

Testimony of

The Honorable Christopher Wray

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STATEMENT OF
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Mr. Chairman and Members of the Judiciary Committee:

Thank you for inviting me to testify before you today. This is an extremely important topic, and I commend you, Mr. Chairman, for holding this hearing. This hearing will provide the American public with an important look at the growing threat of intellectual property (IP) crime, particularly in the areas of piracy involving physical goods. Today I am pleased to share with the Committee, the Department of Justice's enforcement efforts in combating intellectual property crime.

We are at a pivotal time in the history of intellectual property rights enforcement. A number of factors have come together to create unprecedented challenges to intellectual property rights holders and to law enforcement. Some of these factors include the fact that:

? The value of intellectual property is increasing;

? It is now cheap and easy to reproduce and distribute copyrighted and trademarked products;

? Millions of illegal copies can be disseminated throughout the world with the simple click of a button. This makes detection more difficult than in the past;

? Every copy - whether in physical form or online - is perfect or near perfect;

? There is only sporadic and inconsistent enforcement throughout the world, which is compounded by the emergence of organized crime syndicates in international piracy and counterfeiting.

Mr. Chairman, there is no question that the intellectual capital of this nation is among our greatest resources. People around the world desire the products of the American creative community - be it entertainment, such as movies and music, clothing, shoes, or even pharmaceutical products. At the same time demand for American products increases, these products also become the target of criminals seeking to profit off the hard work and creativity of others.

Current technology gives intellectual property rights holders unprecedented opportunities to distribute their works to a worldwide audience. Likewise, there is far greater public access to all kinds of legitimate works. Unfortunately, as the factors I just described illustrate, the same technology has given criminals almost equal opportunity to commit massive and widespread copyright infringement and trademark counterfeiting. In many instances, resourceful criminals use technology to violate both trademark and copyright laws simultaneously by creating and selling products, such as software, which appear legitimate to the average consumer when in fact they are not. As I am sure others at today's hearing will testify to in great detail, this criminal activity has severely harmed American industry.

The harms to our economy and our citizens should be plain. Businesses cannot survive in an environment where black market goods are more available and cheaper than legitimate goods. Small businesses are forced to close and bigger businesses must downsize. Piracy also deprives consumers of their absolute right to be assured that the

products they buy are safe and legitimate.

Under Attorney General Ashcroft, the Department has made the protection of intellectual property rights a law enforcement priority and has waged an extremely aggressive and successful campaign against IP crime. Specifically, we have focused our resources on complex, multi-defendant, multi-district and international, intellectual property cases. Large scale operations like Operation Buccaneer and Operation Safehaven, targeting online piracy, have struck at the heart of the highly-organized online piracy world. In Operations such as Buccaneer and Safehaven, which will be discussed in greater detail below, we have targeted the leadership of the organized online piracy world, known as the "warez" scene. As a result of these efforts, defendants are receiving the longest sentences ever imposed for online piracy - between 33-50 months. We are also reaching across borders to pursue prosecutions of foreign co-conspirators, in countries such as the United Kingdom, Sweden and others. We have also taken the unprecedented step of seeking extradition, from Australia, of one of the warez scene's most notorious and well-known figures. Geographic boundaries cannot be allowed to insulate pirates and counterfeiters from the reach of law enforcement. I would also note that this has all occurred in an environment where law enforcement resources and priorities have had to be realigned to respond to the threat of terrorism. Mr. Chairman, the Department's substantial and largely successful efforts have made significant inroads in the fight against global piracy. But this progress must continue, and we are committed to doing our part to combat piracy.

Since the beginning of his tenure, Attorney General Ashcroft has worked to ensure that the prosecutorial resources needed to address intellectual property crime are in place and managed efficiently and effectively. Since becoming the Attorney General, he has expanded the size and number of Computer Hacking and Intellectual Property (or CHIP) Units operating in larger U.S. Attorney's Offices from just one to thirteen. These specialized units consist of dedicated federal prosecutors, whose primary focus is prosecuting high tech crimes, including IP crimes.

The CHIP Units compliment the already existing network of Computer and Telecommunications Coordinators (CTCs) that serve in every United States Attorney's Office across the country. The CTCs regularly receive specialized training in the investigation and prosecution of high-tech crimes, including intellectual property crimes. Many of the 94 U.S. Attorneys Offices have two or more CTCs to help meet the growing demand for trained high-tech prosecutors.

Working closely with the CHIP Units and the CTC network is the Criminal Division's Computer Crime and Intellectual Property Section, also known as CCIPS. CCIPS is a highly specialized team of thirty-five lawyers who focus exclusively on computer and intellectual property crime. With the deeply appreciated support of Congress, we have significantly increased the size of CCIPS over the past two years, allowing us to substantially increase our IP enforcement efforts both here and abroad. For the first time, CCIPS has a Deputy Chief whose sole responsibility is to oversee and manage a team of attorneys in the Section dedicated exclusively to IP enforcement. At present, there are twelve CCIPS attorneys working full-time on the IP program. CCIPS attorneys are developing a focused and aggressive long-term plan to combat the growing threat of piracy. They are continuing to develop and implement the Department's overall anti-piracy strategy, assisting AUSAs in the prosecution of intellectual property crimes, and reaching out to international counterparts to ensure a more effective world-wide response to intellectual property theft.

Working in concert, CCIPS, the CTC Network, and the CHIP Units create a formidable, multi-pronged approach to prosecuting intellectual property crimes.

Significant Prosecutorial Accomplishments:

In the past few years we have had a substantial impact on counterfeiting and other piracy - including both online and traditional hard goods activities. I would like to take just a few minutes to highlight some of our most recent accomplishments.

Just a few weeks ago, in one of the longest sentences imposed for these types of crimes, a Richmond, Virginia man, Ben John Barbot, was sentenced to 70 months in prison and ordered to pay \$1.7 million in restitution for criminal copyright infringement and trafficking in counterfeit goods. The defendant had distributed well over \$7 million worth of counterfeit Microsoft software products through multiple Internet-based stores he created. The software products he distributed were extremely high quality counterfeits that had been produced and imported from rogue production plants in Asia. The ability to distinguish between the genuine article and the counterfeit one is more difficult than ever before. Counterfeiters, realizing the economic potential of their crime, are becoming more sophisticated in creating and trafficking in near perfect counterfeits, such as those sold by Mr. Barbot.

There are other examples of successful prosecutions involving counterfeiting or copyright infringement involving physical goods;

? In 2003 a Columbia, South Carolina man was sentenced to seven years in prison and ordered to pay over \$3.4 million in restitution to Nike and Tommy Hilfiger for trafficking in thousands of counterfeit T-shirts and other products and engaging in money laundering.

? Also last year, a California man was sentenced to 24 months in federal prison and ordered to pay more than

\$200,000 in restitution for multiple violations including criminal copyright infringement, and trafficking in counterfeit labels. The defendant operated a videocassette reproduction center where he produced and then sold thousands of counterfeit movie videocassettes at various locations throughout California.

? Our efforts also extend beyond our own borders. Later this month, a Ukrainian man is scheduled to be extradited to the United States from Thailand to face prosecution for his piracy and counterfeiting activities. The man sold counterfeit software through websites and eBay auctions in excess of \$3 million dollars. Some of the software was shipped with counterfeit trademarks and logos.

Another reason for strong intellectual property enforcement is the need to protect public health and safety. Criminals, whose only goal is profit, will not hesitate to sell counterfeit baby formula or pharmaceuticals which endanger the health of the consumer.

One recent example of this occurred in Alabama earlier this year. In January, an Alabama man pled guilty to twenty-eight counts of counterfeiting and pesticide misbranding charges. The defendant sold mislabeled and adulterated pesticides needed to control mosquitoes and West Nile Virus to municipalities and private businesses in a number of southern and mid-western states. The defendant falsely identified the brand name of the pesticide, the manufacturer, and the active ingredients.

Similarly, in 2002 the Department convicted a California man on federal charges involving a conspiracy to sell counterfeit baby formula. After selling thousands of cases of counterfeit baby formula to our most vulnerable population, the defendant fled to Canada in 1995. He was arrested there in 2001 and in 2002 was brought to the U.S. to stand trial. He received a sentence of 3 years and 8 months in prison. Had the defendant succeeded in completing his scheme, his profits would have likely reached in excess of \$4.3 million. The potential harm to the babies is, of course, daunting.

As these cases illustrate, the potential consequences of intellectual property offenses go beyond lost sales, and cut right at the heart of public health and safety. Counterfeit products often deprive consumers of their right to safe and legitimate products. Worse yet, counterfeit pharmaceuticals, pesticides and food products harm society's most vulnerable members including our children and those who are ill, or injured. We are actively exploring ways to increase the use of criminal trademark and counterfeit-labeling laws to help protect the health and safety of all our citizens.

Online Piracy and Counterfeiting

Although the focus of this hearing is on intellectual piracy in its physical form, technology and the Internet play an increasing role in counterfeiting. Today's technology allows criminals to use sources both online and off to create infringing products. Thus, in many instances, it is difficult, if not impossible, to separate physical piracy from piracy occurring over the Internet. It is often through the digital transmission of copyrighted material over the Internet that pirates obtain perfect logos to affix to counterfeit goods. Likewise, criminals obtain from Internet sources the newest and most cutting edge copyrighted works which they reproduce in physical form and distribute in massive quantities around the world. Criminals, like Ben John Barbot who I described above, also use the Internet to identify potential customers and to market and sell their infringing goods - essentially operating a "mail order" business through the Internet.

A few years ago, in South Carolina, we successfully prosecuted a criminal who operated a website called fakegifts.com to sell counterfeit luxury items, including fake Rolex watches and designer handbags around the country. Even though he had almost \$16 million in civil judgments against him, he refused to stop his illegal activity because, in his words, he was "making too much money" to stop. He was ultimately sentenced to 24 months in prison and ordered to pay restitution.

We have had numerous cases involving the online auction site eBay which criminals have abused to auction off counterfeit or other infringing goods to the highest bidder. For example, in one case, a man pled guilty to selling unauthorized reproductions of the motion picture "Any Given Sunday" and compilations of National Hockey League highlights and professional fight footage on eBay as well as defrauding bidders of approximately \$15,000 on auctions for Sony Playstation 2 video game consoles.

One emerging, and troubling trend, is the apparent belief among many engaged in counterfeiting online is that their actions are legal so long as they acknowledge upfront that their goods are in fact fake, or "replicas." A simple Google search will reveal numerous websites that candidly acknowledge selling fake or counterfeit goods. Court after court, however, has ruled that this behavior too is criminal. It does, however, point out the pressing need to educate the public about not only the importance of strong intellectual property rights enforcement, but also what is acceptable and what is illegal.

Organized Criminal Activity and Piracy:

As noted, in the past few years the Department has increasingly focused on highly organized criminal organizations engaged in online piracy. In the context of hard goods piracy and counterfeiting, highly organized criminal groups are also emerging. Organized crime syndicates have begun to use piracy and counterfeiting as a means to fund their

illicit activity. It is not surprising that organized crime has begun to fill this role. The nature of piracy has undergone a complete transformation over the past several years. Traditionally, piracy operations were small, often run by individuals or a loose collection of people trying to make a quick buck in what has been perceived to be a fairly "risk-free" criminal enterprise. Today, with low overhead and the possibility of substantial financial reward, piracy is big business. It has become a world-wide, multi-billion dollar illicit economy which robs legitimate industries and creators of income, while driving up costs for consumers. It is against this backdrop that criminal organizations are playing a more prominent - and dangerous - role in piracy around the globe.

Significantly, organized crime syndicates have substantial resources to devote to their illegal operations. This has allowed them to increase the scope and sophistication of their criminal activity. Further, by nature, these syndicates control international distribution channels which allow them to move massive quantities of pirated goods, as well as other illicit goods, throughout the world with relative ease. In fact, we have learned that organized crime syndicates, which are traditionally competitive, now partner with one another across borders to expand their operations at home. Small factories overseas are able to churn out thousands of products annually, ranging from software, to movies, to games, all of which find their way into the black market both overseas and in the United States.

It is a lucrative endeavor for these criminals and, as one might expect, these groups do not hesitate to threaten or injure those who attempt to interfere with their illegal operations. We have received numerous reports from overseas that industry representatives have been threatened, attacked and their property vandalized when their anti-piracy efforts struck too near the illegal operation. Information from overseas indicates that this problem similarly impacts foreign government officials fighting piracy. Some reports from abroad show that raids of factories (producing pirated goods) can often turn into full blown shoot-outs. These world-wide criminal syndicates are formidable foes. The very involvement of organized criminal syndicates, and their apparent willingness to resort to violent means to protect their piracy operations, underscores the critical need for enforcement. We are committed to working closely with our foreign counterparts to address this real and emerging threat.

Online Piracy

As noted earlier, much of the Department's focus has been on those groups that saturate the Internet with pirated products, the so-called "warez" groups. These groups include highly sophisticated and technically savvy members whose goals are to obtain the latest and most coveted - and, sometimes, not yet released - products, including software, games, music and movies; "crack" any security measures on them; and disseminate them over the Internet to as many people as possible and as quickly as possible. The pirated works distributed by these groups ultimately filter - very quickly - through the Internet and are available world-wide within a matter of minutes.

For these reasons, I think it is critical that I touch on some of the significant work we have done in connection with Internet piracy, and, in particular, the warez scene.

Operation Buccaneer:

The Computer Crime and Intellectual Property Section, working with the CHIP Unit for the Eastern District of Virginia and the United States Customs Service, penetrated a massive international copyright piracy conspiracy code-named Operation Buccaneer which continues to yield prosecutions even today. During Operation Buccaneer, law enforcement initiated an undercover investigation which culminated in the simultaneous execution of more than 70 searches worldwide in December 2001, including searches in Australia, Finland, Sweden, Norway, and the United Kingdom.

As of today, twenty-six U.S. defendants from Operation Buccaneer have been convicted of felony copyright offenses, sixteen of those in the Eastern District of Virginia. Ten defendants have received prison sentences of between 33 to 50 months, the longest sentences ever imposed for Internet copyright piracy at the time. Five defendants are awaiting trial in the United Kingdom and other foreign investigations are ongoing. The Department has also initiated extradition proceedings against one of the prime targets of the investigation - a well-known warez leader located in Australia. In both its scope and outcome, Operation Buccaneer is the most significant Internet piracy case ever brought, and it has sent a strong deterrent message which continues to resonate throughout the copyright piracy community.

Operation Safehaven:

Building off the success in Operation Buccaneer, CCIPS, in conjunction with the United States Attorney's Office for the District of Connecticut, and the Bureau of Immigration and Customs Enforcement ("ICE") Cyber Crimes Center, conducted a 15 month investigation called Operation Safehaven, which targeted additional significant Internet software piracy groups. In April 2003, the investigation culminated with the simultaneous execution of over 20 search warrants nationwide, resulting in the capture of many well-known and prolific members of the online piracy community and the seizure of thousands of pirated CDs and DVDs, plus dozens of computers and servers, including the largest warez site seized in the United States to date.

Through prosecutions like those in Operations Buccaneer and Safehaven and those that will follow, we will continue to send strong messages that piracy in any form will not be tolerated.

Conclusion

Finally, although we are making inroads in this battle, pirates and counterfeiters are also refining their own illicit techniques. In response to our aggressive enforcement activities, organizations and individuals have found new and more sophisticated ways to hide their illegal activity. The quality of counterfeit and pirated goods is near perfect. In some instances, even representatives of victim companies themselves have difficulty distinguishing counterfeit goods from legitimate ones. That is how sophisticated this illicit industry has become. We have worked, and will continue to work, closely with American rights holders to ensure that we continue to respond to this threat.

Mr. Chairman, as you can see, the Department of Justice is actively pursuing intellectual property criminals engaged in all forms of intellectual property crime including counterfeiting and other forms of piracy and we believe our efforts are paying off. Though we have had great successes in our battle against global piracy, we recognize that there is much work to be done. We remain committed to this effort and will build on our success by continuing to prosecute piracy aggressively.

On behalf of the Department of Justice, I want to thank you again for inviting me to testify today. We thank you for your support over the years and reaffirm our commitment to continuing to work with Congress to address the significant problem of piracy. I will be happy to answer any questions that you might have.