Department of Justice

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"PROTECTING INTELLECTUAL PROPERTY RIGHTS IN A GLOBAL ECONOMY: CURRENT TRENDS AND FUTURE CHALLENGES"

PRESENTED

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Good morning Chairwoman Watson, Ranking Member Bilbray, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the critical subject of protecting intellectual property rights in a global economy. I am pleased to share with the Subcommittee the Department of Justice's role in and commitment to combating intellectual property crime both at home and abroad.

I. Importance of Intellectual Property Protection

As this Subcommittee is well aware, enforcing U.S. laws that protect intellectual property rights continues to be essential to safeguarding confidence in our economy, creating economic growth, and ensuring integrity, fairness, and competitiveness in the global marketplace.

Intellectual property rights are playing an increasingly significant role in the global marketplace, largely because industries that rely heavily on intellectual property protections represent some of the fastest-growing sectors of the U.S. economy – sectors that also account for an increasingly large share of U.S. exports. As an example, protecting intellectual property is critical to much of America's creative and high-tech industries, from the motion picture production facilities of Culver City, in Chairwoman Watson's district [California 33rd], which rely on copyright laws to protect their work, to the many biotech firms in North County San Diego, in Ranking Member Bilbray's district [California 50th], whose inventions are protected by patents.

Beyond these industries, the importance of intellectual property protection is further illustrated by trade secret laws, which provide a strong deterrent to corporate espionage and other forms of misappropriation in all kinds of businesses, both large and small. Similarly, trademark laws help companies – whether they produce the latest high-tech gadgetry or products that have been sold consistently for decades – protect their investment in their brand and the quality and innovation that brand represents.

But intellectual property protection is not simply important for businesses and the nation's overall economic health – it is also vital to consumers. Effective enforcement of trademarks, for example, helps to protect the public by ensuring that products are what they say they are – that consumers are not given false information about the goods and services they buy. Such protections allow the market to reward makers of quality products and to hold manufacturers accountable when products are inferior – or worse, unsafe.

In the increasingly globalized economy, intellectual property accounts for a growing share of the value of world trade, and protecting intellectual property has become a significant global issue. Thanks to advances in technologies, including the increasing accessibility of the internet as well as improvements in manufacturing, transportation, and shipping, digital content can be distributed to a worldwide market almost instantaneously, and even small businesses have unprecedented opportunities to market and distribute their goods and services around the world.

Unfortunately, the success and profitability of this worldwide trade in intellectual property has also attracted criminals who seek to illegally exploit and misappropriate the intellectual property of others. The same technologies that have engendered rapid growth in the

legitimate economy also allow violators of intellectual property laws to operate global criminal enterprises. Criminals have developed equally sophisticated and diverse methods of committing every type of intellectual property offense imaginable including: widespread online piracy of music, movies, video games, business software, and other copyrighted works; well-funded corporate espionage; increased sales of counterfeit luxury goods, clothing, and electronics, both on street corners and through internet auction sites; and, perhaps of greatest concern, increased international trade in counterfeit pharmaceuticals and other goods that pose a substantial risk to the health and safety of American consumers.

It is well recognized that the intellectual capital of this country is among our greatest resources. American products are highly sought after throughout the world. When criminals illegally exploit American creativity and innovation for their own profit, they do so at the expense of the livelihood and reputation of businesses both large and small. As I am sure others here today will testify to in great length, the harms to the economy and risks to public health and safety posed by intellectual property offenses are significant. Businesses cannot be expected to thrive in the face of daily insidious black market criminal activities that undermine their success. Attorney General Holder has made criminal enforcement of intellectual property rights a top priority, and the Department is fully committed to combating intellectual property crime by working with our partners throughout the U.S. Government, around the globe, and in the private sector, to improve the effectiveness of criminal enforcement efforts for all stakeholders and the American public.

The focus of my remarks today is the role the Department plays in protecting intellectual property rights, particularly internationally, and our efforts to coordinate with other federal agencies to ensure that intellectual property, in its many forms, is effectively and aggressively protected.

II. Role of the Department of Justice

As the agency responsible for enforcing this nation's criminal laws, the Department's unique role in intellectual property protection is the investigation and prosecution of criminal intellectual property offenses, including those involving copyrighted works, trademarks, and trade secrets.

The Department, through the Federal Bureau of Investigation (FBI), the United States Attorney's Offices (USAOs), the Criminal Division, including its Computer Crime and Intellectual Property Section (CCIPS), and other components, along with our other law enforcement partners, including U.S. Immigration and Customs Enforcement (ICE), has developed a robust criminal enforcement network that aggressively investigates and prosecutes intellectual property crimes. The Department has detailed its overall criminal enforcement efforts over the past six years in the Department's report to Congress pursuant to the Prioritizing Resources and Organization for Intellectual Property (PRO IP) Act of 2008, transmitted on October 13. The report contains a detailed account of the Department's activities, some of which I would like to highlight today, particularly those relating to international enforcement efforts and interagency coordination.

III. International Enforcement Efforts

Combating counterfeiting, piracy, and other intellectual property crimes effectively requires a strong domestic enforcement effort, but we cannot hope to make progress in that fight unless we also look beyond our borders to develop a forceful and effective international enforcement program. The Department has worked to expand its international enforcement efforts, employing a multi-faceted approach. The Department and our investigative partners work closely with our foreign law enforcement counterparts to (1) increase international intellectual property prosecutions that disrupt foreign manufacturers and trans-border shipments of pirated and counterfeit products, and (2) dismantle international organized criminal syndicates engaged in intellectual property crime. The Department has achieved notable successes in these areas, a sample of which I would like to highlight here.

A. Prosecutions involving international piracy and trafficking in counterfeit goods

The Department has had a number of significant successes investigating and prosecuting individuals involved in international piracy and trafficking in counterfeit goods.

- Most recently, in January 2009, Kevin Xu, 36, was sentenced in the Southern District of New York to 78 months in prison for conspiring with others in China to traffic in counterfeit cancer drugs and other pharmaceuticals, including Tamiflu, Plavix, Zyprexa, Aricept, and Casodex. Many of these counterfeits were lacking in active ingredients or contained unidentified impurities. Drugs with lot numbers identical to these counterfeits were detected in the legitimate supply chain in London, prompting a massive recall in the UK.

- In 2008, the Department secured the extradition from Thailand and later conviction of Randy Gonzales, a citizen of the Republic of the Philippines, who was sentenced in the Southern District of Texas to 20 months in prison for his role in importing into the United States and distributing more than three-quarters of a million dollars' worth of counterfeit pharmaceuticals. Gonzales was the first foreign national to be extradited to the United States on charges related to counterfeit pharmaceuticals.

- Also in 2008, the Department obtained the conviction of Iyad Dogmosh, a Jordanian national, for importing through the Middle East hundreds of thousands of dollars' worth of counterfeit Viagra tablets, intended for distribution in the United States. Dogmosh was sentenced to 48 months in prison.

B. International Online Copyright Piracy Networks

The Department has also achieved unprecedented success in prosecuting large-scale, online piracy and counterfeiting organizations whose crimes seriously damage the marketplace for legitimate goods and services. For example:

- Earlier this year, the Department obtained its 60th felony conviction arising from Operation Fastlink, one of the largest international law enforcement actions ever taken against online piracy. Operation Fastlink targeted multinational organized criminal networks engaged in large-scale software piracy. In the underlying investigation, the FBI worked with foreign law enforcement to conduct over 120 simultaneous search warrants in 27 states and a dozen foreign countries.

- In September 2009, Edward Mohan, II, 46, of Baltimore, Maryland, pleaded guilty in the Eastern District of Virginia to conspiracy to commit criminal copyright infringement for his role in the internet piracy group known as Rabid Neurosis, or "RNS," which operated from at least 1999 to 2007. RNS gained notoriety for releasing pirated copies of popular albums on the internet before they were commercially released, and the group prided itself on being untouchable by law enforcement.

- In late 2008, Barry E. Gitarts, 25, of Brooklyn, New York, was sentenced to 18 months in prison for his role in operating a server used by the internet music piracy group, Apocalypse Production Crew (APC). Gitarts was the 15th APC member to be convicted of conspiracy to commit criminal copyright infringement.

C. Traditional Organized Criminal Networks

Because intellectual property crime is perceived as a low-risk criminal enterprise with the potential for high profit margins, it is not surprising that the sale of counterfeit and pirated goods is also becoming an attractive revenue source for traditional organized crime groups. This is a serious concern, particularly in Asia, but also in other parts of the world, including countries in the former Soviet Union and the Tri-border region of South America. Organized crime syndicates have the ability and the resources to manufacture and move massive amounts of counterfeit products around the globe.

In the PRO IP Act of 2008, Congress directed the Department's Criminal Division to work with the FBI and the Department of Homeland Security (DHS) to develop and implement a plan to address links between organized crime and intellectual property crime. Although there has not yet been additional funding provided for this initiative, the Department has nevertheless taken a number of steps to implement the provision and to incorporate intellectual property into its existing International Organized Crime (IOC) Strategy.

For example, the Department has detailed an experienced CCIPS attorney to serve as Counsel to the International Organized Crime Intelligence and Operations Center (IOC-2). Working through senior staff of the IOC-2, CCIPS, the Criminal Division's Organized Crime and Racketeering Section (OCRS), the FBI, DHS, and other federal agencies are coordinating their efforts and working to ensure that critical IP-related intelligence and case information will be contributed to the IOC-2 data pool and analyzed for links to international organized crime. The Department also is working with member agencies to ensure that IOC-2 is adequately staffed by representatives familiar with intellectual property offenses. Once the IOC-2 is fully operational and incorporates data sources related to intellectual property offenses, the

Department will be able to better identify organized crime cases that involve intellectual property offenses.

D. IP Law Enforcement Coordinators (IPLECs) in Europe and Asia

Building strong and lasting law enforcement relationships with our foreign counterparts is an essential component of effective international criminal intellectual property enforcement. The cornerstone of the Department's effort to strengthen international law enforcement relationships is the Intellectual Property Law Enforcement Coordinator (IPLEC) program. Under this program, with the help of the State Department, the Department has deployed two experienced federal prosecutors to serve as IPLECs in Bangkok, Thailand for Southeast Asia and Sofia, Bulgaria for Eastern Europe.

The IPLECs 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 is yielding 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.

For example, in addition to participating in over 50 regional training programs in the past four years, the IPLEC for Asia was integral to obtaining the extradition of Randy Gonzales in the counterfeit pharmaceutical prosecution I mentioned earlier.

The IPLEC for Eastern Europe, who has also participated in numerous training programs, has worked directly with small groups of prosecutors and investigators on specific issues. Recently, the Eastern European IPLEC worked closely to train Ukrainian prosecutors on how to build a criminal case against a major online piracy site in that country. Although the Ukrainian authorities lacked access to the sort of computer and forensic technology we take for granted, with technical training from the IPLEC they were able to take down the online piracy site using an outdated personal computer and a dial-up internet connection.

E. IP Criminal Enforcement Network (IPCEN) in Asia

Working with the IPLEC in Bangkok, Thailand, the Department has also spearheaded the creation of an Intellectual Property Crimes Enforcement Network (IPCEN) for Asia in 2007. The IPCEN brings together law enforcement officials from 14 Asian economies to provide a forum for the exchange of successful investigative and prosecutive strategies in combating piracy and counterfeiting crimes. The IPCEN helps strengthen communication channels and promote the informal exchange of evidence, with the ultimate goal of promoting coordinated, multinational prosecutions of the most serious offenders.

F. U.S.-China Joint Liaison Group for Law Enforcement Cooperation

China has been a significant source of counterfeit and pirated products imported into the United States and presents an especially great challenge to U.S. law enforcement. The Department, therefore, has prioritized developing strong working relationships with Chinese law

enforcement officials. For example, since 2006, the Department's Criminal Division and the Chinese Ministry of Public Security (MPS) have co-chaired the Intellectual Property Criminal Enforcement Working Group (IPCEWG) of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation (JLG), which has resulted in an open dialogue on intellectual property enforcement, the sharing of information on selected investigations, and a number of successful joint intellectual property operations.

For example, the IPCEWG provided the platform that supported U.S. and Chinese law enforcement cooperation in Operation Summer Solstice, the largest-ever joint criminal enforcement operation between the FBI and MPS against international criminal groups that manufacture and distribute counterfeit software. As a result of Operation Summer Solstice, in 2007, Chinese law enforcement arrested 25 individuals, dismantled multiple manufacturing locations, and seized over $7 million in assets and more than $500 million worth of counterfeit software. To date, China has convicted 11 Summer Solstice defendants, sentencing them each to prison terms of one-and-a-half to six-and-a-half years. According to industry sources, this organized criminal syndicate was responsible for manufacturing and distributing more than $2 billion worth of pirated software.

G. Training

The Department has also participated in a substantial number of training programs in the United States and abroad to increase awareness of criminal intellectual property issues and techniques for effective enforcement. In many countries, even those with adequate intellectual property laws and criminal procedures, criminal intellectual property enforcement is weak because the police and prosecutors lack sufficient training on obtaining evidence or developing effective criminal investigations and prosecutions in intellectual property cases. Over the past five years, Department attorneys have provided training and education on intellectual property enforcement to over 10,000 prosecutors, police, judicial officers, and other government officials from over 100 countries.

Some of these training programs are brief, while others require multiple training events extending over several years. I would like to touch on just a few of our more recent and significant efforts in Mexico, South Africa, and India.

In 2008, the Department organized several intensive training programs in the Mexican ports of Vera Cruz, Manzanillo, and Mazatlan, working with DHS and the State Department, the World Customs Organization, and various branches of the Mexican government. The courses focused on targeting and risk analysis at the border, criminal investigative techniques, inter-agency networking and cooperation, and the need for stronger sentences. After the Vera Cruz training, Mexican law enforcement conducted nine major seizures of infringing products, seven of which were criminally investigated by local prosecutorial authorities. Before the training, there had never been a seizure or criminal referral at the Vera Cruz port for intellectual property violations. Likewise, after the training program in Manzanillo, government officials pledged to support future capacity building to combat intellectual property crime and to increase the number of intellectual property seizures and referrals at the local port.

In July 2008, the Department, working with the State Department, provided the first-ever training program in South Africa on computer forensic skills particular to intellectual property cases. Bringing 20 pre-configured laptop computers from the United States, the training team was able to provide hands-on training on investigating and seizing computers, securing and analyzing electronic evidence, conducting off- and online investigations using computers, and presenting electronic evidence in court. To increase in-country enforcement capacity, the program also trained instructors from lead agencies in intellectual property enforcement. These newly-trained instructors are now able to provide additional training to other prosecutors and investigators in country. Finally, to increase the level of expertise in the South African judiciary on intellectual property cases, the Department organized a judicial workshop in Johannesburg for more than 200 magistrates from around the country.

India is another country important to U.S. intellectual property interests, with its rapidly expanding information economy and many ties to U.S. corporations through manufacturing agreements, joint ventures, and production facilities. India is experiencing substantial domestic growth as a producer of intellectual property in the entertainment, medical, and software fields. To help ensure that systems to protect intellectual property keep pace with economic and business trends, the Department has worked closely with representatives of the judiciary and the private sector in India, as well as police, prosecutors, and other government officials, to address substantial delays and inefficiencies in the Indian court system that impose significant obstacles to effective enforcement of intellectual property rights in India. Among other things, the Department's Criminal Division has worked with Indian judicial officials to increase efficiency in adjudicating criminal intellectual property cases through plea bargaining, which Indian law first authorized in 2006. Over the past few years, CCIPS has held training programs in India and the United States that demonstrated how plea bargaining can lead to the more efficient administration of justice while also protecting the rights and interests of criminal defendants, crime victims, and the public. The Criminal Division also worked with Indian court authorities to implement a "fast track" court option in Delhi and Bangalore for criminal intellectual property cases and other appropriate offenses that are intended to resolve such cases by plea or trial within six months. Although the "fast track" courts in both cities have resolved a number of intellectual property criminal cases, these court systems are still in the process of reorganization, including the transfer of all criminal intellectual property cases to designated judges.

In addition, the Department has assisted in the creation of mediation centers in these two cities, both of which are major business centers with rapidly-developing technology and intellectual property-based business communities. The Department organized intensive mediation training sessions by U.S. federal judges and other experts. Within 18 months of creating this program, the Bangalore Mediation Center alone has settled nearly 3,000 disputes. The Criminal Division will continue to work with Indian enforcement authorities and representatives of rights holders and other affected groups during the coming year, helping to develop further the expertise necessary for effective investigation, prosecution, and resolution of criminal intellectual property violations.

IV. Coordination with Domestic Law Enforcement Partners

Through the Criminal Division's Computer Crime and Intellectual Property Section and a dedicated network of over 230 Computer Hacking and Intellectual Property (CHIP) coordinators and AUSAs nationwide, the Department works in close cooperation with all of our partner law enforcement agencies on intellectual property cases. The complexity of investigations and prosecutions involving intellectual property crime requires early engagement and coordination between investigators and prosecutors. This collaborative approach has resulted in a number of successful multi-district and multi-national investigations and prosecutions, several of which I highlighted earlier.

The Department also works closely with our law enforcement partners through the National Intellectual Property Rights Coordination Center (IPR Center). The IPR Center consists of investigators and analysts from participating agencies, including ICE, U.S. Customs and Border Protection (CBP), the FBI, the Food and Drug Administration (FDA), and the U.S. Postal Inspection Service, who work together to combat counterfeiting and piracy. The IPR Center de-conflicts investigative leads, coordinates investigations, and provides outreach and training. The Criminal Division's Computer Crime and Intellectual Property Section currently has two attorneys working closely with the IPR Center and expects that attorney support to increase as the Center increases its operational capacity. In addition, the Department also coordinates, when appropriate, with other law enforcement partners, including INTERPOL and state and local authorities.

The Department's ability to undertake coordinated law enforcement actions has been bolstered by the 31 additional FBI Special Agents funded by Congress in 2009 who will be dedicated solely to investigating intellectual property crime. The Criminal Division, the FBI, and the Executive Office for U.S. Attorneys worked together to determine the appropriate placement of these agents. The FBI has placed nearly all 31 agents, including 26 agents in field offices located near CHIP Units and the remaining 5 agents (to include a Unit Chief and two Supervisory Special Agents) at the IPR Center. These Special Agents will help to generate more investigations and better prosecutions of both domestic and international intellectual property crime.

V. Coordination with Other U.S. Agencies

The Department also works extensively on intellectual property issues with other agencies in the federal government, including the Departments of State and Commerce, the U.S. Patent and Trademark Office (USPTO), and the U.S. Trade Representative (USTR). For example, the Department frequently coordinates with USPTO and State in organizing intellectual property training programs overseas. We coordinate with USTR through its Special 301 process, in which USTR examines IPR protection and enforcement in various countries, as well as by contributing to negotiations on portions of international treaties involving intellectual property that affect criminal enforcement interests, such as parts of Free Trade Agreements and the developing Anti-Counterfeiting Trade Agreement.

Another example is the Department's past role as co-chair of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC). NIPLECC was a forum for coordination among federal agencies involved in various aspects of intellectual property policy, including USPTO, DHS and USTR.

The PRO IP Act, enacted last October, replaced NIPLECC with a newly-created Intellectual Property Enforcement Coordinator (IPEC) in the Office of Management and Budget (OMB) and an Advisory Committee comprised of a broad range of federal agencies including the Department's Criminal Division and the FBI; the Department of Commerce, including USPTO; the Department of State, including U.S. Agency for International Development and the Bureau of International Narcotics Law Enforcement; ICE and CBP; the FDA; and the Department of Agriculture. The IPEC will chair the Advisory Committee and work with its members to develop a strategic plan that enhances intellectual property enforcement here and abroad.

VI. Conclusion

I would like to thank the Subcommittee for the opportunity to share with you, and the American people, the high priority the Attorney General places on criminal enforcement of intellectual property rights and the work we do to combat intellectual property crime both here and abroad. We recognize that each of the federal components testifying here today play a distinct and vital role in the protection of intellectual property, and we look forward to continuing to work with them toward our common goal of maintaining a robust system for intellectual property protection that, in the words of our Founding Fathers, "promotes the progress of science and the useful arts," and that fosters creativity and innovation and protects consumers.

This concludes my remarks. I would be pleased to answer questions from you and other members of the Subcommittee.