

Testimony of

The Honorable Anthony Wayne

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Testimony by Assistant Secretary of State
for Economic and Business Affairs
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Mr. Chairman and other distinguished members of the Committee, I want to thank you for giving me the opportunity to talk about the protection of American intellectual property overseas. The State Department appreciates the Committee's efforts to bring more attention to this very important issue.

In the State Department's Bureau of Economic and Business Affairs, we have a Mission Statement that hangs on our office walls in the Bureau. One of the priorities listed in that Statement reads, "Increase market access for U.S. goods and services, protect intellectual property and promote global information technology and communications."

Today, I would like to explain what we are doing, both here in Washington and in our embassies and consulates overseas, to translate this part of our Mission Statement into action.

Importance of Intellectual Property

No one can doubt the increasing importance of intellectual property to the U.S. economy. Studies have indicated that over 50 percent of U.S. exports now depend on some form of intellectual property protection, compared to less than 10 percent fifty years ago. The World Intellectual Property Organization estimates that copyright industries alone contributed \$791 million, or 7.75 percent, to the U.S. economy in 2001. The economic contributions provided by patents, trademarks and other forms of intellectual property are more difficult to quantify, but nonetheless just as important as those provided by copyrights.

As the importance of intellectual property rights have grown, so too have the challenges associated with their protection. Estimates of U.S. companies' worldwide losses to counterfeiting and piracy range from \$200 to \$250 billion per year. Last year's Special 301 Report from USTR named this problem for what it is: a "global scourge."

Part of the challenge today is being driven by new technology: with CD burners, you can now make pirated copies of music and movies on a commercial scale in the back rooms of small residences rather than large factories, making this crime all the more difficult to detect, and stop.

But the new challenges posed by digital technologies should not lead us to ignore the massive and growing problems in tangible piracy and counterfeiting. Trademark theft remains one of the largest and most widely spread of intellectual property crimes. The International AntiCounterfeiting Coalition's 2004 Special 301 submission lists 27 countries as having serious problems in this area, the most ever submitted by the organization. The list of counterfeited products noted in its report range from air compressors and shampoo in China, to cell phones and printer cartridges in Canada. As this problem grows, so too do related concerns about the health and safety of consumers who assume they are getting a genuine, not fake product; and about the involvement of organized crime and other unsavory actors.

The State Department is actively engaged in these issues through our function of protecting U.S. interests overseas. We care about intellectual property because American industry cares about it, because American artists and

innovators care about it, and indeed, as evidenced by this hearing today, because the legislative representatives of the American people care about it.

There's another reason that we attach so much importance to this issue. We have a long-term goal of promoting peace and prosperity around the globe. That goal rests on our ability to encourage sound policies that will lead to increasing economic growth. Investment has to be part of this equation, and this is where intellectual property plays such an important role. Respect for patents, copyrights, trademarks and other forms of intellectual property protection is an essential element in any long-term economic growth strategy; not only is it needed to give innovators and artists the incentive they need to take risks with their talent, but it is also needed if countries are going to attract foreign investors and their technology.

The World Intellectual Property Organization has noted that a number of studies show a correlation in developing countries between a healthy intellectual property regime and foreign direct investment. The World Bank's Global Economic Prospects report for 2002 concluded that there are "reasons to believe that enforcement of intellectual property rights has a positive net impact on growth prospects." The report also found that "across the range of income levels, intellectual property rights are associated with greater trade and foreign direct investment flows, which in turn translate into faster rates of economic growth."

There is a final set of issues that is making the protection of intellectual property an even more critical issue today. Counterfeiting and piracy in most countries around the world is a high margin, low risk activity. Combine that with a weak legal and law enforcement regime, as again we find in many countries, and you have a situation that invites organized crime and other actors to step in. INTERPOL has identified this as a serious and growing risk, and called for intellectual property crimes to be treated more seriously by governments around the globe. So in this sense, we see cracking down on intellectual property theft as part of our response to the new set of national security challenges we face as a nation.

So that's why we think the issue is so important. Now, what can be done about it?

Let me list three inter-related activities that need to be part of any sustained effort to improve intellectual property protection: building knowledge, building capacity and building will. At the outset, I want to underline that the State Department's actions in these three areas are coordinated with and supported by other federal agencies, such as USTR, the Commerce Department, including the Patent and Trademark Office, and industry, here and in our missions overseas. This truly is a team effort.

Building Knowledge

By building knowledge, I am referring to the need to increase awareness of intellectual property issues. At the State Department, each entering class of new Foreign Service officers now receives a briefing on intellectual property issues. They learn about pharmaceutical data protection, optical disk piracy and counterfeit Levi jeans. The world of diplomacy has changed dramatically, and we are adapting to it. This awareness training continues in courses we run for economic and commercial officers, for deputy chiefs of mission and for ambassadors, all designed to drive home to our people how important this issue is.

The greater challenge in the building knowledge area lies overseas. All too often intellectual property is seen as something that benefits only large American multinational corporations, or as something that has no relevance to local interests. Governments may believe that they can't afford the time or effort to protecting intellectual property, given so many other pressing needs.

We need to use every instrument in our diplomatic tool-kit to get the intellectual property message out. This includes activities such as raising the issue in bilateral meetings with government officials, sending foreign journalists to visit the U.S. to understand the issues better, sending U.S. academic experts to countries to give lectures, hosting digital video conferences with foreign counterparts, and having our ambassadors and economic counselors give speeches and write opinion pieces in the local media.

We need to spread the message that protection of intellectual property is good for these countries too, and in doing so build domestic constituencies that will also press for change. The U.S. Ambassador to Russia, Sandy Vershbow, last year wrote an op-ed piece that reminded Russians of their wonderful artistic heritage. He made the point that pirates and counterfeiters are threatening to kill off Russia's once-proud movie, literature and music industries. I have attached a copy of this op-ed to my written statement as an example of the type of work we are doing in the public diplomacy field.

We are also reaching out to non-traditional audiences to get our messages across. My colleagues and I at State often speak to young people both domestically and abroad about what we do in the Department on the economic front, and we use these opportunities to challenge their attitudes on piracy and counterfeiting. We talk to them about the potential to develop their ideas and creativity -- even to be a member of the next big rock group -- and how intellectual property protection is needed to make it all happen.

As another example of this non-traditional approach, one of our embassies will soon hold a reception featuring various members of the local entertainment community, including a singer will put on a short performance. The reception will also include various business and government officials involved in intellectual property protection. The message will be clear to all in attendance -- the future of the entertainers and their potential to contribute to their country's culture will depend on the officials' ability to protect their work from pirates and counterfeiters.

Building Capacity

The second front in the fight to protect American intellectual property overseas concerns building capacity. And here too our efforts need to have one side that addresses our own needs, and another that addresses the needs of other countries.

On the home front, the State Department is improving the way it trains and equips its officers and embassies to deal with intellectual property issues, to complement the awareness raising programs mentioned earlier. We are using the Internet to link up officers in different posts facing similar problems, and disseminating background papers to help our officers better understand the issues they are handling. For example, just last week we sent a message to all overseas posts explaining why the issue of Geographical Indications, or GIs, is so important to the United States. Under GI proposals made by the European Union, U.S. companies would be forced to abandon names and terms that have long been established in the U.S. market, such as feta or gouda cheese and kalamata olives. In cases where a company is forced to abandon use of the term, it would lose the benefit of the reputation built up in that product, its market access, and the benefit of use of a well-known name. Although the losses are difficult to quantify, our industries are very concerned that they would be substantial.

We have a series of cables on other intellectual property-related topics planned for the remainder of the year.

As a further example, next month we are bringing together economic officers from a number of our embassies in Europe, North Africa and the Middle East to attend a conference on current intellectual property and telecommunications issues. I plan to fly over for this event, which will also include representatives from industry. This will give our mission officers a chance to hear the latest developments and, more importantly, to learn new approaches to intellectual property issues they can take back to their respective countries and put into practice -- for example, how to set up an Embassy Intellectual Property Task Force to focus efforts and improve coordination between policy and enforcement sections, how to use local media more effectively to get our intellectual property message out, or how to set up a business advisory committee to assist a host government in drafting copyright or patent legislation.

We plan to hold similar conferences in other regions.

While on the topic of our internal capacity, I should also mention that our efforts on the intellectual property front have benefited greatly from the general increase in State Department staffing and modernization of technology brought about by the Diplomatic Readiness Initiative.

We are building up the State Department's capacity to address intellectual property issues because we recognize that one of our greatest assets in this area is our people. We have "boots on the ground" in all the countries where the major intellectual property issues are, so we need to make sure that the Americans and local staff serving in our embassies and consulates have the tools they need to be effective advocates of U.S. intellectual property interests.

In developing and transitional economies, we face a very different kind of capacity issue. Many of the countries where we see rampant piracy and counterfeiting already have laws on the books to prevent it. If the problem is not caused by a lack of political will, which I will get to in a minute, then it may very well have its roots in the lack of adequate domestic legal and law enforcement structures. Strong protection of intellectual property requires the working together of a large number of actors, from intellectual property officials to judges and prosecutors, from customs officials to cops on the street. Weakness in any one link can make the whole effort fail.

And ironically, the biggest losers in such a failure can often be the local artists and innovators whose struggle to get their talents recognized -- whether it be Brazilian musicians or Malaysian software designers -- is defeated by the pirates and counterfeiters.

We are helping to provide and coordinate assistance to these countries to improve their intellectual property regimes, both on a policy and on an enforcement level. The State Department chairs the government-industry IPR Training Coordination Group that, as its name implies, seeks to coordinate and maximize the effectiveness of different agencies and industries' training programs. The group is now looking at issues such as best practices, and what type of training seems to work best, in order to improve performance.

In addition, the State Department, through the Bureau of International Narcotics and Law Enforcement Affairs, funds its own government-to-government training and technical assistance focused on building law enforcement capacity. Training for police, prosecutors, judges, customs, border and other officials involved in fighting intellectual property crime is provided through our network of International Law Enforcement Academies, bilaterally in country and also by bringing foreign officials to the U.S.

USAID also runs programs that have a broader focus of improving intellectual property regimes, often providing technical assistance with drafting of legislation or training of staff. In 2003, USAID spent \$7 million on programs to assist developing countries in meeting their WTO-related intellectual property obligations. Other kinds of programs supported by USAID included assisting the government of Bolivia in combating the sale of pirated audio/video materials, and addressing the intellectual property dimension of promoting the development of agricultural biotechnology in Africa.

Building Will

We now come to the last, and in many cases, the most important aspect of protecting American intellectual property: building up the will to take action. The real test of this comes in our ability to convince foreign governments to take on the pirates and counterfeiters within their borders, and to implement and enforce strong intellectual protection rules. The other two aspects obviously play a role in this: raising knowledge of the issue, and providing needed technical assistance, can make the job easier and build a local constituency that can provide political cover for government actions. But sometimes that is not enough, and we need to take a tougher approach.

We have a number of ways to bring pressure on governments to act. The first tool used is raising the issue in a high-level bilateral meeting. Sometimes, just by making clear that this is an important issue to the United States and that other aspects of the relationship will suffer without progress, we can begin to see movement. The Secretary of State, Under Secretary for Economic, Business and Agricultural Affairs Al Larson, our ambassadors around the world, and I have all delivered the message on intellectual property rights to our foreign counterparts. We see it as part of our foreign policy portfolio.

Another tool we use is the leverage provided in trade discussions, whether in bilateral or regional free trade agreements, or in a multilateral setting such as the WTO accession process. USTR has the lead on these efforts, but the message often is delivered through our missions overseas.

The Special 301 process, which will culminate next month, is another way to convince countries it is time to take action. Countries do not like seeing their names on a black list, and this threat is sometimes what is needed to prod them to do what they know they have to do. Again, I should note that this is a USTR-led process, but one which we actively support through the information gathered in our overseas missions on local intellectual property conditions.

When all these other efforts fail, then the U.S. can consider imposition of trade sanctions, either through our own programs such as Special 301 or the Generalized System of Preferences (GSP), or through multilateral dispute resolution such as in the WTO. Ukraine has had its GSP preferences withdrawn and a further \$75 million in trade sanctions imposed under Section 301 because of its persistent failure to find the will to address serious problems in its intellectual property regime. This is obviously a tool of last resort, but it is one the State Department has supported when it was truly necessary.

Activities in Selected Countries

Having provided that background, I would now like to illustrate the types of actions being taken to address serious intellectual property problems in key countries.

China

? President Bush raised IPR issues with Premier Wen during Premier Wen's December 2003 visit to the United States.

? In November 2003, USTR led a high-level USG delegation to China, which included the State Department, to discuss Chinese implementation of its WTO commitments, including the vital IPR component.

? In November 2003, the U.S. Embassy in Beijing also held its second annual Ambassador's IPR Roundtable, bringing together over one hundred IP industry representatives with U.S. and Chinese government officials, to focus on China's IPR situation. Vice Premier Wu Yi accepted our invitation to deliver the keynote message at the event.

? Following up on this Roundtable, the Embassy compiled, summarized and delivered submissions and recommendations by participating IP associations to the Vice Premier.

? The U.S. Embassy in Beijing has developed a ten-point China IPR Action Plan in conjunction with U.S. industry. This IPR Action Plan identifies deficiencies in China's enforcement of IPR, as well as legislative issues in need of redress by the Chinese Government.

? As a result of coordinated pressure by the U.S. Embassy in Beijing in cooperation with U.S. industry in China, the Chinese Government has designated Vice Premier Wu Yi to head up China's efforts to address IPR concerns. In April of this year, the Administration will again raise our IPR concerns with her at the Joint Commission on Commerce and Trade.

? The USG expends significant resources providing technical training to Chinese judges, prosecutors, customs officials and other officials. The most recent large-scale training took place in October of 2003, when an interagency United States Government IPR experts team traveled to Beijing, Shanghai, and Guangzhou to train hundreds of Chinese Government prosecutors and law enforcement officials in areas such as protection of IP over Internet, procedures for collection of evidence for IPR crimes, and legal standards for opening cases against criminal networks involved in large-scale IPR counterfeiting and piracy.

Russia

? President Bush raised IPR with President Putin at the Camp David Summit in September 2003. As a result of that meeting, IPR was placed on a checklist of items and both government agreed to work more closely on the issue.

? Pressure from the Embassy, in coordination with efforts by other agencies over the growing number of pirated optical discs helped to convince the government to create an IPR Commission headed by the Prime Minister. Contacts indicate that Commission will be retained and headed by Deputy Prime Minister under the new government.

? Ambassador Vershbow and Embassy staff remain in regular contact with Russian officials and industry, pressing for stronger enforcement by Russian law enforcement agencies and passage of a stronger Copyright Law and separate Optical Disc Law.

? The Embassy has developed an IPR training program focused on law enforcement officials and funded through INL. Four seminars will be held in 2004 throughout various regions in Russia

? The State Department will fund an exchange program in 2004 between Russian and U.S. judges focused on civil IPR suits.

? The Embassy is currently developing an international visitor program for Russian officials devoted to "Intellectual Property Rights and New Technology."

Pakistan

? Secretary Powell and Under Secretary Larson were just in Pakistan, and ensured that intellectual property protection was on the agenda for meetings with government officials.

? In July 2003, the U.S. proposed a technically-comprehensive IPR Road Map to Pakistan that sets out goals in a number of areas. We plan to discuss this further at the inaugural trade and investment framework agreement meetings in mid-April.

? In January 2004, after much encouragement from the U.S., the Pakistani Cabinet approved legislation to create the Pakistan Intellectual Property Office (PIPRO). The government expects this legislation to be passed and enacted by Parliament by the middle of this year, or sooner if temporarily enacted by Presidential decree.

? Also in January, the government, with encouragement from our Embassy, launched the Intellectual Property Rights Advisory Committee (IPRAC), which is designed to increase coordination between the public and private sectors and serve as an impetus for reform. IPRAC includes representatives from several U.S. firms and other IPR stakeholders.

? In addition, new trademark regulations will be approved and published soon, and assume force of law. This is another step outlined in the IPR Roadmap.

Brazil

? Despite Brazil's severe problems with intellectual property right (IPR) enforcement, we have seen encouraging signs recently that the Government of Brazil may be looking for ways to improve IPR protection.

? In December 2003, Brazil had its first ever National Anti-Piracy Day, during which several well-known Brazilian recording artists joined political leaders to witness the televised destruction of half a million pirated CDs.

? The Investigative Commission on Piracy of the Brazilian Congress has taken the lead in the past several months in drawing public attention to the problem of the organized criminal activity and tax evasion that underlie many intellectual property crimes.

? The State Department is hosting a visit on March 25 of several members of this Investigative Commission. The congressmen will meet various intellectual property industry groups during their visit and will discuss ways of improving IPR enforcement.

Vietnam

? The Government of Vietnam is making progress in implementing the intellectual property provisions of the 2001 U.S.-Vietnam Bilateral Trade Agreement (BTA).

? As part of a USAID-funded \$5 million program to implement the BTA, consultants have been hired to assist in drafting intellectual property legislation and to train intellectual property professionals.

? The U.S. Consulate in Ho Chi Minh City, working with the U.S.-Vietnam Trade Council, has set up Vietnam's first intellectual property law library, and has a program to continue training of library staff.

? The Consulate has also arranged for Ho Chi Minh City's Chief Justice -- before whom all intellectual property cases involving foreign interests are heard -- to receive training in Washington and other U.S. cities.

Mr. Chairman, we do not pretend to have the answer on how to stop growing intellectual property theft around the world, nor to claim that the activities I just mentioned above indicate that things are necessarily getting better. This is a huge global problem, and it will take time to resolve.

One thing we do know, however, is that whatever we do has to address the key aspects of the problem -- knowledge, capacity and will. This must be a team effort, involving numerous federal agencies, the Congress and industry. We must continue to do what we have been doing, attacking the problem from all angles. We look forward to working closely with all the stakeholders in this debate to improve our own performance, and to further America's intellectual property agenda.

As I close, let me urge members of the Committee to remain engaged on these issues, and to raise them with foreign officials, legislators and media in your overseas travel. Believe me when I tell you that foreign governments pay close attention to what you say and do.

Thank you again Mr. Chairman for this opportunity to be here today. I look forward to answering any questions you may have.