



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.

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 the 112 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.

**Testimony of David Hirschmann
President and Chief Executive Officer
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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.

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 GIPC¹ 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

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

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

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.

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.”

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.