 Artists and Creators urging the Administration to Support Artists' Rights

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Approximately 340 AM and FM radio stations operate in Alabama.

The State of Alabama is home to nearly 50 daily and weekly newspapers and their employees.

The motion picture and television industry is responsible for 4,972 direct jobs and $168.6 million in wages in Alabama.

Scenes from several films have been shot in Alabama in recent years, including "Talladega Nights: The Ballad of Ricky Bobby," "Failure to Launch" and "Sweet Home Alabama". A major feature film shooting on location generates $225,000 per day for the local economy.

Gary Baker, writer of the hit song "I Swear", is an Alabama resident.

There are 49 local TV stations and network affiliates in Alabama.

More than 580 professional photographers are employed in the State of Alabama.

"6 Days on the Road" by Alabama resident and songwriter Earl Greene has been broadcast more than 1 million times on radio and television stations across America.

In Alabama, the software industry employs nearly 500 people who earn more than $27 million in wages.

The number of businesses in Alabama involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 6,000 in 2008 – an increase of 14.9 percent over 2007.

ALASKA

Singer and songwriter Jewel is an Alaska native.

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The motion picture and television industry is responsible for 806 direct jobs and $11.1 million in wages in Alaska.

Several films were shot in Alaska in recent years, including "Into the Wild," and "The Guardian," starring Ashton Kutcher and Kevin Costner. A major feature film shooting on location generates $225,000 per day for the local economy.

In March 2009, Evergreen Films opened a production and post-production facility in Anchorage, Alaska.

Alaska is home to 16 daily and weekly newspapers and their employees.

Approximately 120 AM and FM radio stations operate in the State of Alaska.

The number of businesses in Alaska involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 1,500 in 2008 – an increase of 9.7 percent over 2007.

There are 18 local TV stations and network affiliates in Alaska.

More than 108 professional photographers are employed in the State of Alaska.

ARIZONA

More than 50 films shot in Arizona during the last several years, including "The Kingdom," "3:10 to Yuma" and "Little Miss Sunshine". A major feature film shooting on location generates $225,000 per day for the local economy.

The motion picture and television industry is responsible for 10,859 direct jobs and $329.9 million in wages in Arizona.

The entertainment software industry in Arizona directly employs 226 people who earn an average yearly salary of $85,000.

Arizona is home to more than 50 daily and weekly newspapers and their employees.

More than 630 professional photographers are employed in the State of Arizona.

Approximately 220 AM and FM radio stations operate in Arizona.

The number of businesses in Arizona involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 10,500 in 2008 – an increase of 14.4 percent over 2007.

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CeCe Peniston, writer of the hit song "Finally", is an Arizona resident.

There are 33 local TV stations and network affiliates in Arizona.

"Listen to the Radio" by Arizona resident and songwriter Fredric Knipe has been broadcast more than 1 million times on radio and television stations across America.

In Arizona, the software industry employs more than 3,600 people who earn nearly $243 million in wages.

ARKANSAS

In Arkansas, the software industry employs more than 250 people who earn nearly $14 million in wages.

Arkansas is home to nearly 60 daily and weekly newspapers and their employees.

The number of businesses in Arkansas involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 3,600 in 2008 – an increase of 14.2 percent over 2007.

Twila Paris, writer of the hit song "God is in Control", is an Arkansas resident.

More than 328 professional photographers are employed in the State of Arkansas.

Approximately 290 AM and FM radio stations operate in Arkansas.

The motion picture and television industry is responsible for 2,579 direct jobs and $76 million in wages in Arkansas.

Several films have shot in Arkansas in recent years, including "Come Early Morning", starring Ashley Judd, as well as "Sling Blade" and "Biloxi Blues". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 29 local TV stations and network affiliates in the State of Arkansas.

"I'll Take You There" by Arkansas songwriter and resident Albertis Isbell has been broadcast more than 1 million times on radio and television stations across America.

CALIFORNIA

The motion picture and television industry is responsible for more than 209,946 direct jobs and more than $16.7 billion in wages in California.

California is home to nearly 200 daily and weekly newspapers and their employees.

Diane Warren, writer of the hit song "How Do I Live", is a California resident.

Approximately 860 AM and FM radio stations operate in California.

The number of businesses in California involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 98,900 in 2008 – an increase of 14.4 percent over 2007.

There are 110 local TV stations and network affiliates in California.

The entertainment software industry in California directly employs more than 9,200 people who earn an average yearly salary of $100,400.

More than 4,186 professional photographers are employed in the State of California.

Songs written by California residents like Colbie Caillat ("Bubbly"), Herbie Hancock ("All Apologies") and Bob Crewe ("Big Girls Don't Cry") have been broadcast more than 1 million times on radio and television stations across America.

The software industry employs more than 41,000 Californians who earn more than $5 billion in wages.

COLORADO

John Martin Sommers, writer of the hit song "Thank God I'm a Country Boy", is a Colorado resident.

The number of businesses in Colorado involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 13,800 in 2008 – an increase of 8.3 percent over 2007.

There are 32 local TV stations and network affiliates in the State of Colorado.

In Colorado, the software industry employs nearly 13,000 people who earn more than $118 million in wages.

Colorado is home to nearly 60 daily and weekly newspapers and their employees.

The entertainment software industry directly employs 284 people in Colorado who earn an average yearly salary of $86,000.

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Approximately 260 AM and FM radio stations operate in Colorado.

In total, the motion picture and television industry is responsible for 11,171 direct jobs and $463.8 million in wages in Colorado.

More than a dozen films shot in the state of Colorado in recent years, including "Catch and Release," starring Jennifer Garner and "The Bucket List," starring Jack Nicholson. A major feature film shooting on location generates $225,000 per day for the local economy.

More than 866 photographers are employed in the State of Colorado.

Songs written by Colorado residents like Richard James Roberts ("Just Remember I Love You") and Stephen Allen Davis ("Stand Beside Me") have been broadcast more than 1 million times on radio and television stations across America.

CONNECTICUT

Connecticut is home to nearly 60 daily and weekly newspapers and their employees.

More than 600 professional photographers are employed in the State of Connecticut.

Approximately 100 AM and FM radio stations operate in Connecticut.

The motion picture and television industry is responsible for 7,233 direct jobs and $523.2 million in wages in Connecticut.

More than a dozen films have shot in the State of Connecticut in recent years, including "College Road Trip" and "Revolutionary Road." A major feature film shooting on location generates $225,000 per day for the local economy.

The film industry in Connecticut generated $2.5 billion in gross state product and approximately 8,000 direct jobs and 18,000 indirect jobs in 2005.

Jack Lawrence, writer of the hit song "Tenderly", is a Connecticut resident.

There are 13 local TV stations and network affiliates in the State of Connecticut.

The entertainment software industry in Connecticut directly employs 155 people who earn an average yearly salary of $85,000.

Songs written by Connecticut residents like Evan Rogers ("God Must Have Spent A Little More Time On You"), Frederick Parris ("In the Still of the Night") and

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Paul Leka ("Green Tambourine") have been broadcast more than 1 million times on radio and television stations across America.

In Connecticut, the software industry employs nearly 1,600 people who earn about $166 million in wages.

The number of businesses in Connecticut involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 9,500 in 2008 – an increase of 6.8 percent over 2007.

DELAWARE

The number of businesses in Delaware involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 1,400 in 2008 – an increase of 13.7 percent over 2007.

Jesse Frederick, who wrote the theme song "Perfect Strangers", is a Delaware resident.

Approximately 30 AM and FM radio stations operate in Delaware.

Delaware is home to at least eight daily and weekly newspapers and their employees.

More than 164 professional photographers are employed in the State of Delaware.

Academy Award winning movie "Dead Poet's Society", starring Robin Williams, was shot in Delaware. A major feature film shooting on location generates $225,000 per day for the local economy.

There are 3 local TV stations and network affiliates in Delaware.

DISTRICT OF COLUMBIA

The motion picture and television industry is responsible for 4,587 direct jobs and $444.3 million in wages in the District of Columbia.

Scenes from more than a dozen films have been shot in the District of Columbia in recent years, including "Body of Lies," National Treasure: Book of Secrets," and "Night at the Museum: Battle of the Smithsonian." A major feature film shooting on location generates $225,000 per day for the local economy.

The District of Columbia is home to at least 10 daily and weekly newspapers and their employees.

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William Danoff, writer of the hit song "Take Me Home Country Roads", is a resident of the District of Colombia.

Approximately 20 AM and FM radio stations operate in the District of Columbia.

There are 12 local TV stations and network affiliates in the District of Columbia.

The number of businesses in the District of Columbia involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 2,300 in 2008 – an increase of 11.9 percent over 2007.

More than 58 photographers are employed in the District of Columbia.

FLORIDA

The entertainment software industry in Florida directly employs 630 people who earn an average yearly salary of $85,000.

Telemundo employs more than 850 people in the Miami area, where it produces daily news and entertainment programs, a weekly sports show, and 3-4 tele-novellas every year.

Songs written by Florida residents like Jimmy Buffett ("Margaritaville") and Ronnie Van Zant ("Sweet Home Alabama") have been broadcast more than 1 million times on radio and television stations across America.

Florida is home to over 100 daily and weekly newspapers and their employees.

Jose Feliciano, writer of the hit song "Feliz Navidad", is a Florida resident.

Approximately 570 AM and FM radio stations operate in Florida.

The motion picture and television industry is responsible for 31,997 direct jobs and more than $1.48 billion in wages in Florida.

Scenes for at least 30 films have been shot in Florida in recent years, including "Marley and Me," "New in Town," and "Confessions of a Shopaholic.". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 101 local TV stations and network affiliates in Florida.

More than 2,964 professional photographers are employed in the State of Florida.

The software industry employs nearly 8,000 Floridians who earn more than $685 million in wages.

The number of businesses in Florida involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 40,000 in 2008 – an increase of 14.1 percent over 2007.

GEORGIA

The entertainment software industry in Georgia directly employs 477 people who earn an average yearly salary of $97,000.

Songs written by Georgia residents like L'il Wayne ("Amilli") and R.E.M. ("Losing My Religion") have been broadcast more than 1 million times on radio and television stations across America.

Georgia is home to over 70 daily and weekly newspapers and their employees.

Approximately 450 AM and FM radio stations operate in Georgia.

The motion picture and television industry is responsible for 23,469 direct jobs and more than $1.28 billion in wages in Georgia.

Scenes for more than 20 films have been shot in the State of Georgia in recent years, including "The Preacher's Kid," "House of Payne," and "Beauty Shop." A major feature film shooting on location generates $225,000 per day for the local economy.

More than 600 television series, pilots, episodes, TV movies and feature films have filmed on location in Georgia since 1972, generating $5 billion in economic impact.

The film and TV studio "Tyler Perry Studios" opened in Atlanta in October 2008. The 30-acre studio features over 200,000 square feet of studio and office space, including five soundstages.

There are 47 local TV stations and network affiliates in Georgia.

More than 1,444 professional photographers are employed in the State of Georgia.

The software industry employs nearly 11,000 Georgians who earn over $1 billion in wages.

Jermaine Dupri, writer of the hit song "You Make Me Wanna", is a Georgia resident.

The number of businesses in Georgia involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 17,600 in 2008 – an increase of 16 percent over 2007.

HAWAII

The hit TV series "Lost" has been filmed in Hawaii since 2004.
The motion picture and television industry is responsible for 2,998 direct jobs and $96.2 million in wages in Hawaii.

The entertainment software industry in Hawaii directly employs 129 people who earn an average yearly salary of $85,000.

Hawaii is home to nearly 20 daily and weekly newspapers and their employees.

Scenes for a dozen films have been shot in the State of Hawaii in recent years, including "Forgetting Sarah Marshall" and "Pirates of the Caribbean: At World's End." A major feature film shooting on location generates $225,000 per day for the local economy.

Hawaii has hosted hundreds of feature films since 1913, and 23 major television series since 1968. In addition, Hawaii has hosted the production of over 700 individual television episodes.

Pat Simmons, writer of the hit song "Black Water", is a Hawaii resident.

There are 26 local TV stations and network affiliates in Hawaii.

The number of businesses in Hawaii involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 2,900 in 2008 – an increase of 3.7 percent over 2007.

More than 292 professional photographers are employed in the State of Hawaii.

Approximately 90 AM and FM radio stations operate in Hawaii.

IDAHO

Several films have been shot in the State of Idaho in recent years, including "Napoleon Dynamite", starring Jon Heder.

The motion picture and television industry is responsible for 2,607 direct jobs and $53.4 million in wages in Idaho.

Steve Miller, writer of the hit song "Fly Like an Eagle", is an Idaho native.

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Idaho is home to nearly 30 daily and weekly newspapers and their employees.

Approximately 150 AM and FM radio stations operate in Idaho.

The number of businesses in Idaho involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 3,100 in 2008 – an increase of 10.7 percent over 2007.

There are 21 local TV stations and network affiliates in Idaho.

More than 150 professional photographers are employed in the State of Idaho.

In Idaho, the software industry employs more than 300 people who earn more than $27 million in wages.

"One for the Money" by Idaho resident and songwriter Buck Moore has been broadcast more than 1 million times on radio and television stations across America.

ILLINOIS

The number of businesses in Illinois involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 23,600 in 2008 – an increase of 12.1 percent over 2007.

The entertainment software industry in Illinois directly employs 896 people who earn an average yearly salary of $91,000.

More than 1,568 professional photographers are employed in the State of Illinois.

Illinois is home to more than 140 daily and weekly newspapers and their employees.

Approximately 460 AM and FM radio stations operate in Illinois.

Marvin Isley, writer of the hit song "Fight the Power", is an Illinois resident.

The motion picture and television industry is responsible for 24,972 direct jobs and $1.08 billion in wages in Illinois.

More than 30 films have been shot in Illinois in recent years, including "Batman Begins" and its sequel "The Dark Knight," starring Christian Bale, as well as enduring classics like "Ferris Bueller's Day Off" and "The Breakfast Club". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 49 local TV stations and network affiliates in Illinois.

With 239 stores, Illinois ranks 5th in country in the total number of bookstores.

Songs written by Illinois residents like Gary Lee Jackson (Higher and Higher") and Renard Miner ("Rescue Me") have been broadcast more than 1 million times on radio and television stations across America.

In Illinois, the software industry employs more than 3,700 people who earn more than $321 million in wages.

INDIANA

Writers Kurt Vonnegut, Rex Stout and Booth Tarkington all hail from Indiana.

Indiana is home to nearly 70 daily and weekly newspapers and their employees.

Approximately 345 AM and FM radio stations operate in Indiana.

The motion picture and television industry is responsible for 10,192 direct jobs and $267.7 million in wages in Indiana.

Several films have been shot in the State of Indiana in recent years, including "American Teen," as well as sports classics like "Rudy," "Hoosiers" and "Brian's Song". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 41 local TV stations and network affiliates in the State of Indiana.

Singer and songwriter John Mellencamp is an Indiana resident.

The number of businesses in Indiana involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 8,900 in 2008 – an increase of 12.5 percent over 2007.

More than 772 professional photographers are employed in the State of Indiana.

"Release Me" by Indiana resident and songwriter James Pebworth has been broadcast more than 1 million times on radio and television stations across America.

In Indiana, the software industry employs almost 1,200 people who earn more than $10 million in wages.

IOWA

Iowa is home to more than 60 daily and weekly newspapers and their employees.

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The number of businesses in Iowa involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 5,100 in 2008 – an increase of 6.9 percent over 2007.

Approximately 275 AM and FM radio stations operate in the State of Iowa.

Greg Brown, writer of the hit song "Driftless", is an Iowa resident.

The motion picture and television industry is responsible for 4,168 direct jobs and $92.8 million in wages in Iowa.

Scenes for several films were shot in Iowa in recent years, as well as the classic "Field of Dreams," a location that continues drawing tourists.

There are 34 local TV stations and network affiliates in Iowa.

The entertainment software industry in Iowa directly employs 91 people who earn an average yearly salary of $85,000.

More than 534 professional photographers are employed in the State of Iowa.

The software industry employs more than 700 people in Iowa.

KANSAS

Singer and songwriter Melissa Etheridge is a Kansas native.

The number of businesses in Kansas involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 4,400 in 2008 – an increase of 9.2 percent over 2007.

"Carry On Wayward Son" by Kansas resident and songwriter Kerry Livgren has been broadcast more than 1 million times on radio and television stations across America.

Kansas is home to more than 50 daily and weekly newspapers and their employees.

Approximately 230 AM and FM radio stations operate in the State of Kansas.

The motion picture and television industry is responsible for 3,114 direct jobs and $104.4 million in wages in Kansas.

Scenes from at least nine films have been shot in Kansas in recent years.

There are 29 local TV stations and network affiliates in Kansas.

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More than 532 professional photographers are employed in the State of Kansas.

The software industry employs nearly 1,500 Kansans who earn nearly $87 million in wages.

KENTUCKY

Approximately 340 AM and FM radio stations operate in the State of Kentucky.

In Kentucky, the software industry employs more than 500 people who earn more than $25 million in wages.

Kentucky is home to over 50 daily and weekly newspapers and their employees.

Richard and Fred Young, writers of the hit song "Dumas Walker", are residents of Kentucky.

The motion picture and television industry is responsible for 3,893 direct jobs and $127.5 million in wages in Kentucky.

Academy Award Nominee "Seabiscuit", starring Tobey McGuire, was shot in Kentucky, as were scenes from 2005's "Elizabethtown." A major feature film shooting on location generates $225,000 per day for the local economy.

There are 40 local TV stations and network affiliates in Kentucky.

More than 504 professional photographers are employed in the State of Kentucky.

The number of businesses in Kentucky involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 5,600 in 2008 – an increase of 11.7 percent over 2007.

"Starting All Over Again" by Kentucky resident and songwriter Leroy Mitchell has been broadcast more than 1 million times on radio and television stations across America.

LOUISIANA

There are 40 local TV stations and network affiliates in Louisiana.

The motion picture and television industry is responsible for 9,532 direct jobs and $343.1 million in wages in Louisiana.

Nearly 50 films have been shot in Louisiana in recent years, including "Cadillac Records," and "The Curious Case of Benjamin Button," starring Brad Pitt. A major feature film shooting on location generates $225,000 per day for the local economy.

Louisiana is home to more than 35 daily and weekly newspapers and their employees.

Wynton Marsalis, whose album *Black Codes* was released in 1985, is a Louisiana native.

Approximately 260 AM and FM radio stations operate in Louisiana.

The number of businesses in Louisiana involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 6,300 in 2008 – an increase of 12.1 percent over 2007.

More than 654 professional photographers are employed in the State of Louisiana.

Songs written by Louisiana residents like George Khoury ("Sea of Love"), Dave Bartholomew ("Ain't It A Shame") and Fats Domino ("Walkin' To New Orleans") have been broadcast more than 1 million times on radio and television stations across America.

The entertainment software industry in Louisiana directly employs 64 people who earn an average yearly salary of $85,000.

In Louisiana, the software industry employs nearly 300 people who earn more than $23 million in wages.

MAINE

Maine is home to 30 daily and weekly newspapers and their employees.

Approximately 120 AM and FM radio stations operate in the State of Maine.

The motion picture and television industry is directly responsible for 2,809 direct jobs and $84.4 million in wages in Maine.

Films such as "In the Bedroom" and "Pet Sematary" were filmed almost entirely in Maine. A major feature film shooting on location generates $225,000 per day for the local economy.

There are 15 local TV stations and network affiliates in Maine.

More than 156 professional photographers are employed in the State of Maine.

The number of businesses in Maine involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 2,800 in 2008 – an increase of 7.8 percent over 2007.

Noel Stookey, writer of the hit song "I Dig Rock & Roll Music", is a Maine resident.

"American Pie" by Maine resident and songwriter Don McLean has been broadcast more than 1 million times on radio and television stations across America.

In Maine, the software industry employs more than 300 people who earn nearly $13 million in wages.

MARYLAND

Critically acclaimed television series "The Wire" and "Homicide: Life on the Street" were filmed on location in Baltimore.

The number of businesses in Maryland involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 11,400 in 2008 – an increase of 11.6 percent over 2007.

The entertainment software industry in Maryland directly employs 773 people who earn an average yearly salary of $90,000.

Crystal Waters, writer and performer of the 1991 hit song "Gypsy Woman (She's Homeless)", is a Maryland resident.

There are 17 local TV stations and network affiliates in the State of Maryland.

The motion picture and television industry is responsible for 87,858 direct jobs and $505.5 million in wages in Maryland.

Scenes for films such as "Step Up 2: The Streets" and "Wedding Crashers" were filmed in Maryland. A major feature film shooting on location generates $225,000 per day for the local economy.

Maryland is home to 30 daily and weekly newspapers and their employees.

Approximately 125 AM and FM radio stations operate in Maryland.

More than 686 professional photographers are employed in the State of Maryland.

In Maryland, the software industry employs more than 1,600 who earn nearly $153 million in wages.

MASSACHUSETTS

The entertainment software industry in Massachusetts directly employs 1,012 people who earn an average yearly salary of $85,000.

More than 1,224 photographers are employed in the State of Massachusetts.

Massachusetts is home to more than 100 daily and weekly newspapers and their employees.

The number of businesses in Massachusetts involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 15,400 in 2008 – an increase of 7.8 percent over 2007.

Tom Scholz, writer of the hit song "More than a Feeling", is a Massachusetts resident.

Approximately 170 AM and FM radio stations operate in Massachusetts.

The motion picture and television industry is responsible for 11,524 direct jobs and $484.4 million in wages in Massachusetts.

More than 20 films have shot in the State of Massachusetts in recent years, including "Shutter Island," "Surrogates," and "Paul Blart: Mall Cop.". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 22 local TV stations and network affiliates in Massachusetts.

"This Diamond Ring" written by Massachusetts resident Al Kooper has been broadcast more than 1 million times on radio and television stations across America.

The software industry employs more than 20,500 people in Massachusetts.

MICHIGAN

More than 1,246 professional photographers are employed in the State of Michigan.

The number of businesses in Michigan involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 18,400 in 2008 – an increase of 8.3 percent over 2007.

Approximately 440 AM and FM radio stations operate in Michigan.

Michigan is home to more than 100 daily and weekly newspapers and their employees.

Bob Seger, writer of the hit song "Night Moves", is a Michigan resident.

The motion picture and television industry is responsible for 15,161 jobs and $510 million in wages in Michigan.

More than 45 films have shot in the State of Michigan in recent years, including "Gran Torino," and "Semi-Pro.". A major feature film shooting on location generates $225,000 per day for the local economy.

The entertainment software industry in Michigan directly employs 193 people who earn an average yearly salary of $85,000.

There are 59 local TV stations and network affiliates in the State of Michigan.

Ann Arbor Michigan has more bookstores per capita, selling more books per capita, than any other city in the country.

Songs written by Michigan residents like Thomas Orden ("Heartbreak Hotel") and Barrett Strong ("I Heard It Through The Grapevine") have been broadcast more than 1 million times on radio and television stations across America.

MINNESOTA

More than 876 professional photographers are employed in the State of Minnesota.

The number of businesses in Minnesota involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 11,000 in 2008 – an increase of 9.6 percent over 2007.

Singer and songwriter Prince is a Minnesota resident.

In Minnesota, the software industry employs more than 5,500 people who earn over $492 million in wages.

Minnesota is home to more than 130 daily and weekly newspapers and their employees.

The entertainment software industry in Minnesota directly employs 271 people who earn an average yearly salary of $85,000.

Approximately 335 AM and FM radio stations operate in Minnesota.

The motion picture and television industry is responsible for 9,426 direct jobs and $284.5 million in wages in Minnesota.

Several films were shot in Minnesota during the last several years, including "A Serious Man," as well as "Beautiful Girls", "Grumpy Old Men" and "Drop Dead Gorgeous". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 31 local TV stations and network affiliates in Minnesota.

"Funkytown," written by Minnesota resident and songwriter Steven Greenberg has been broadcast more than 1 million times on radio and television stations across America.

MISSISSIPPI

Bestselling author John Grisham lives in Mississippi.

Approximately 280 AM and FM radio stations operate in Mississippi.

The motion picture and television industry is responsible for 1,225 direct jobs and $17.8 million in wages in Mississippi.

Several films have been filmed in Mississippi, including "O Brother Where Are Thou", starring George Clooney, "Ghosts of Mississippi" and "Mississippi Burning". A major feature film shooting on location generates $225,000 per day for the local economy.

Wanda Mallette, writer of the hit song "Lookin' for Love", is a Mississippi resident.

Mississippi is home to nearly 30 daily and weekly newspapers and their employees.

More than 276 professional photographers are employed in the State of Mississippi.

Songs written by Mississippi residents like George Henry Jackson ("That Old Time Rock 'n' Roll") and Jimmy Forrest ("Night Train") have been broadcast more than 1 million times on radio and television stations across America.

There are 36 local TV stations and network affiliates in Mississippi.

The software industry employs almost 7,000 people in Mississippi.

The number of businesses in Mississippi involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 2,900 in 2008 – an increase of 13.8 percent over 2007.

MISSOURI

The number of businesses in Missouri involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 9,500 in 2008 – an increase of 11.6 percent over 2007.

Tom Whitlock, writer of the hit song "Take My Breath Away", is a Missouri resident.

Approximately 370 AM and FM radio stations operate in Missouri.

Missouri is home to more than 75 daily and weekly newspapers and their employees.

The entertainment software industry in Missouri directly employs 97 people who earn an average yearly salary of $85,000.

There are 37 local TV stations and network affiliates in Missouri.

More than 808 professional photographers are employed in the State of Missouri.

Songs written by Missouri residents like Chuck Berry ("Johnny B. Goode"), Ronnie Self ("I'm Sorry"), Keith McCormack ("Sugar Shack") and Oscar Washington ("Night Train") have been broadcast more than 1 million times on radio and television stations across America.

In Missouri, the software industry employs more than 2,200 people who earn nearly $170 million in wages.

The motion picture and television industry is responsible for 10.393 direct jobs and $325.5 million in wages in Missouri.

MONTANA

The motion picture and television industry is responsible for 1,185 direct jobs and $16.8 million in wages in Montana.

Scenes for dozens of films have been shot in Montana during the last several years, including "My Sister's Keeper" and "Taking Chance," with production spending of more than $50 million, and an economic impact of more than $81 million.

James Rushing, writer of the hit song "Lonesome Standard Time", is a Montana resident.

Montana is home to more than 30 daily and weekly newspapers and their employees.

Approximately 180 AM and FM radio stations operate in Montana.

There are 26 local TV stations and network affiliates in Montana.

More than 172 professional photographers are employed in the State of Montana.

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The number of businesses in Montana involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 2,300 in 2008 – an increase of 9.5 percent over 2007.

"I Ain't That Lonely Yet," written by Montana resident and songwriter Kostas has been broadcast more than 1 million times on radio and television stations across America.

NEBRASKA

In Nebraska, the software industry employs nearly 400 people who earn more than $24 million in wages.

Nebraska is home to over 35 daily and weekly newspapers and their employees.

The number of businesses in Nebraska involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 2,900 in 2008 – an increase of 6.9 percent over 2007.

Approximately 170 AM and FM radio stations operate in the State of Nebraska.

Buddy Miles, writer of the hit song "Them Changes", is a Nebraska native.

The motion picture and television industry is responsible for 881 direct jobs and $15.2 million in wages in Nebraska.

Scenes for several films have been shot in Nebraska over the last few years, including "Elizabethtown" and "About Schmidt." A major feature film shooting on location generates $225,000 per day for the local economy.

There are 29 local TV stations and network affiliates in Nebraska.

More than 366 professional photographers are employed in the State of Nebraska.

NEVADA

More than 248 professional photographers are employed in the State of Nevada.

The number of businesses in Nevada involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 5,100 in 2008 – an increase of 10.9 percent over 2007.

Nevada is home to more than 20 daily and weekly newspapers and their employees.

Approximately 105 AM and FM radio stations operate in Nevada.

The entertainment software industry in Nevada directly employs 161 people who earn an average yearly salary of $87,000.

The motion picture and television industry is responsible for 4,030 direct jobs and $167.5 million in wages in Nevada.

Scenes for hundreds of films have been shot in Nevada during the last several years, including "The Hangover" and "What Happens in Vegas." A major feature film shooting on location generates $225,000 per day for the local economy.

There are 24 local TV stations and network affiliates in Nevada.

Clifton Davis, writer of the hit song "Never Can Say Goodbye", is a Nevada resident.

Songs written by Nevada residents like George Reid Neilsen ("Except For Monday") and Thomas Snow ("If You're In My Arms Again") have been broadcast more than 1 million times on radio and television stations across America.

In Nevada, the software industry employs more than 600 people who earn more than $42 million in wages.

NEW HAMPSHIRE

In New Hampshire, the software industry employs nearly 3,000 people who earn more than $288 million in wages.

Blues singer and songwriter Mighty Sam McClain is a New Hampshire resident.

The number of businesses in New Hampshire involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 3,200 in 2008 – an increase of 9.2 percent over 2007.

New Hampshire is home to more than 20 daily and weekly newspapers and their employees.

Approximately 90 AM and FM radio stations operate in New Hampshire.

The motion picture and television industry is responsible for 2,094 direct jobs and $89.9 million in wages in New Hampshire.

Nearly 30 films have been shot in New Hampshire during the last several years, including 2007's "The King of Kong" and 2006's "Live Free or Die". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 7 local TV stations and network affiliates in New Hampshire.

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More than 250 professional photographers are employed in the State of New Hampshire.

"Your Heart's Not In It," written by New Hampshire resident and songwriter Kenneth Jones, has been broadcast more than 1 million times on radio and television stations across America.

NEW JERSEY

Singer and songwriter Bruce Springsteen is a New Jersey resident.

Songs written by New Jersey residents like Ben E. King ("Stand By Me"), Sandy Linzer ("Workin' My Way Back To You") and Peter Paul Lucia Jr. ("Crimson & Clover") have been broadcast more than 1 million times on radio and television stations across America.

New Jersey is home to more than 40 daily and weekly newspapers and their employees.

The motion picture and television industry is responsible for 11,404 direct jobs and $780.6 million in wages in New Jersey.

Scenes for more than 50 films have been shot in New Jersey during the last several years, including "Julie & Julia" and "The Wrestler." Television shows like "Law and Order: Special Victim's Unit" and "Mercy" film in New Jersey.

The entertainment software industry in New Jersey directly employs 477 people who earn an average yearly salary of $85,000.

Approximately 135 AM and FM radio stations operate in New Jersey.

The number of businesses in New Jersey involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 19,000 in 2008 – an increase of 11.5 percent over 2007.

More than 1,172 professional photographers are employed in the State of New Jersey.

There are 15 local TV stations and network affiliates in New Jersey.

In New Jersey, the software industry employs more than 4,200 people who earn nearly $404 million in wages.

NEW MEXICO

USA Network's television series "In Plain Sight", starring Mary McCormack and Fred Weller, is filmed in New Mexico.

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The motion picture and television industry is responsible for 4,055 direct jobs and $146.8 million in wages in New Mexico.

Nearly 50 films have shot in New Mexico in recent years, including "Indiana Jones and the Kingdom of the Crystal Skull," "No Country for Old Men," and "Terminator Salvation." A major feature film shooting on location generates $225,000 per day for the local economy.

More than 200 new film specific business have been established in New Mexico since 2003, and more than 600 additional businesses are benefiting from film activities.

Gerald Fried, writer of the "Star Trek" theme song, is a New Mexico resident.

New Mexico is home to more than 30 daily and weekly newspapers and their employees.

Approximately 205 AM and FM radio stations operate in New Mexico.

The number of businesses in New Mexico involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 4,300 in 2008 – an increase of 9.4 percent over 2007.

There are 28 local TV stations and network affiliates in New Mexico.

More than 158 professional photographers are employed in the State of New Mexico.

Songs written by New Mexico residents like Arthur Resnick ("Under The Boardwalk"), Ronald Bert Greaves ("Take A Letter Maria") and Al Anderson ("Unbelievable") have been broadcast more than 1 million times on radio and television stations across America.

In New Mexico, the software industry employs more than 300 people who earn more than $18 million in wages.

NEW YORK

The entertainment software industry in New York directly employs 1,501 people who earn an average yearly salary of $97,000.

New York is home to nearly 120 daily and weekly newspapers and their employees.

Stephen Sondheim, writer of the hit song "Send in the Clowns", is a New York resident.

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In total, the motion picture and television industry in total is responsible for 86,637 direct jobs and $7.56 billion in wages in New York.

Hundreds of films have filmed in New York in recent years, including "Enchanted" and "Sex and the City" as well as TV shows such as "30 Rock" and "Saturday Night Live." A major feature film shooting on location generates $225,000 per day for the local economy.

More than 1,896 professional photographers are employed in the State of New York.

Approximately 550 AM and FM radio stations operate in New York.

Songs written by New York residents like Paul Simon ("Bridge Over Troubled Waters"), Chip Taylor ("Angel of the Morning"), and Gary Bonner ("Happy Together") have been broadcast more than 1 million times on radio and television stations across America.

The software industry employs more than 3,700 New Yorkers who earn over $406 million in wages.

There are 59 local TV stations and network affiliates in New York.

The number of businesses in New York involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 51,000 in 2008 – an increase of 12.7 percent over 2007.

NORTH CAROLINA

The number of businesses in North Carolina involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 15,000 in 2008 – an increase of 13 percent over 2007.

There are 54 local TV stations and network affiliates in the State of North Carolina.

North Carolina is home to more than 80 daily and weekly newspapers and their employees.

Approximately 440 AM and FM radio stations operate in North Carolina.

Billy Ed Wheeler, writer of the hit song "Coward of the Country", is a North Carolina resident.

The motion picture and television industry is responsible for 9,825 direct jobs and $213.7 million in wages in North Carolina.

Scenes for more than 50 films have been shot in the State of North Carolina in recent years, including "Nights in Rodanthe," starring Richard Gere. A major feature film shooting on location generates $225,000 per day for the local economy.

The entertainment software industry in North Carolina directly employs 445 people who earn an average yearly salary of $85,000.

Nearly 1,184 professional photographers are employed in the State of North Carolina.

Songs written by North Carolina residents like Maurice Williams ("Stay"), Richard Martin Head ("Kentucky Rain") and Gregory Carroll ("Just One Look") have been broadcast more than 1 million times on radio and television stations across America.

The software industry employs 6,500 people in North Carolina.

Literary legends Lee Smith, Tom Robbins and Thomas Wolfe all hail from North Carolina.

NORTH DAKOTA

The software industry employs nearly 1,100 people in North Dakota who earn nearly $85 million in wages.

Approximately 100 AM and FM radio stations operate in North Dakota.

North Dakota is home to nearly 30 daily and weekly newspapers and their employees.

More than 126 professional photographers are employed in the State of North Dakota.

The number of businesses in North Dakota involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to 1,100 in 2008 – an increase of 7.5 percent over 2007.

Alf Clausen, who scores the theme song "The Simpsons", is a native of North Dakota.

The motion picture and television industry is responsible for 1,090 direct jobs and $28.1 million in wages in North Dakota.

Scenes from the Academy Award winning film "Fargo," starring William H. Macy, Frances McDormand and Steve Buscemi, were shot in North Dakota. A major feature film shooting on location generates $225,000 per day for the local economy.

There are 28 local TV stations and network affiliates in North Dakota.

OHIO

Ohio is home to more than 80 daily and weekly newspapers and their employees.

Approximately 425 AM and FM radio stations operate in the State of Ohio.

Jon Hendricks, writer of the hit song "Doodlin", is an Ohio resident.

The motion picture and television industry is responsible for 15,409 direct jobs and $484.2 million in wages in Ohio.

Scenes from motion pictures like "The Soloist," "American Splendor," and "The Shawshank Redemption" were filmed in Ohio. A major feature film shooting on location generates $225,000 per day for the local economy.

More than 1,372 professional photographers are employed in the State of Ohio.

"All By Myself" by Ohio resident and songwriter Eric Carmen has been broadcast more than 1 million times on radio and television stations across America.

In Ohio, the software industry employs more than 3,600 people who earn over $283 million in wages.

There are 54 local TV stations and network affiliates in Ohio.

The number of businesses in Ohio involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 18,000 in 2008 – an increase of almost 10 percent over 2007.

OKLAHOMA

Songs written by Oklahoma residents like Toby Keith ("How Do You Like Me Now") and Danny Joe Mitchell ("If You're Gonna Play in Texas") have been broadcast more than 1 million times on radio and television stations across America.

Oklahoma is home to nearly 50 daily and weekly newspapers and their employees.

Members of the groups Hanson and the Flaming Lips are Oklahoma natives.

Approximately 230 AM and FM radio stations operate in Oklahoma.

The motion picture and television industry is responsible for 4,943 direct jobs and $176.2 million in wages in Oklahoma.

Scenes from more than 10 films have been shot in the State of Oklahoma in recent years, including scenes from 2005's "Elizabethtown", starring Kirsten Dunst and Orlando Bloom, as well as classics like "Rain Man", "Twister" and "The Outsiders". A major feature film shooting on location generates $225,000 per day for the local economy.

More than 498 professional photographers are employed in the State of Oklahoma.

There are 32 local TV stations and network affiliates in Oklahoma.

The software industry employs 650 Oklahomans who earn nearly $35 million in wages.

The number of businesses in Oklahoma involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 4,700 in 2008 – an increase of 9 percent over 2007.

OREGON

The entertainment software industry in Oregon directly employs 412 people who earn an average yearly salary of $98,000.

"Signed, Sealed, Delivered, I'm Yours" by Oregon resident and songwriter Lee Garrett has been broadcast more than 1 million times on radio and television stations across America.

Oregon is home to nearly 50 daily and weekly newspapers and their employees.

Approximately 280 AM and FM radio stations operate in Oregon.

Roger Nichols, writer of the hit song "Rainy Days and Mondays", is an Oregon resident.

The motion picture and television industry is responsible for 8,200 direct jobs and $268.6 million in wages in Oregon.

More than 15 films have been produced in the State of Oregon in recent years, including "Twilight" and the animated feature "Coraline", featuring the voices of Dakota Fanning and Teri Hatcher.

More than 410 professional photographers are employed in the State of Oregon.

The software industry employs more than 7,000 people in Oregon.

The number of businesses in Oregon involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 9,100 in 2008 – an increase of 9.8 percent over 2007.

Oregon has more than 40 independent bookstores.

There are 36 local TV stations and network affiliates in Oregon.

PENNSYLVANIA

More than 1,444 professional photographers are employed in the State of Pennsylvania.

Pennsylvania is home to more than 100 daily and weekly newspapers and their employees.

The number of businesses in Pennsylvania involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 21,000 in 2008 – an increase of 10.5 percent over 2007.

Approximately 505 AM and FM radio stations operate in Pennsylvania.

The entertainment software industry in Pennsylvania directly employs 238 people who earn an average yearly salary of $85,000.

DJ Jazzy Jeff (Jeffrey Townes), a Pennsylvania resident, is co-writer with Will Smith of the theme song "Fresh Prince of Bel Air."

The motion picture and television industry is responsible for 18,184 direct jobs and $735.4 million in wages in Pennsylvania.

More than 35 films have been shot in the State of Pennsylvania in recent years, including "Smart People", which was shot entirely in Pittsburgh and M. Night Shyamalan's hits "The Village" and "Signs". A major feature film shooting on location generates $225,000 per day for the local economy.

There are 47 local TV stations and network affiliates in Pennsylvania.

Songs written by Pennsylvania residents like Kenny Gamble & Leon Huff ("Used To Be My Girl") and Melvin Steals ("Could It Be I'm Falling In Love") have been broadcast more than 1 million times on radio and television stations across America.

In Pennsylvania, the software industry employs nearly 3,800 people who earn almost $340 million in wages.

RHODE ISLAND

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In Rhode Island, the software industry employs nearly 1,000 people who earn nearly $141 million in wages.

David Olney, writer of the hit song "Deeper Well", is a Rhode Island native.

Rhode Island is home to more than 20 daily and weekly newspapers and their employees.

Approximately 35 AM and FM radio stations operate in Rhode Island.

The motion picture and television industry is responsible for 1,494 direct jobs and $57.2 million in wages in Rhode Island.

Scenes from more than a dozen films have been shot in the State of Rhode Island in recent years, including "Dan in Real Life" and comedies like "Me, Myself and Irene" and "There's Something About Mary". A major feature film shooting on location generates $225,000 per day for the local economy.

More than 150 professional photographers are employed in the State of Rhode Island.

There are 5 local TV stations and network affiliates in Rhode Island.

The number of businesses in Rhode Island involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 2,400 in 2008 – an increase of almost 11 percent over 2007.

"On the Dark Side" by Rhode Island resident and songwriter John Cafferty has been broadcast more than 1 million times on radio and television stations across America.

SOUTH CAROLINA

The number of businesses in South Carolina involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 6,200 in 2008 – an increase of almost 15 percent over 2007.

Approximately 250 AM and FM radio stations operate in South Carolina.

South Carolina is home to over 35 daily and weekly newspapers and their employees.

The motion picture and television industry is responsible for 4,396 direct jobs and $140.7 million in wages in South Carolina.

At least a dozen films have been shot in South Carolina in recent years, including "Leatherheads," as well as the TV show "Army Wives," which films in and around Charleston.. A major feature film shooting on location generates $225,000 per day for the local economy.

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The band Hootie & the Blowfish was formed when all four members were students at the University of South Carolina.

There are 33 local TV stations and network affiliates in South Carolina.

More than 480 professional photographers are employed in the State of South Carolina.

The software industry in South Carolina employs more than 1,100 people who earn almost $69 million in wages.

"Personally" by South Carolina resident and songwriter Paul Kelly has been broadcast more than 1 million times on radio and television stations across America.

SOUTH DAKOTA

The motion picture and television industry is responsible for 955 direct jobs and $14 million in total in South Dakota.

Scenes for more than a dozen films in recent years, including 2007's "Into the Wild" and "National Treasure Book of Secrets," as well as classics like "Dances with Wolves" and "North By Northwest," were shot in South Dakota. A major feature film shooting on location generates $225,000 per day for the local economy.

South Dakota is home to more than 30 daily and weekly newspapers and their employees.

Shawn Colvin, writer of the hit song "Sunny Came Home", is a South Dakota native.

Approximately 115 AM and FM radio stations operate in South Dakota.

The number of businesses in South Dakota involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 1,300 in 2008 – an increase of 10 percent over 2007.

More than 180 professional photographers are employed in the State of South Dakota.

The software industry in South Dakota employs more than 200 people who earn more than $12 million in wages.

There are 26 local TV stations and network affiliates in South Dakota.

TENNESSEE

Songs written by Tennessee residents like Taylor Swift ("Love Story"), Miley Cyrus ("See You Again"), Calvin Lewis ("When A Man Loves A Woman"), Francis Zamba ("Hooked on a Feeling"), Steve Cropper ("Sittin' On The Dock of the Bay") and Dolly Parton ("I Will Always Love You") have been broadcast more than 1 million times on radio and television stations across America.

The software industry in Tennessee employs nearly 1,000 people who earn more than $62 million in wages.

Tennessee is home to more than 60 daily and weekly newspapers and their employees.

Alan Jackson, writer of the hit song "Chattahoochee", is a Tennessee resident.

Approximately 415 AM and FM radio stations operate in Tennessee.

The motion picture and television industry is responsible for 12,850 direct jobs and $538.8 million in wages in Tennessee.

Scenes for more than 15 films were shot in Tennessee in recent years, including "Hannah Montana: The Movie" and "Walk the Line." A major feature film shooting on location generates $225,000 per day for the local economy.

There are 40 local TV stations and network affiliates in Tennessee.

More than 810 professional photographers are employed in the State of Tennessee.

The number of businesses in Tennessee involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 11,000 in 2008 – an increase of 13.8 percent over 2007.

TEXAS

Approximately 930 AM and FM radio stations operate in Texas.

The number of businesses in Texas involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 45,200 in 2008 – an increase of 12.8 percent over 2007.

Texas is home to nearly 150 daily and weekly newspapers and their employees.

The motion picture and television industry is responsible for 43,167 direct jobs and $1.53 billion in wages in Texas.

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Scenes for more than 50 films were shot in the State of Texas in recent years, including "There Will Be Blood", "Syriana" and "Miss Congeniality". A major feature film shooting on location generates $225,000 per day for the local economy.

Multiple episodes of the hit TV series "Prison Break" and "Friday Night Lights" were shot in Texas in recent years.

The band ZZ Top was formed in Houston, Texas.

The entertainment software industry in Texas directly employs 2,172 people who earn an average yearly salary of $92,000.

There are 146 local TV stations and network affiliates in Texas.

Nearly 4,086 professional photographers are employed in the State of Texas.

Songs written by Texas residents like Willie Nelson ("On The Road Again"), Jerry Jeff Walker (Mr. Bojangles"), Cindy Walker ("You Don't Know Me") and Dash Crofts ("Summer Breeze") have been broadcast more than 1 million times on radio and television stations across America.

The software industry employs nearly 17,000 Texans who earn almost $1.5 billion in wages.

UTAH

The motion picture and television industry is responsible for over 6,930 direct jobs and $180.8 million in wages in Utah.

More than 30 films were shot in the State of Utah in recent years, including the hit movies "High School Musical" and its sequels. A major feature film shooting on location generates $225,000 per day for the local economy.

Utah is home to more than 30 daily and weekly newspapers and their employees.

The entertainment software industry in Utah directly employs 477 people who earn an average yearly salary of $85,000.

Kassidy, Kelsi and Kristy Osborn of the group SHeDAISY are Utah natives.

Approximately 115 AM and FM radio stations operate in Utah.

The number of businesses in Utah involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 5,900 in 2008 – an increase of 13.3 percent over 2007.

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There are 20 local TV stations and network affiliates in Utah.

More than 308 professional photographers are employed in the State of Utah.

The software industry in Utah employs more than 5,000 people who earn nearly $460 million in wages.

"Buy Me a Rose" by Utah resident and songwriter Jim Funk has been broadcast more than 1 million times on radio and television stations across America.

VERMONT

The software industry in Vermont employs more than 250 people who earn almost $18 million in wages.

The number of businesses in Vermont involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 2,000 in 2008 – an increase of 6.3 percent over 2007.

Vermont is home to more than 20 daily and weekly newspapers and their employees.

Approximately 75 AM and FM radio stations operate in Vermont.

The motion picture and television industry is responsible for 1,130 direct jobs and $28.5 million in wages in Vermont.

More than five films have been shot in the state of Vermont in recent years, including "What Lies Beneath", starring Harrison Ford and Michelle Pfeiffer. A major feature film shooting on location generates $225,000 per day for the local economy.

Concert music composer Nico Muhly is a Vermont native.

There are 8 local TV stations and affiliates in Vermont.

More than 114 professional photographers are employed in the State of Vermont.

"I Wonder" by Vermont resident and songwriter Leroy Preston has been broadcast more than 1 million times on radio and television stations across America.

VIRGINIA

The software industry employs nearly 5,000 Virginians who earn over $525 million in wages.

Virginia is home to more than 65 daily and weekly newspapers and their employees.

The number of businesses in Virginia involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to nearly 13,800 in 2008 – an increase of 14.7 percent over 2007.

The entertainment software industry in Virginia directly employs 174 people who earn an average yearly salary of $85,000.

Approximately 355 AM and FM radio stations operate in Virginia.

Bruce Hornsby, writer of the hit song "That's the Way It Is", is a Virginia resident.

The motion picture and television industry is responsible for 12,483 direct jobs and $608 million in wages in Virginia.

More than 45 films shot in Virginia in recent years, including "The Bourne Ultimatum" and "National Treasure: Book of Secrets," as well as the miniseries' John Adams." A major feature film shooting on location generates $225,000 per day for the local economy.

There are 40 local TV stations and network affiliates in Virginia.

More than 1,216 professional photographers are employed in the State of Virginia.

"Along Comes Mary" by Virginia resident and songwriter Tandyn Almer has been broadcast more than 1 million times on radio and television stations across America.

WASHINGTON

The entertainment software industry in Washington directly employs 2,674 people who earn an average yearly salary of $98,000.

Eddie Vedder of Pearl Jam is a Washington resident.

Washington is home to more than 75 daily and weekly newspapers and their employees.

Approximately 285 AM and FM radio stations operate in Washington.

The motion picture and television industry is responsible for 11,290 jobs and $347.8 million in total wages in Washington.

Scenes for numerous films have been shot in Washington, including "The Last Mimzy" and "Sleepless in Seattle." "The Hand That Rocks the Cradle" and "Ten Things I Hate

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About You" were filmed entirely in Washington. A major feature film shooting on location generates $225,000 per day for the local economy.

The software industry employs more than 41,000 Washingtonians who earn more than $4.7 billion in wages.

More than 808 professional photographers are employed in the State of Washington.

Songs written by Washington residents like Gretchen Christopher Matzen ("Come Softly To Me"), Nirvana ("Just Like Teen Spirit") and Deke Richards ("Love Child") have been broadcast more than 1 million times on radio and television stations across America.

There are 37 local TV stations and network affiliates in Washington.

The number of businesses in Washington involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 18,100 in 2008 – an increase of 9.8 percent over 2007.

WEST VIRGINIA

Approximately 180 AM and FM radio stations operate in West Virginia.

West Virginia is home to more than 30 daily and weekly newspapers and their employees.

The motion picture and television industry is responsible for 2,180 direct jobs and $49.7 million in wages in West Virginia.

Scenes for "We Are Marshall", starring Matthew McConaughey and classics like "The Deer Hunter" and "Coal Miner's Daughter" were shot in West Virginia. A major feature film shooting on location generates $225,000 per day for the local economy.

Larry Groce, writer of the hit song "Junk Food Junkie", is a West Virginia resident.

There are 18 local TV stations and network affiliates in West Virginia.

The number of businesses in West Virginia involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 1,800 in 2008 – an increase of 11.7 percent over 2007.

More than 182 professional photographers are employed in the State of West Virginia.

"Happy Happy Birthday Baby" by West Virginia resident and songwriter Margo Beach has been broadcast more than 1 million times on radio and television stations across America.

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WISCONSIN

The software industry in Wisconsin employs nearly 4,500 people who earn almost $289 million in wages.

Ben Sidran, writer of the hit song "Space Cowboy", is a Wisconsin resident.

The number of businesses in Wisconsin involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 9,700 in 2008 – an increase of 9.7 percent over 2007.

Wisconsin is home to more than 100 daily and weekly newspapers and their employees.

Approximately 330 AM and FM radio stations operate in Wisconsin.

The entertainment software industry in Wisconsin directly employs 161 people who earn an average yearly salary of $85,000.

More than 806 professional photographers are employed in the State of Wisconsin.

"Wildfire" by Wisconsin resident and songwriter Michael Martin Murphy has been broadcast more than 1 million times on radio and television stations across America.

There are 47 local TV stations and network affiliates in Wisconsin.

The motion picture and television industry in total is responsible for 8,820 direct jobs and $232.2 million in wages in Wisconsin.

Scenes from movies including 2005's "The Amityville Horror" were filmed in Wisconsin. A major feature film shooting on location generates $225,000 per day for the local economy.

WYOMING

The motion picture and television industry is responsible for 413 direct jobs and $4.5 million in wages in Wyoming.

In recent years, the films "Flicka" and "Starship Troopers" shot in Wyoming. A major feature film shooting on location generates $225,000 per day for the local economy.

Wyoming is home to more than 20 daily and weekly newspapers and their employees.

Approximately 130 AM and FM radio stations operate in Wyoming.

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John Barlow, writer of the hit song "Mexicali Blues", is a Wyoming resident.

The number of businesses in Wyoming involved in the creation, distribution or performance of certain copyrighted works, such as theaters, museums and studios, grew to more than 1,100 in 2008 – an increase of 6.9 percent over 2007.

There are 20 local TV stations and network affiliates in Wyoming.

More than 70 professional photographers are employed in the State of Wyoming.

"Dirty Water" by Wyoming resident and songwriter Edward Cobb has been broadcast more than 1 million times on radio and television stations across America.

SOURCES:
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ASCAP
BMI
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Entertainment Software Association
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Motion Picture Association of America
National Association of Broadcasters
NBC Universal
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Testimony of Victoria Espinel
Intellectual Property Enforcement Coordinator, Office of Management and Budget
Before the Committee on the Judiciary
United States Senate
June 23, 2010

Chairman Leahy, Senator Sessions, and members of the Judiciary Committee: Thank you for your continued leadership on this important issue.

I sit here today humbled by my recent confirmation and service to the President as the first Intellectual Property Enforcement Coordinator on a vital issue facing American businesses and American consumers in the 21st Century. Congress created my office in an important first step at reform and the response has been overwhelmingly supportive. I feel privileged to have the opportunity to work with you on this effort.

Congress tasked the Administration with developing and implementing a U.S. government strategy to tackle a wide range of problems associated with intellectual property enforcement and today, I'm pleased to present you with our strategy.

This first strategy reflects the hard work of, and coordination between, numerous U.S. government agencies – including many dedicated public servants and law enforcement officials - the public, the private sector, and my small but hard-working office. But, the release of this strategy marks the commencement of a long process and much hard work lies ahead.

The country needs America's ingenuity now more than ever. It is American innovation that drives our economy and keeps people working. And that makes our intellectual property

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enforcement efforts all the more critical. We need a new course - one that will protect those ideas and help the American economy to thrive again.

In this strategy, we have attempted to capture the significant issues that require immediate attention. We'll be targeting counterfeiters and pirates, not those engaged in legal and legitimate activities. Increased coordination, cooperation, and prioritization must accompany this first step. And legislative action may be required in order to fulfill our goals.

The United States has always been a global leader in developing new technologies in intellectual property-related industries. We lead the way in bringing new pharmaceuticals to consumers, inventing tires that keep families safe on the road, developing environmentally-conscious technologies, creating innovative software products and producing films, music and games craved by consumers throughout the world. However, our leadership in the development of innovative technology and creative works also makes us a global target for theft.

For those reasons, strong enforcement of our intellectual property is critical. Combating counterfeiting and piracy is an economic concern, it is a national security concern, and it requires a robust federal response. Strong intellectual property enforcement saves American jobs, it creates American jobs, it protects American ideas and it invigorates our economy. The revenue lost to American businesses from intellectual property theft carries with it lost funding for public services to compound the harm caused to our economy.

Counterfeiting and piracy affects a vast range of businesses and industry sectors. As part of our efforts to develop this strategic plan, we asked the public for input so the Administration could understand their concerns directly and we received over 1,600 responses. My office reviewed all of those responses and we posted them on our website. Anyone who is interested can see what we are taking into account. I also met with many companies, across a broad

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spectrum of America's industries, as well as unions, academics and consumers groups to engage them about where the problems in intellectual property enforcement lie and to find out what we can do to make things better for the many Americans and American industries that depend on intellectual property for success. The strategy reflects the recommendations that came from the public.

I also want to emphasize that the development of this strategy was an inter-agency collaboration. Justice, Homeland Security, Commerce, USTR, HHS, State and others – all worked tirelessly to make this an excellent and forward leaning strategy.

The overarching mission of this strategy is to ensure that all of the agencies that have a hand in enforcing intellectual property are working together in a coordinated fashion -- and in a manner that is consistent with the priorities of the Administration. With increased cooperation and coordination, this plan has the ability to alter our approach to intellectual property enforcement for the better for many years to come. To do so, we are taking some new bold steps and we look forward to partnering with you.

- The U.S. Government will work to collect and analyze data to determine jobs and exports that are generated by the intellectual property-intensive industries. We will also start collecting annual data on U.S. Government resources spent on intellectual property enforcement to make certain that we are using those resources efficiently. This information may take some time to gather, but will be valuable to better inform our approach in years to come.

- We will lead by example. We are establishing a government-wide procurement working group which will prepare recommendations on how to reduce the risk of the procurement of counterfeit products. And we will review our policies and practices to promote legal use of software by Federal government contractors.

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- This Administration is strongly committed to transparency in our policy making. Both the process through which the strategy was developed and the substance of the strategy reflect that. We will increase information-sharing with rightholders. We will make sure that victims know how and where to report a potential intellectual property crime. And we will work to ensure that victims of crimes and the public are appropriately informed of our law enforcement activities.

- In order to reduce duplication and waste, we will ensure that federal agencies are coordinating, cooperating, and offering broad participation on this issue. We will also help state and local law enforcement coordinate their responses with federal agencies in an effort to help reduce duplication of resources and conflicts among and between law enforcement agencies.

- We will improve the effectiveness of U.S. Government personnel overseas to combat intellectual property infringement. Therefore, we will strive to station overseas personnel in countries of top concern. We will also improve coordination of international capacity building and training so that foreign governments have the tools necessary to strengthen intellectual property protection on their own.

- We will work with foreign governments to increase foreign law enforcement efforts and promote enforcement of American intellectual property rights through trade policy tools, such as trade agreements and "Special 301" action plans.

- We are establishing a counterfeit pharmaceutical interagency committee to examine the numerous problems associated with unlicensed internet pharmacies, health and safety risks in the United States associated with the distribution of counterfeits, and the proliferation of the distribution of counterfeit pharmaceuticals abroad. And to further guard against the proliferation of counterfeit drugs, we will increase our enforcement efforts and cooperation with relevant agencies - including CBP, DEA, and FDA.

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- In order to reduce counterfeit goods in our supply chain, we want to encourage voluntary disclosure when importers discover that they are transporting counterfeit goods without knowledge. We're proposing legislative changes to encourage them to come forward.

- We need to facilitate cooperation to reduce intellectual property infringement occurring over the internet. It's important for the private sector to work to find practical and efficient solutions to the problems on their own. In the meantime, we will also be exploring alternative measures to reduce piracy.

- For example, we will go after the foreign-based websites and web services that infringe our intellectual property rights utilizing a combination of tools, including law enforcement, diplomatic measures, and coordination with the private sector.

- We will also conduct a comprehensive review of existing intellectual property laws to determine where legislative changes are needed to improve our enforcement, including to address the problem of internet piracy. We will be presenting those to you for your review and consideration.

- Finally, we will undertake a comprehensive review of efforts to support U.S. businesses that face difficulties enforcing their intellectual property in overseas markets in order to ensure that American rights are respected and enforced in global markets, including China.

I've stated some ambitious goals. This Committee has been steadfast in its fight for justice for the American people. I commend your leadership on these issues and I look forward to working closely with this Committee in the coming months on improving our enforcement efforts - here and abroad. I look forward to your questions.

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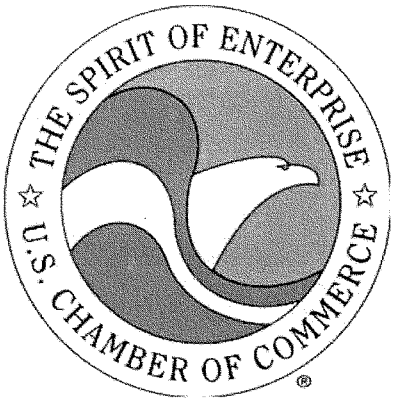

Statement of the U.S. Chamber of Commerce

ON: "Oversight of the Office of the Intellectual Property Enforcement Coordinator"

TO: The Senate Committee on the Judiciary

DATE: Wednesday, June 23, 2010

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

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About the U.S. Chamber of Commerce

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

In addition to virtually all of the nation's largest companies being active members of the Chamber, more than 96 percent of our members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

The Chamber's membership represents a significant cross-section of the American business community, from small mom-and-pop companies to multinational corporations employing tens of thousands of individuals. The Chamber's membership also represents virtually every commercial sector. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. The Chamber has substantial membership in each state in the nation.

The U.S. Chamber of Commerce has a significant international reach as well through the112 American Chambers of Commerce in foreign lands. Rather than posing a threat to American business interests, the Chamber believes that global commercial interaction enhances our national economy and creates significant opportunities, both at home and abroad. In addition, an ever-increasing number of our members are engaged in the export and import of both goods and services and have ongoing investment activities beyond our borders. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members and others who serve on committees, subcommittees, and task forces which debate, influence and decide regional, national and international issues affecting commerce, economics, relations and business.

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Testimony of David Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center
U.S. Chamber of Commerce

Introduction

Chairman Leahy, Ranking Member Sessions, and Members of the Committee: I appreciate the opportunity to testify today on behalf of the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC). The GIPC believes that protecting intellectual property (IP) rights is essential to driving the innovation and creativity necessary to create jobs, save lives, advance economic growth and development around the world, and generate breakthrough solutions to global challenges.

At the outset, I want to thank the Committee, and the Chairman in particular, not only for holding today's hearing, but for the important efforts over the years to better protect the rights of innovators and creators. One of the most notable among these efforts, of course, was enactment of the PRO-IP Act in the Fall of 2008. Without this forward-looking legislation, we would not be having today's discussion on the Office of the Intellectual Property Enforcement Coordinator or the newly-released, first-ever national IP enforcement strategy. So I commend the Chairman for getting us to this point and for his continued commitment to improving the government's capacity to protect and enforce Americans' IP rights.

It also is worth noting that enactment of the PRO-IP Act was accomplished on a bipartisan basis with the support of a diverse group of stakeholders, including both business and organized labor. This clearly demonstrates that providing effective protection of IP rights can and should be a goal that transcends party identification and our disagreements in other policy areas.

The GIPC and our members are very pleased that the IPEC, Victoria Espinel, recently released her national IP enforcement strategy, and we applaud her for undertaking this thorough review of the government's IP enforcement efforts with alacrity following her Senate confirmation late last year. I would also like to compliment Ms. Espinel and her office for the accessibility and willingness to engage stakeholders that they have demonstrated in developing this plan. And we certainly anticipate that this will remain the case as they move forward on its implementation.

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The release of this plan is an historic and necessary step toward improving the effectiveness and efficiency of federal IP enforcement. But we also recognize that implementing it clearly presents a much greater challenge, which is why the GIPC and our members stand ready to work with Congress and the Administration to that end. Let me also be clear in stating that the hard work put into developing this plan will be for naught unless Congress and the Administration make it a top priority to ensure that Ms. Espinel has the requisite authority, budget and staff to successfully work with Congress, the appropriate federal departments and agencies, industry and other stakeholders toward its implementation.

The Importance of IP Rights & Current Threats

IP rights and innovation have been important drivers of job creation and economic growth throughout our nation's history. Today, IP-based industries account for more than $5 trillion of the U.S. GDP, are responsible for more than half of our exports, and employ over 18 million Americans. By providing incentive for individuals, small businesses and large companies alike to invest their time and financial resources on innovative and creative ventures, IP rights have also been a catalyst for improvement to our standard of living, whether it's the development of a new life saving medicine, a better and safer mode of transportation, or the creation of entertainment such as books, movies, and music.

In the global economy of the twenty-first century, U.S. competitiveness has become directly and inextricably linked to our ability to adequately and effectively enforce IP rights. A recent study commissioned by the GIPC[1] found that IP-intensive industries—such as life sciences, software, and aerospace—are succeeding globally, driving innovation, and investing heavily in research and development, which, in turn, grows the economy by creating jobs and increasing exports. IP-intensive industries are also able to weather economic downturns better and pay both skilled and unskilled workers better salaries than do non-IP sectors of the economy.

While it is well-established that innovation, technical invention and creativity are the primary drivers of U.S. global competitiveness, it is also clear that Americans' ability to compete in the global marketplace is increasingly

[1] *"The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages and Exports" by NDP Consulting*

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threatened by a tidal wave of infringing activity—including counterfeiting and piracy in both the physical and online environments—that diverts the benefits of innovation and creativity from its proper beneficiaries into the coffers of criminals. In addition, foreign governments increasingly allow and even encourage unwarranted exceptions to IP laws and norms that weaken companies' ability to innovate. Lastly, an Internet culture that views online piracy and the willful trafficking in counterfeit goods as tolerable, if not acceptable, threatens to undermine our IP intensive industries, their employees, and consumers around the world.

IP theft is estimated to cost the U.S. economy hundreds of billions of dollars annually, and has also led to a significant loss of American jobs. In addition to the economic impact, IP theft poses a health and safety threat that presents a clear and increasing danger to the public. Sectors where this threat is particularly severe include automobile parts, airplane parts, food, medical devices, medical supplies, electrical supplies, pharmaceuticals and many more. IP theft has become an attractive proposition for organized crime because they can engage, with minimal risk, in high-value commerce such as manufacturing millions of bootleg DVDs, bottles of counterfeit medicine, or even chips used by our military to operate sophisticated, multi-million dollar weapon systems.

The combination of all of these factors has elevated counterfeiting and piracy from being just a chronic problem to an acute and growing crisis, which significantly impacts a broad and diverse segment of the business community and the jobs they support. Today, America's business sectors invest heavily in technical and other measures to prevent and investigate intellectual property theft, and convince foreign governments of the benefits of IP protection. But, the private sector can only do so much. Congress and the administration must also be committed to implementing sound IP policies and sustaining strong IP enforcement efforts in the United States and abroad. That is why the development and release by the IPEC of a first-ever, government-wide, IP enforcement strategy is viewed by the GIPC and our Members as such a positive step. We encourage this committee and others to carefully examine this White House plan and thoughtfully consider what legislative action might be necessary.

As we pore over this report in the coming days, the GIPC will be looking to see how this strategy coordinates, strengthens and improves the U.S. government's enforcement of IP across a range of areas, but with a specific interest in how this

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plan seeks to achieve the following three broad goals that our members have said are particularly important:

- Making the U.S. and its like-minded trading partners the toughest, most capable enforcers of IP laws in the world, delivering effective consequences to those stealing others' hard work and ingenuity.

- Protecting IP rights in the U.S. and abroad, particularly in the handful of capitals and multilateral fora where some are constantly trying to undermine them for their own gain.

- Aggressively cracking down on the growing problem of IP theft online, by making it harder for criminals to use the Internet to distribute stolen American ideas and harm consumers.

While we acknowledge that fully achieving each of these goals will likely require a sustained, multi-year effort to accomplish, I would like to briefly mention several critical priority areas that GIPC believes Congress and the administration can and should focus on in the near term to address IP theft domestically, internationally, as well as online.

Protecting IP Domestically

The PRO-IP Act authorized critical IP-focused investigative and prosecutorial resources at the Justice Department, which – thanks to funding from Congress the past two fiscal years – have recently started to come online. Congress should continue to provide robust funding for these IP-dedicated resources while conducting vigorous oversight of the PRO-IP Act's personnel and new authorities to ensure that they are both having the anticipated impact.

Using the model for what was accomplished with regard to DOJ through the PRO-IP Act, Congress and the administration should work together to provide U.S. Customs and Border Protection and Immigration Customs Enforcement with the structure, resources, tools, and direction necessary to bolster their capacity to prevent counterfeit goods from entering the United States. These agencies represent the primary barrier to the ever-increasing flood of counterfeit and pirated products. However, even as IP crime and its impact have grown, they have been slow to undertake the policy changes and resource allocations necessary to

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effectively counter the problem. S. 1631, the "Customs Facilitation and Trade Enforcement Reauthorization Act of 2009," which was introduced in July 2009, contains important provisions to improve CBP and ICE's IP enforcement capabilities, and the GIPC believes the Senate should move this legislation without further delay.

Lastly, the federal government must continue to support State and local efforts to address IP theft. State and local law enforcement recognize that they can play an important role in the fight against counterfeiting and piracy, and that their efforts help preserve local economies, save jobs, and protect consumers. That is why many jurisdictions have created city-wide or state-wide task forces focused on IP crime. Often state and local law enforcement is able to investigate and prosecute IP cases that federal enforcement agencies choose not to pursue. One important way the federal government can support these efforts is to continue providing robust grant funding for state and local IP enforcement through programs such as the one authorized by section 401 of the PRO-IP Act. Federal enforcement agencies should also support and participate in state and local training efforts whenever possible. A multi-jurisdictional approach to training is just as important as it is to investigations and prosecutions.

Protecting IP Internationally

The protection of intellectual property rights abroad is also essential to promoting the growth of our IP-intensive industries, in particular, and increasing our broader economic competitiveness more generally. For these reasons, it is important that the administration continue to promote and defend a robust international system of IP laws and norms while strengthening cooperation with key trading partners to promote shared IP priorities. This includes protecting IP rights in international fora such as the World Intellectual Property Organization, as well as advancing agreements, such as the pending U.S.-Korea Free Trade Agreement and the proposed Trans-Pacific Partnership agreement, with strong IP protection and enforcement provisions. The GIPC is encouraged by the administration's efforts to conclude an ambitious and comprehensive Anti-Counterfeiting Trade Agreement (ACTA) before the end of this year, and we firmly believe an agreement that includes robust provisions to confront IP theft in both the physical and online environments will help protect American jobs and stimulate the economy.

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IP specialists, stationed at American embassies in select countries, are an important asset in helping address IP protection and enforcement issues. Given the success of the current IPLEC and IP attaché programs, GIPC believes it would be wise for Congress and the administration to work together to expand these programs and further improve them by strategically directing these personnel to countries where capacity building programs and technical assistance could most significantly improve IP enforcement.

Congress should also consider legislation to improve the U.S. Trade Representative's "Special 301" process by enhancing the tools available to the administration to engage more effectively with nations that fail to respect or enforce the rights of America's innovators and live up to their international IP obligations. This legislation should require an action plan for Priority Watch List countries that includes clear benchmarks to measure performance and meaningful consequences, consistent with international trade obligations, for nations that fail to perform.

Protecting IP Online

In addition to the many benefits that the emergence of the Internet and new online technologies have brought society, they have also fueled an explosion in IP theft that not only poses a risk to consumer health and safety through the sale of faulty and dangerous products, but also severely undermines sectors of our economy that have historically provided secure, high-paying jobs. The rampant theft of movies, music, books, television programming, games, software and other digital content is threatening the ability of U.S. companies to increase investment and hire additional workers in these industries—sectors in which America has been a world leader, and through which the international community has come to know our country.

One reason the problem of IP theft online has become so pervasive is that, unfortunately, many believe that the rules and norms associated with the traditional marketplace do not, or should not, apply to the Internet. For instance, while it is widely-understood that walking into a store and stealing a DVD off the shelf is wrong, illegally streaming or downloading that same movie on the Internet is somehow viewed as a less serious offense – and even acceptable – by a substantial segment of society. Indeed, a sub-culture has developed that "if it's online, it's not a crime."

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Additionally, while most Americans would rightfully have suspicions about the quality of bargain-priced medicine or other items being sold out of the back of a van, a slick-looking website is often all it takes to prompt Americans to unwittingly purchase counterfeit products online without even a second thought about their authenticity.

Many of the problems we face online are clear, but the solutions are much more complicated, which is why I believe that a serious discussion about how to foster continued innovation while protecting IP in the online marketplace is long overdue. The GIPC and our members will continue to vigorously pursue voluntary business to business solutions where practicable, however, we also believe that Congress and the administration should examine this problem and consider new and creative efforts to fight counterfeiting and piracy in the online environment.

A reasonable starting point for addressing IP theft online that I hope we can all agree on is the need to ferret out and shut down websites whose business models are indisputably centered on the sale or distribution of counterfeit and pirated goods. Many of these websites are situated overseas, and may not be within the jurisdictional reach for costly and time-consuming criminal or civil actions. We look forward to working with the Committee and with the Congress to explore creative and effective methods that would make it more difficult for such sites to sustain a business model built on facilitating IP theft.

Conclusion

Protecting IP rights is a critical component of our economic resurgence, and vitally important to America's future. The Obama Administration has been a strong advocate of IP rights, vocally supporting efforts to safeguard American jobs and ideas, and the White House should be commended for developing this national IP enforcement plan. While we anticipate that the IPEC will work to further refine this plan—in close collaboration with Congress and industry—she should also begin implementing it now if we are to stem IP theft and strengthen our economy. This process should begin today. Indeed, it must given all that is at stake.

Thank you for this opportunity to share our perspectives on these important issues. The GIPC looks forward to working with you in the future.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Oversight Of The Intellectual Property Enforcement Coordinator"
June 23, 2010

Intellectual property fuels the American economy and creates jobs. The Chamber of Commerce estimates that American intellectual property accounts for more than $5 trillion and IP-intensive industries employ more than 18 million workers. Just as intellectual property is crucial to our economy, counterfeiting and piracy of that American intellectual property slows our growth.

We have recognized the value and importance of IP throughout our Nation's history. It is included in our Constitution. A strong but balanced system for protecting intellectual property is not uniquely a Democratic or Republican priority – it is a bipartisan priority.

The PRO-IP bill enacted last Congress was cosponsored by 22 Senators – half Democrats; half Republicans, and passed the Senate by unanimous consent.

Patent reform legislation is another shining example of our bipartisan work in this area. Along with Senators Hatch, Sessions, and Kyl, we have forged bipartisan consensus legislation that will improve the economy and create jobs without adding to the deficit. The bill has strong bipartisan support, and shows what we can do when we work together to improve our economy.

Today's hearing is the first oversight hearing with the Intellectual Property Enforcement Coordinator and her first appearance before this panel since her confirmation hearing before this Committee last November. We welcome Victoria Espinel back to the Committee to discuss the Joint Strategic Plan for intellectual property enforcement. Congress created the IP enforcement coordinator position in response to concerns that the numerous agencies within the Government sharing responsibility for protecting intellectual property were not sharing information and coordinating their efforts as effectively as they could. We should all agree that enforcement of the laws we enact should be effective and efficient.

Intellectual property crime takes many forms. It may be the counterfeit and inferior semiconductor that finds its way into military aircraft; the counterfeit and unsafe pharmaceutical product that is used to treat an illness; pirated software; or a mob-run cyberlocker subscription service of stolen American movies as Reuters reported just yesterday. In all these forms, it hurts our economy, resulting in a loss of hundreds of thousands of jobs and billions in tax revenue. In some forms, it can put American's health and safety in jeopardy.

The first important task for the enforcement coordinator was to create a Joint Strategic Plan against counterfeiting and infringement. I applaud Ms. Espinel for having conducted an open process in the creation of the plan that we are reviewing today. That process demonstrates her commitment to hearing from all interested parties. It is my hope that this plan will represent a way forward to a stronger and more effective enforcement effort.

I am concerned that, increasingly, the Internet is being used to steal intellectual property – from books and journal articles to software, movies, and music. This is no longer an emerging

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nuisance, but a real problem that is draining our economy and costing American jobs. The AFL-CIO recently cited studies estimating that digital theft of just movies and music costs more than 200,000 jobs. This is unacceptable in any economic climate. It is devastating today.

Too often, the discussion of piracy focuses only on consumers who have downloaded illegal content, and not on the websites, primarily based overseas, that are making hundreds of millions of dollars off of American intellectual property. The Department of Justice is finding that international organized crime groups are financing their criminal enterprises through IP theft. I am pleased that the Department of Justice is recognizing this link and that it has created an IP Task Force to address it. This is an economic threat and a security threat. We need to make sure that law enforcement has the tools it needs to combat this rapidly evolving crime.

I want to work with Senator Hatch, Senator Whitehouse and others on legislation that will target those who profit directly from taking American property, and American jobs along with it.

I thank Ms. Espinel for appearing before the Committee. We appreciate her for her hard work and dedication in this new and challenging responsibility.

Finally, I want to assure those who are here with us today that if there is good news to report from the U.S v. Algeria World Cup match, we will do so.

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Testimony of Barry M. Meyer
Chairman and CEO
Warner Bros. Entertainment Inc.
Senate Judiciary Committee
Hearing on
"Oversight of the Office of the Intellectual Property Enforcement Coordinator"
June 23, 2010

Chairman Leahy, Ranking Member Sessions and Members of the Committee. My name is Barry Meyer, and I am Chairman and CEO of Warner Bros. Entertainment, a global leader in the creation, production and distribution of all forms of entertainment and their related businesses. Warner Bros. stands at the forefront of every aspect of the entertainment industry, from feature films to television, home entertainment, animation, comic books, interactive games, product and brand licensing, and international cinemas.

I appreciate the opportunity to appear before you today and want to start first by thanking you and your colleagues for passing the PRO-IP Act to establish the important role of the Intellectual Property Enforcement Coordinator (IPEC) and strengthen the government's commitment to copyrights, American creativity and innovation. As the release of the Joint Strategic Plan demonstrates, consumers are being well-served by the appointment of Victoria Espinel, who has already begun to do an incredible job of bringing together the many resources of the federal government to coordinate and share information, which is vital to achieving the most beneficial results in a cost-effective manner.

The Joint Strategic Plan is another important step in achieving a higher level of cross-agency collaboration on intellectual property (IP) issues. While we have not had a chance to fully review the plan, we understand it contemplates examining current laws and future needs for meeting the growing challenges from IP crimes. We commend the efforts of all those in the Administration who

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played a role in developing the plan, and especially thank President Obama and Vice President Biden for their strong and thoughtful leadership. We stand ready to work with Ms. Espinel to implement this ambitious blueprint for strengthening the government's coordinated IP enforcement activities.

Mr. Chairman, the work being undertaken by the IPEC goes to the heart of what we and others in the creative community do to inform, educate and entertain. We value the Internet as a powerful means by which to distribute our media properties in innovative new ways. While the Internet provides the high-speed link, what we do connects people all around the world, and now more than ever, closely couples technology with media that consumers have seamlessly integrated into their lives.

While today the average consumer still spends more time watching content on television than over the Internet, online video views were up more than 200% at the end of 2009 compared to the beginning of 2008, and video viewers increased 23%.[1] In fact, we continue to see double digit growth in time spent with online media as consumers continue to shift day to day behaviors and engagement habits.[2] Added to this is another 200 minutes or so per month using a mobile device, a segment that grew more than 50% in that same timeframe.[3]

By no means has the marriage of technology and media occurred without disruptive effects to the industry's core businesses. Technological advances coupled with marked changes in

[1] comScore Video Metrix reports, January 2008 through December 2009.
[2] eMarketer, April 2010, "US Internet Users 2010."
[3] Nielsen, Three Screen Report, Volume 8, First Quarter 2010.

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consumer behavior have required us to constantly re-think our models. We do this more than willingly and use such disruptive events as opportunities to innovate.

Mr. Chairman, responding to these trends and recognizing a series of critical inflexion points that will determine the overall welfare and stability of the motion picture industry in the future, Warner Bros. has adapted its strategies and integrated multiple new digital delivery models that enable consumers to access content across multiple platforms and a myriad of devices. Our goal is straightforward: to deliver content to consumers in the highest quality, with the greatest variety of choices, with reliable convenience and portability and at reasonable price points, while diminishing the risks of unauthorized reproduction and distribution using a variety of tactics.

Beginning more than 15 years ago, Warner Bros. led the effort to work with consumer electronics and technology companies in the development of the DVD. We continue to collaborate with the technology industries on new business models and on accompanying strategies to deliver content in smart, consumer-friendly ways. For example, today we release our Blu-ray titles with not only the high definition version but also versions in standard definition that can be used on a PC, Mac or mobile device. Numerous products that we launch incorporate some form of access to a user's social network whether it's Facebook, Twitter, MySpace and others through functions like BD-Live that allow users to coordinate online movie screenings with friends and post commentaries via their Internet-connected Blu-ray players. With recent data showing that 58% of TV/Internet households, at least a third of the time, use the television and web simultaneously, incorporating "lean back and lean forward" experiences is a key component to our studio's digital strategy.

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We have also partnered with Apple, Microsoft, Amazon, Sony and many others to distribute our products to personal computers, media servers, gaming consoles and mobile devices. Warner Bros. content is now available on a wide variety of video-on-demand, subscription and electronic sell-through services over the Internet, cable and satellite platforms and mobile networks. We license streaming of our movies and television shows in both paid and advertising supported services over the Internet. For example, within twenty-four hours from the initial broadcast of a new episode of our hit television series "Gossip Girl," it is available for sale by download over the Internet via Amazon and the iTunes video store. Viewers can also watch the episode online for free on the advertising supported streaming site Hulu. At the same time we release one of our new feature films on DVD and Blu-ray, electronic copies are available for purchase online through such services as CinemaNow and Blockbuster and can be enjoyed on a variety of devices from a personal computer to a Playstation3 to an Xbox or an Internet connected television set.

By placing consumer access and technology enablers as key strategic determinants, Warner Bros. is at the forefront of modifying the traditional distribution windows. Typically, studios released motion pictures on DVD at least two months before they were available via video-on-demand rental services. Today, Warner Bros.' video-on-demand window coincides with our packaged media release dates so consumers can access both physical and digital options of our content sooner. Furthermore, as a result of the FCC's recent decision promoting use of secure digital outputs, we are actively pursuing opportunities for an early window release of our films over cable and satellite systems in advance of DVD and Blu-ray.

Mr. Chairman, none of this innovation would be possible without the tireless efforts of millions of talented professionals working in the film and television industries, which extends far

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beyond just the studio lots in California or the streets of New York. In 2008, the motion picture industry was responsible for over 2.4 million jobs and over $140 billion in total wages – across *all fifty states.*[4] The industry is made up of more than 95,000 small businesses across the country - 82% of which employ 10 people or less. The industry also makes more than $40 billion in payments to businesses around the country, with film productions infusing on average $225,000 per day into a local economy. This includes local hires for production, such as extras and electricians, as well as a network of small businesses in that community, such as lumberyards, apparel retailers, caterers, florists, and dry cleaners. Nationwide, the motion picture industry generated $15.7 billion in public revenues in 2008, and we consistently boast a positive balance of trade in virtually every country in which we do business. In fact, the trade surplus for motion picture and television exports is larger than the surpluses of the U.S. telecommunications, management and consulting, legal, medical, computer and insurance services sectors.

Fueled by this combined innovation on both the technology and creative sides, we are excited about the future. We recognize that consumers seek more control over where, when and how they enjoy our content. In just the last year, for example, the number of subscribers watching video on their phones or other mobile devices grew by more than 50%.[5] That is why we are embracing new technologies to deliver our content to consumers on every conceivable platform. In addition, we understand that more consumers want to make our content part of their online social interactions. Whether by Facebook or by live online discussions, such as the one we recently arranged with Daniel Radcliffe, the star of the "Harry Potter" movies, we are increasingly providing social networking opportunities around our content.

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[4] MPAA, The Motion Picture & Television Industry Contribution to the U.S. Economy, Supplementary Report, April 2010.
[5] Nielsen, Three Screen Report, Volume 8, First Quarter 2010.

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While high-speed broadband networks bring immense opportunities for the exchange of information and ideas, and new business prospects for media companies, the inappropriate use of these networks can also facilitate the anonymous theft and rapid, ubiquitous illegal distribution of copyrighted works. Indeed, the rampant theft of IP and the growing proliferation of stolen goods on the Internet strikes at the very heart of our nation's economy, our core values of reward for innovation and hard work, and our ability to compete globally. According to a study by the Institute for Policy Innovation, motion picture piracy costs the U.S. economy more than $20 billion in total output, results in the loss of more than 141,000 jobs for American workers, and costs Federal, state and local governments $837 million in lost tax revenue.[6]

Copyright infringement, in other words, is a threat to every American entrepreneur, from the guy in the garage with the next big idea, to our nation's leading high-tech companies that are busy creating next generation computer software and the exciting new devices that can access high quality content on advanced digital platforms. As President Obama recently said, the United States must act to "aggressively protect our intellectual property," which he called one of our nation's greatest "asset[s] . . . the innovation and the ingenuity and creativity of the American people." The motion picture industry deeply shares this view.

We face challenges in this effort, however, as online piracy has become highly commercial and professionally run. For example, while the misuse of peer-to-peer networks still represents a major threat, consuming 39% of all Internet traffic[7] for primarily infringing files[8], streaming sites

[6] Institute for Policy Innovation "*The True Cost of Motion Picture Piracy to the U.S. Economy,*" by Stephen E. Siwek, September 2006.
[7] Cisco Visual Networking Index: Forecast and Methodology, 2009-2014, June 2, 2010.
[8] Princeton Center for Information Technology Policy, Freedom to Tinker, "Census of Files Available via BitTorrent," by Ed Felten, January 29, 2010.

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and cyberlockers are increasingly becoming the tools of choice for online thieves. These sites often use traditional revenue models, like advertising and subscriptions. Consumers are often unaware they are providing their personal and financial information to an illegal distributor who then often sells such data to third parties. To give a sense of the scope of the problem, within one week from our theatrical release of "Sherlock Holmes" in the United States in December 2009, three unique illegal camcorded versions of the film were available on the Internet (English, Russian and Thai). Over the next few weeks pirate versions in every major language were also put online. There were more than 1.7 million downloads of the film in the first 30 days through peer to peer networks alone and thousands of copies posted to cyberlockers and streaming sites, each serving as the source for further pirate copies or unauthorized viewing.

Even more troubling is the fact that sophisticated criminal enterprises are behind many of these web sites, which are usually run from safe havens abroad and generate hundreds of millions of dollars each year. Furthermore, a RAND report released last year, which focused on the distribution of pirated DVDs and detailed fourteen case studies found a link between piracy, narcotics trafficking and organized crime.[9] This included the New York Chinatown Yi Ging organization, which reportedly has netted $1.2 million per year from film piracy.

Warner Bros. is doing everything it can to help combat the piracy of our content, and we spend tens of millions of dollars annually directly on our anti-piracy activities. We have secured our production and distribution chains such that there has been no pre-theatrical leak of a Warner Bros. film in more than five years. We partner with a variety of different industries and companies to create new and attractive secure distribution channels for our content. We are working with

[9] RAND Corporation, Safety and Justice Program and the Global Risk and Security Center, "Film Piracy, Organized Crime, and Terrorism," by Gregory F. Treverton, et al, 2009.

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technology companies to develop and implement technical tools, such as watermarking and filtering, to reduce digital piracy. And we are reaching out to Internet service providers and online intermediaries to enlist their assistance in reducing the vast amounts of digital piracy that clog their networks. Indeed, future gains in the fight against piracy can be greatly influenced by the continued (and in some cases increased) participation by broadband network providers, website operators, search engines, online payment processors, advertisers and both hardware and software product manufacturers.

While the release of the IPEC's Joint Strategic Plan is a critical step forward with respect to government led efforts, we acknowledge that no "silver bullet" exists — either in the public or private sector — that can fully eradicate the problem of piracy. Rather, the problem must be pursued on a variety of levels and through multiple approaches, which include providing robust legitimate alternatives, ensuring cross-industry cooperation to prevent infringement, and vigorous enforcement efforts at home and abroad. In conjunction with the implementation of the Joint Strategic Plan, we recommend the following steps:

1. More education on the societal, cultural and economic value and importance of copyright and IP;
2. More effective enforcement of IP rights online, particularly with respect to the major sites and sources of pirated content, for which criminal prosecutions should be pursued;
3. Development and implementation of technologies and practices that make copyright infringement in the digital world less reliable and less "user friendly." The government should not take any actions that might impede the ability of the content industries and broadband network operators to cooperatively use an array of technological tools and approaches to address online theft;

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4. Expanded collaboration among content owners, Internet service providers, online payment processors, advertising placement networks, search engines and other intermediaries to disable or disrupt sites and services devoted to aggregating and distributing pirated content.
5. Increased cooperative efforts by Internet service providers to work with content owners to educate and deter individual broadband subscribers from engaging in the unauthorized peer-to-peer uploading and downloading of copyrighted content;
6. Ensuring that the federal government adopts a high standard for IP in its international trade negotiations – specifically through the ongoing talks on the Anti-Counterfeiting Trade Agreement (ACTA), where anti-copyright activists have aggressively pursued weaker online copyright protections, and with the Trans-Pacific Partnership (TPP) agreement;
7. Stress to foreign leaders the importance of strong IP protection to their bilateral relationships (specifically in countries such as Spain, Canada, Mexico and China, that are on the USTR Special 301Watch List) and support the steps several governments have taken, or are taking, to strengthen their IP enforcement regimes, such as France, the UK, Korea and Taiwan.

With respect to the above, continued government reiteration regarding the value of copyright protection and the responsibility of all participants to address piracy would be highly valuable. Government encouragement of Internet service providers, online payment processors, search engines, advertising networks and other intermediaries to work cooperatively with copyright owners and to take reasonable pro-active measures to disable or disrupt digital piracy would be very helpful to achieve the results that both the government and the private sector seek with respect to preserving the value of creativity and intellectual property.

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As the IPEC Joint Strategic Plan recognizes, Warner Bros. and others in our community have a significant role in the vibrancy of the American economy, and to American workers. Enforcement of laws to ensure that consumers continue to enjoy what we create has broad benefits, and we appreciate that today's hearing and the efforts described by the Coordinator recognize that fact. In closing, I'd like again to thank the Coordinator for her hard and thoughtful work to date, and thank you, Mr. Chairman, for allowing me the opportunity to address this important topic. I am happy to answer any questions you may have.

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Oversight of the Office of the Intellectual Property Enforcement Coordinator

June 22, 2010
Thank you for the opportunity to provide insight to the Judiciary Committee and the new Intellectual Property Enforcement Coordinator.

I have significant unique experience.
I am James M. Yates, an individual from the State of Missouri, with extensive experience in the handling of fungible objects. For more than two centuries, the principal means devised by the Copyright Act to reward authors for a work is to afford them the right to get paid from the issuance of fungible objects embodying that work. The most common fungible objects today are CDs, DVDs, and eBooks. These objects have been the subject of much discussion and activity in recent years due to technology changes that have resulted, in some cases, in piracy. The business model of the stewards of these copyrights has encouraged piracy.

No further legislation needed.
There is one and only one way that is known to thwart piracy in the fungible object, and it has yet to be tried. I propose that no further legislation need be promulgated to solve these problems, which are generally lumped into the categories of peer-to-peer file sharing and/or piracy. There exists a simple adaptive technology to solve the problems with clarity and finality.

Successful use of basic technology solves the problem.
This basic technology is used throughout the world to successfully perform the most sensitive of fungible property transfers. I refer to cash, credit and security instruments. This technology has been modified in each case to accommodate the unique nature of the Intellectual Property objects. I have created such a model for media Intellectual Property objects. I call it the Media Content Exchange. You can participate in it at thedce.com. It works for digital and physical media and the coordination of one form to the other.

Principles of the Exchange.
The principles are simple. You cannot succeed in cheating the Intellectual Property holder when you must verify to a trusted entity to use or exchange the property. The Intellectual Property can be immobilized for more efficient transactions much like writing a check on your immobilized cash in your bank account. You cannot succeed in cheating the Intellectual Property holder when all the transactions are transparent. The principles that keep the New York Stock Exchange from trading in illegal or pirated securities are the same that protect the Intellectual Property holder.

Reduction of piracy.
Should the holders of Intellectual Property choose to use such a system for all their transactions with their customers and all their distributors do the same there will be no piracy opportunities. Any attempt outside the system will be easily detected and very difficult to disguise. While there will always be those that attempt counterfeiting, piracy, or other illegal activities, the Exchange will provide a clear and viable mechanism for discouraging such illegal activities.

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Improvement in pursuing legal activities.
Further, the Exchange can bolster the legality of current activities which are now of questionable legality like those that assume the files on you hard drive are owned by you when you play them from afar (example is Simplify Media recently purchased by Google) and uploaded to the cloud for use (example is MP3Tunes).

Added benefits of the Exchange.
The Exchange, by its very nature, is the registrar of the Intellectual Property that is clearly necessary to solve the issue of digital books that has arisen within the Google Book Settlement. The Exchange is an Opt In system that is fair to all parties. The Exchange is the trust fund for those persons who own the Intellectual Property but have not been or cannot be found creating what has come to be called Orphan Works. The Exchange is the platform to keep track of all media Intellectual Property objects as the custodian of Intellectual Property information from the largest music labels and the largest publishers of movies and largest book publishers to the individual who wishes to make a go of it on his own. It is a by-product of providing the Exchange facility. What is more emblematic of the freedom of the Untied States than providing a mechanism where the individual can operate on the same level as a large corporation? That is what Intellectual Property was established for in the United States Constitution. The Exchange implements that right without further laws and with the technology that currently exists.

Why large holders of Intellectual Property do not or have not understood this concept and chosen to participate is unknown. I welcome their discussion and comments.

A brief word about Orphan Works.
Many people who discuss this subject propose that these works are lost and are unable to properly used, digitized or transacted because the Intellectual Property owner cannot be located or will not participate. This position is just not true. The Exchange, by verifying the existing copies as owned by individuals allow it to participate in commerce on the basis of those copies that currently exist. The Exchange enforces a one to one relationship in commerce that, like a bank, does not manufacture additional copies of those items deposited within its walls. The Exchange simply allows transactions in those items that exist and are presented properly to it for verification.

A brief word about Patent Protection of Intellectual Property.
Yes, I have applied for a patent to protect this unique idea from being taken and implemented by those with greater resources. The framers of the Constitution took particular care in setting up the framework to protect ideas as well as works. This idea is my Intellectual Property and I propose to protect it with a patent that is pending.

Attachments:

Short Resume of James M. Yates
James M. Yates has a Civil Engineering BS and MBA from Washington University in St. Louis. He has been a NYSE member and worked on the NYSE trading floor. He founded and ran Bridge Data that was sold to Reuters (now Thomson Reuters). Bridge was highly profitable (over 7 years to 1986 sales grew at an annual compounded rate of 48.2% and profitability achieved a 40 percent return on sales pretax). He designed and implemented the data service and information database including the most sophisticated and unique real time stock, option and futures information available.
Most of what is taken for granted on the Internet with financial information was done initially by Mr. Yates at Bridge Data in the 1960s and 1970s prior to the Internet.
Mr. Yates founded The Media Exchange Company, Inc. in 2003 to assist in solving the legal exchange and use of copyrighted digital files based upon the Exchange model. He has a Patent Pending on technology and process for this purpose. See thedce.com for a demonstration of this solution.

White Paper – Toward an Digital Content Exchange by R. Emmett McAuliffe
Separate attachment
Scribd 31283454-White-Paper-Toward-a-Digital-Content-Exchange-for-copyrighted-works.pdf

Google Book Settlement Amicus Curiae submission
Separate attachment
Justia docs Amicus Curiae filed 8F615510d01.pdf

Comparison to financial exchange white paper
Separate attachment
DCE_Financial_Exchange_Comparison.pdf

Patent info
METHOD AND APPARATUS FOR DIGITAL COPYRIGHT EXCHANGE

(57) Abstract: An apparatus and method for enabling commercial exchange of copyrighted digital media and other digital files (104) where there is a fee due to the owner (102), such as but are not limited to, music, movies, books, software, games and photos. This structure will compensate the Copyright owner (109) and the seller or referrer (106) completely within the existing laws. For a fee, a service provider (100) verifies for all parties to a transaction that the transaction is legal and the file or digital media is correct and without faults, as well as the proper routing of payment to all properly represented parties. It is simply a structure that will operate as all exchanges do, to facilitate the legal transfer of assets and money.

http://www.wipo.int/pctdb/en/
fetch.jsp?LANG=ENG&DBSELECT=PCT&SERVER_TYPE=19&SORT=1200121-KEY&TYPE_FIEL
ENG&RESULT=1&TOTAL=1&START=1&DISP=25&FORM=SEP-0/HITNUM,B-
ENG,DP,MC,PA,ABSUM-
ENG&SEARCH_IA=US2005007102&QUERY=wo%2f2005%2f088507

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Application 3-4-04 with Prior art to 3-4-03
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