







# NIPLECC

# 2003 ANNUAL REPORT

## NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL

SUBMITTED TO THE PRESIDENT OF THE UNITED STATES AND THE UNITED STATES CONGRESS

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
UNITED STATES DEPARTMENT OF COMMERCE
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES DEPARTMENT OF STATE
UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES COPYRIGHT OFFICE (ADVISOR TO THE COUNCIL)

# NIPLECC

# 2003 Annual Report

## The National Intellectual Property Law Enforcement Coordination Council

## Submitted to the President of the United States and the United States Congress

Office of the United States Trade Representative
United States Department of Commerce
United States Department of Homeland Security
United States Department of Justice
United States Department of State
United States Patent and Trademark Office

United States Copyright Office (advisor to the council)

Notice: No copyright is claimed in United States Government or public domain materials.

This report is available on the following web sites:

| | |
|---|---|
| United States Customs and Border Protection: | www.customs.gov |
| United States Department of Commerce: | www.doc.gov |
| United States Department of Justice: | www.usdoj.gov |
| United States Department of State: | www.state.gov |
| United States Patent and Trademark Office: | www.uspto.gov |
| United States Trade Representative: | www.ustr.gov |
| United States Copyright Office: | www.loc.gov/copyright/ |

Single copies of this Report may be obtained, free of charge, by sending requests by e-mail to karen.sewell@uspto.gov or by written request to:

Office of Public Affairs
United States Patent and Trademark Office
2121 Crystal Drive, Suite 0100
Arlington, VA 22202

# NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATING COUNCIL

## TABLE OF CONTENTS


Introduction ..... 1

Executive Summary ..... 3

Individual Agency Reports ..... 5

A. Office of the United States Trade Representative ..... 5

B. U.S. Department of Commerce, International Trade Administration ..... 7

C. U.S. Department of Homeland Security, Bureau of Customs and Border Protection ..... 13

D. U.S. Department of Justice, Criminal Division ..... 17

E. U.S Department of State, Bureau of Economic, Business and Agricultural Affairs ..... 33

F. United States Patent and Trademark Office..... 35

G. United States Copyright Office ..... 41

Federal Register Notice Requesting Industry Comments .....Attachment A

International Anti-Counterfeiting Coalition .....Attachment B

International Intellectual Property Alliance .....Attachment C

Software & Information Industry Association .....Attachment D

Other Comments Received ..... Attachment E

Interagency Database of Intellectual Property Rights Training ..... Attachment F

## INTRODUCTION

Pursuant to 15 U.S.C. 1128(e), the National Intellectual Property Law Enforcement Coordination Council shall report annually on its coordination activities to the President, and to the Committees on Appropriations and the Judiciary of the Senate and House of Representatives. This report is the third annual report issued by the Council, reporting on its coordinating activities.

Included in this report is a compendium of agency activities relating to domestic and international intellectual property rights enforcement efforts and the mission of the National Intellectual Property Law Enforcement Coordination Council.

Submitted December 2003.

JAMES E. ROGAN
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CHRISTOPHER A. WRAY
Assistant Attorney General for the Criminal Division
United States Department of Justice

## EXECUTIVE SUMMARY

The National Intellectual Property Law Enforcement Coordination Council was created under the Treasury and General Government Appropriations Act 2000, which also defined its membership, set forth the duties of the Council and provided for the submission of an annual report. Pursuant to 15 USC 1128(b), the statutory mandate of the Council is to "coordinate domestic and international intellectual property law enforcement among federal and foreign entities."

The Council consists of the following members:

- Ambassador, Deputy United States Trade Representative;
- Assistant Attorney General, Criminal Division;
- Commissioner of Customs;
- Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office;
- Under Secretary of Commerce for International Trade; and
- Under Secretary of State for Economic and Agricultural Affairs.

The U.S. Department of Justice and the United States Patent and Trademark Office serve as the Council's co-chairs. Pursuant to 15 U.S.C. 1128(c), the Council "shall consult with the Register of Copyrights on law enforcement matters relating to copyright and related rights matters."

Subsequent to the issuance of the second annual report, the Council met in December 2002, and again in April 2003. The Council's mission includes: law enforcement liaison, training coordination, industry and other outreach and increasing public awareness. In addition to providing a forum in which agencies coordinate activities involving intellectual property law enforcement, the Council has determined that efforts should focus on a campaign of public awareness, at home and internationally, addressing the importance of protecting intellectual property rights.

On October 28, 2003, a request for comments was published in the Federal Register seeking public comment as to how the Council may be effective in coordinating a public awareness campaign about the importance of strong intellectual property rights protection and enforcement. A pilot project designed for the Central American countries and to be implemented by the State Department Office of Public Diplomacy, in coordination with the Department of Commerce and the United States Patent and Trademark Office, was approved by the Council in April 2003. In the months ahead, the Council will seek to evaluate the results and impact of this pilot project. This report exhibits the commitment of the Council member agencies to domestic and international intellectual property rights enforcement.

# INDIVIDUAL AGENCY ANNUAL REPORTS

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Special 301 Review

On May 1, 2003, United States Trade Representative Robert B. Zoellick announced the results of the 2003 "Special 301" annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 74 countries.

In the report, USTR noted the continued designation of Ukraine as a Priority Foreign Country due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. As a result, the $75 million worth of sanctions imposed on Ukrainian products on January 23, 2002, remain in place. This continued failure to adequately protect intellectual property rights could also jeopardize Ukraine's efforts to join the World Trade Organization (WTO) and seriously undermine its efforts to attract trade and investment. The U.S. Government continues to remain actively engaged with Ukraine in encouraging the nation to combat piracy and to enact the necessary intellectual property rights legislation and regulations.

In this year's report, forty-nine trading partners are listed as countries or economies with which the U.S. is working to improve IP protection and enforcement. This year's report lists eleven trading partners on the Priority Watch List (PWL), which indicates that a trading partner does not provide an adequate level of protection or enforcement of intellectual property rights or market access for persons relying on intellectual property protection. Thirty-six trading partners are placed on the Watch List (WL), meriting bilateral attention to address the underlying intellectual property rights problem.

In addition to the forty-seven described above, China and Paraguay are subject to another part of the statute, Section 306 monitoring, because of previous agreements reached with the United States to address specific problems raised in earlier reports.

Priority Watch List countries or economies include Argentina, Bahamas, Brazil, the EU, India, Indonesia, Lebanon, the Philippines, Poland, Russia, and Taiwan.

Watch List countries or economies include Azerbaijan, Belarus, Bolivia, Canada, Chile, Colombia, Costa Rica, Croatia, the Dominican Republic, Ecuador, Egypt, Guatemala, Hungary, Israel, Italy, Jamaica, Kazakhstan, Korea, Kuwait, Latvia, Lithuania, Malaysia, Mexico, Pakistan, Peru, Romania, Saudi Arabia, the Slovak Republic, Tajikistan, Thailand, Turkey, Turkmenistan, Uruguay, Uzbekistan, Venezuela, and Vietnam.

In this year's review, USTR devoted special attention to the growing issue of counterfeiting and piracy, with particular emphasis on the ongoing campaign to reduce production of unauthorized copies of "optical media" products such as CDs, VCDs,

DVDs, and CD-ROMs. Counterfeiting of trademarked goods is an increasing problem in many countries, including China, Paraguay, Poland, the Philippines, Russia, Turkey, and Vietnam.

**WTO and TRIPs**

In addition, USTR continued to focus on other critically important issues including Internet piracy, proper implementation of the TRIPs Agreement by developing country WTO Members and full implementation of TRIPs standards by new WTO Members at the time of their accession. USTR also continued to encourage countries to ensure that government ministries use only authorized software. Over the past year, many developing countries and newly acceding WTO Members made progress toward implementing TRIPs obligations. Nevertheless, full implementation of TRIPs obligations has yet to be achieved in certain countries, particularly with respect to the Agreement's enforcement provisions. As a result, piracy and counterfeiting of U.S. intellectual property remain unacceptably high in these countries.

**Free Trade Agreements**

The United States is committed to a policy of promoting increased intellectual property protection. In this regard, we are making progress in advancing the protection of these rights through a variety of mechanisms, including through the negotiation of free trade agreements (FTAs). We are pleased that the FTAs with Chile and Singapore will provide for higher levels of intellectual property protection in a number of areas covered by the TRIPs Agreement. We are also seeking higher levels of intellectual property protection and enforcement in the FTAs that are currently under negotiation with Australia, Central America, Morocco, and the Southern Africa Customs Union, and in the ongoing negotiations of the Free Trade Area of the Americas.

USTR will continue to use all statutory tools, as appropriate, to improve intellectual property protection in such countries where it is inadequate, such as Ukraine, Russia, Brazil, Peru, Ecuador, Bolivia, Venezuela, the Dominican Republic, Pakistan, Thailand and Turkey including through implementation of the Generalized System of Preferences and other trade preference programs.

# U.S. DEPARTMENT OF COMMERCE, INTERNATIONAL TRADE ADMINISTRATION

## SUMMARY OF AGENCY MISSION

### Intellectual Property Compliance and Monitoring

The International Trade Administration (ITA) helps American businesses and workers overcome difficulties they face when exporting their goods and services overseas because of foreign barriers to trade, including the lack of adequate and effective intellectual property rights protection. To ensure this objective, ITA monitors the compliance and implementation of international trade agreements by foreign governments, especially those agreements pertaining to intellectual property rights enforcement.

ITA, and in particular the Trade Compliance Center (TCC), has the coordinating role within the U.S. Department of Commerce on multilateral and bilateral efforts to promote effective worldwide protection and enforcement for intellectual property rights. The TCC works closely with the Office of the U.S. Trade Representative, the United States Patent and Trademark Office, the U.S. Department of State's Intellectual Property and Competition Policy Division, the U.S. Copyright Office, and the private sector. With the support of these agencies and industry, ITA helps to develop and implement a comprehensive interagency strategy for addressing bilateral and multilateral IP programs. Such programs include the annual Special 301 Review, which examines in detail the adequacy and effectiveness of intellectual property protection and enforcement by our trading partners. The TCC has the responsibility of coordinating the development of the Commerce Department's position concerning the status of countries under Special 301. The TCC also monitors countries' implementation of various intellectual property (IP) agreements, including the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and bilateral IP agreements, such as those with China, Bulgaria, Paraguay, and Ukraine. Further, the TCC monitors implementation efforts regarding the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which update and improve protection for the rights of authors and performers within the digital environment. The TCC represents the Commerce Department on official government delegations at meetings of the World Trade Organization TRIPs Council, which provides the opportunity to obtain information on countries' efforts to comply with TRIPs obligations. In addition, the TCC participates and provides policy input in IP negotiations and consultations, such as on Free Trade Agreements and on IP "action plans" of key elements for governments to implement in order to improve their IP regimes, in such countries as Korea, Thailand, and the Philippines.

Officials from ITA meet frequently with our trading partners to help advance our intellectual property interests overseas. For example, in 2003, ITA has engaged the following countries:

- People's Republic of China, to improve its enforcement against pirated and counterfeit goods;

- Croatia, to provide protection for confidential test data;

- Poland, to enforce its IPR laws aggressively against retail piracy and to protect confidential test data;

- Mexico, to have the Health and Patent Ministries coordinate to protect against the infringement of patented pharmaceuticals; and

- Malaysia, to improve the prosecution of IPR cases, impose deterrent penalties and address the concern over price controls for optical media products.

Additionally, intellectual property issues have been raised bilaterally with Australia, Bulgaria, Canada, Czech Republic, Hungary, India, Italy, Pakistan, Paraguay, Romania, Russia, Spain, Sri Lanka, Thailand, and Turkey. ITA will continue to work with these and other countries to ensure that they provide adequate and effective IPR protection and enforcement for U.S. businesses.

## COORDINATION WITH THE U.S. INTELLECTUAL PROPERTY INDUSTRY

### International Trade Administration's Compliance Initiative

International compliance and enforcement are the highest priorities of ITA, and it works with U.S. companies to ensure that problems are promptly and aggressively addressed. Through its compliance program, ITA works with industry in a variety of ways, including:

- actively searching company supplied information for IP problems facing industry;

- applying expertise to develop an implementation strategy to resolve problems; and,

- in conjunction with USPTO and the Department of Commerce's Office of the Chief Counsel for International Commerce, counseling U.S. companies on the IP commitments undertaken by our trading partners under existing trade agreements to which the United States is a party.

As part of ITA's compliance initiative, the TCC has a Compliance Liaison Program, by which approximately 100 trade associations have appointed a representative to serve as a liaison between their members and the TCC. The liaison solicits complaints on market access barriers and agreement compliance problems from members, and notifies the TCC for action. Such trade industry groups as the Motion Picture Association, Recording Industry Association of America, Business Software Alliance, American Film Marketing

Association**,** Pharmaceutical Research Manufacturers Association, and the International Anti-Counterfeiting Coalition have appointed representatives who are part of the Compliance Liaison Program. Congressional and Senatorial offices and countrywide U.S. Export Assistance Centers (USEACs) also actively participate in the Compliance Liaison Program.

The TCC administers a hotline for U.S. firms to use when faced with trade barriers. Advice has been provided to several U.S. firms that have faced problems concerning the infringement of intellectual property rights in many trading partners including China, Singapore, Honduras, Malaysia, Spain, Mexico, Saudi Arabia and Hong Kong. While the parties involved in the intellectual property complaints have generally been private entities as opposed to government actors, the information provided by the compliance program has led to several of these firms litigating to enforce their rights under the intellectual property laws of the countries where infringement occurs. Intellectual property complaints concerning the unauthorized copying of textile designs overseas continue to be a concern for U.S. industry. The Commerce Textiles Compliance Team, consisting of personnel from ITA, the Office of the Chief Counsel for International Commerce, USPTO, and the U.S. Bureau of Customs and Border Protection are working with U.S. textile industry groups to improve IP enforcement for textile designs in foreign countries and at U.S. points of entry.

**Industry Functional Advisory Committee on IPR**

ITA also ensures that American firms overcome market access barriers, including in the area of intellectual property rights, in its administration of the functional and sector committees in the Industry Consultations Program. It includes over 500 industry executives who provide advice and information to the U.S. Government on trade policy matters. The advice received from committees has helped to strengthen the international trading system and has assisted U.S. Government officials negotiating multilateral and bilateral trade agreements with our trading partners. The program includes sector and functional advisory committees, including the Intellectual Property Rights committee (IFAC 3), administered by the TCC. Membership on the functional committee is made up of industry representatives and representatives from sectoral committees. A substantial amount of the briefing for the IFACs is done by USTR, USPTO, and Commerce staff.

IFAC 3 plays an active role in advising the U.S. Government on intellectual property trade negotiating objectives and priorities. Advice has been sought on the Free Trade of the Americas Agreement (FTAA); the Free Trade Agreements with Chile**,** Singapore, Central America, Australia, Morocco, and the Southern Africa Customs Union; the Asia-Pacific Economic Cooperation forum; and bilateral negotiations and consultations. Finally, IFAC 3 provides advice to the U.S. Government on negotiating objectives for WTO accessions, and identifies IP concerns in countries that are eligible beneficiaries under the Generalized System of Preference program. The priorities of the IFAC 3 committee include advising the U.S. negotiators on WTO Members' implementation of and compliance with the WTO TRIPs Agreement. In particular, the committee provides

advice on WTO TRIPs Council compliance reviews and WTO dispute settlement cases. In addition, IFAC 3 plays an important role in channeling private sector advice into the implementation of the Special 301, ongoing Section 301 investigations on Ukraine and Section 306 monitoring of China and Paraguay.

**International Intellectual Property Technical Assistance**

Aside from USPTO, ITA staff and other Commerce entities do not participate in international intellectual property training programs as technical assistance trainers. However, Commerce Department offices do organize a number of technical assistance programs with the support of the substantive USG IP agencies.

**ITA Sponsored China Intellectual Property Rights (IPR) Programs**

From October 20-28, 2003, U.S. Department of Commerce, in coordination with Departments of Justice and State, hosted the United States-China IPR enforcement seminar focused on criminal enforcement in Beijing, Shanghai and Guangzhou. This was the first time that China's Supreme People's Procuratorate (China's prosecutorial body) cooperated with the U.S. Government in co-sponsoring a seminar. In each city, approximately 100 participants, including Chinese prosecutors, judges, police, customs officials, and IPR administrative officials from State Administration on Industry and Commerce, attended the seminar. In addition to U.S. Government speakers from USPTO, Customs, and the Department of Justice, and industry representatives, five senior-level Chinese officials from the Criminal Division of the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Chinese Customs, and State Administration on Industry and Commerce presented their respective agencies' views on IPR criminal enforcement.

**Commercial Law Development Program**

The Department of Commerce's Commercial Law Development Program (CLDP) provides training and consultative services through a variety of mechanisms, including conferences, workshops and other activities that focus on laws, administrative practices, and enforcement of intellectual property rights. In particular, CLDP assists countries in their compliance efforts with the WTO TRIPs Agreement. In FY 2003, CLDP's IPR activities include the following:

- A conference for Nigerian IPR officials and lawyers that focused on Nigeria's final draft of its IPR legislation**;**

- A program in Russia focused on support of the Russian Patent and Trademark Agency's (Rospatent) efforts to develop a comprehensive system of IPR training materials that will facilitate the training of Russian officials and others involved in the protection and enforcement of intellectual property rights. The materials will be used to train judges, prosecutors, investigators, customs officers, and others on the enforcement of IPR both in Moscow and the regions;

- Workshops in Washington for foreign judges from Algeria, Egypt, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, and Romania on the adjudication of IPR disputes under the guidance of U.S. District Court Judges;

- A conference in Egypt to study the opportunity costs of not providing IPR protection;

- A program in Tunisia to review its patent and copyright practices with emphasis toward improving enforcement;

- Consultations between Tunisia and U.S. Government officials and private sector actors on copyright protection in the United States;

- A judge's bench reference manual for analyzing IP cases in Albania and review of Albania's draft IP law for WTO consistency; and

- As part of its Southeast Europe Initiative, CLDP conducted a pilot IPR seminar in Belgrade, conducted a customs harmonization and IPR border enforcement program and conducted an IPR enforcement experience-sharing program in Serbia-Montenegro.

# U.S. DEPARTMENT OF HOMELAND SECURITY, BUREAU OF CUSTOMS AND BORDER PROTECTION

## SUMMARY OF AGENCY MISSION

The Bureau of Customs and Border Protection (CBP), formerly a part of the U.S. Customs Service (established in 1789) is now one component agency in the newly formed Department of Homeland Security (established in 2003). The Department of Homeland Security was created in the aftermath of the terrorist attack against the United States in September 11, 2001, with the belief that the Nation would be better protected if the previously disparate domestic agencies existed within one department. As such, CBP's main mission is to detect and prevent terrorists and terrorist weapons from entering the United States, while facilitating the orderly and efficient flow of legitimate trade and people at and through our Nation's borders. In addition, CBP is charged with carrying out all the traditional missions of the unified border agencies, including interdicting illegal drugs and other contraband at and, where possible, beyond the border; apprehending individuals who are attempting to illegally enter the United States; screening inbound and outbound people, vehicles and cargo; enforcing all laws of the U.S. at the border; protecting U.S. agricultural and economic interests from harmful pests and diseases; regulating and facilitating international trade; collecting import duties; and ensuring that appropriate training, detection equipment, technology, and operational support is available to carry out the foregoing mission.

CBP is an administrative agency with the legal authority, under the Tariff Act of 1930, the Lanham Act of 1946 and the Copyright Act of 1976, to make infringement determinations regarding federally registered trademarks and copyrights. Although CBP has no legal authority to make patent infringement determinations, it does have the authority to exclude from entry into the United States goods that the U.S. International Trade Commission has determined to infringe a valid and enforceable U.S. patent.

Through its enforcement powers combined with its administrative authority to make trademark and copyright infringement determinations, CBP is able to combat the flow of counterfeit and piratical goods into the United States. CBP may on its own accord initiate enforcement actions to detain or seize infringing merchandise, or alternatively, it may proceed on the basis of information supplied by rights owners. Enforcement actions represent the combined efforts of many disciplines within CBP. In some instances, intellectual property rights (IPR) enforcement actions may also be undertaken in cooperation with other Government agencies.

Rights owners who so wish can record their trademarks and copyrights with CBP. CBP's IPR recordation system, as embodied in its electronic IPR database, was designed to make IPR information relating to imported merchandise readily available to CBP personnel. CBP enforces both recorded and non-recorded trademarks and copyrights; however, recorded trademarks and copyrights are entitled to greater protection from CBP than those that are not recorded.

## MAJOR PROGRAMMATIC ACTIVITIES

### Ongoing Interdiction

CBP's commitment to combating IPR violations is evidenced in its continued efforts to improve the efficacy of its IPR enforcement regime; this is reflected in the Agency's annual IPR seizure statistics. In fiscal year 2003, CBP seized 3,117 shipments with a domestic value of approximately $38 million. In fiscal year 2002, CBP seized 2,781 shipments with a domestic value of approximately $27 million. In the five fiscal years (FY 1997-2001) preceding FY 2002, CBP made over 15,800 seizures with an estimated domestic value of over $331 million. More detailed enforcement statistics are available on the CBP web site at www.cbp.gov.

In order to identify shipments of IPR infringing merchandise and prevent their entry into the United States, CBP employs the latest in information technology to design an innovative IPR risk assessment computer model. Through the use of sophisticated, state-of-the-art statistical/analytical techniques, the model uses weighted criteria to assign risk scores to individual imports. The methodology is developed on both historical risk-based trade data and qualitative rankings. This historical data is comprised of seizure information and cargo examination results. The qualitative rankings include the IPR at-risk countries as identified by the Office of the U.S. Trade Representative and will soon include external business data such as Dun & Bradstreet.

### Systems Improvements

- In 2003, CBP reconstructed its IPR database to improve the efficiency of its border enforcement efforts. The "Customs Electronic Bulletin Board" (CEBB), through which the public may access the public version of the IPR Module, which contains information on recorded intellectual property, has been reconstructed to a web-based system to facilitate the public's access to information.

- CBP implemented steps to streamline the recordation process by creating an electronic recordation form ("E-Form") that is available on the CBP web site. Trademark and copyright owners, who wish to record their IPR with CBP can now simply download these forms, complete the forms electronically and return these forms (with the required fee and certified copies of the registration) to CBP. By streamlining this process, recordations will be more accurate.

### International Activities

- **International Training**: CBP both conducted and participated in a number of international IPR border enforcement training programs. Sponsoring organizations included both international organizations and trade associations and U.S. Government agencies, such as the United States Patent and Trademark Office, U.S. Department of

Commerce, the World Customs Organization and the Asian Development Bank. In 2003, CBP was involved in several international programs both in Washington, D.C., and abroad. Before the end of this year, CBP will participate in two additional programs, one in Rio de Janeiro, Brazil, and the other in Bangkok, Thailand.

- **World Customs Organization**: CBP is a member of the World Customs Organization (WCO) IPR Strategic Working Group. The Group was developed as a joint venture with international business sponsors to help Member Administrations to improve the efficiency and effectiveness of their organizations in combating IPR violations. As part of an initiative proposed in January 2002, at the 21st session of the WCO Enforcement Committee, WCO Member Customs Authorities pledged to revise the current WCO Model IPR Border Enforcement Legislation, which was drafted more than six years ago. The Group met a number of times, and in 2003, the revision of the model legislation was completed. The final draft was presented at the WCO annual meeting in February 2003. The new model legislation improves upon the existing document by strengthening enforcement, removing ambiguities and moving toward a "TRIPs-plus" protection.

**Industry Outreach**

CBP continues to work with Industry on an ongoing basis to combat IPR violations:

- **Meetings**: CBP met with representatives from a number of companies and trade associations to learn about their concerns, to discuss CBP's IPR enforcement efforts including its available resources, and to discuss cooperative efforts. Some of the entities with whom CBP met include the following: Pharmaceutical Research and Manufacturers of America (PhRMA), International Anti-Counterfeiting Coalition (IACC), the Textiles Industry, DVD Format/Logo Licensing Corp. and Microsoft.

- **Program Participation**: Following are some of the events in which CBP participated to present CBP's IPR border enforcement efforts and the changes following September 11th: the IACC Spring and Fall conferences; a meeting of the Industry Sector Advisory Committee on Footwear, Leather and Leather Products; the annual meeting of the Association of Home Appliance Manufacturers; the annual meeting of the International Trademark Association; and a meeting of the National Association of Manufacturers.

- **Product Identification Training**: CBP, in coordination with Industry, continued to provide product identification training to CBP port officials.

Legislative Efforts

CBP has been working with Industry and Congressional Representatives to afford greater protection to certain classes of copyrighted works, specifically sound recordings and audio-visual works. These efforts have led to the imminent introduction of proposed

amendments to CBP regulations that will afford greater protection of these copyrighted works against piratical goods.

## U.S. DEPARTMENT OF JUSTICE, CRIMINAL DIVISION

The Department of Justice is responsible for the investigation and prosecution of criminal cases involving the piracy of copyrighted works, trademark counterfeiting and theft of trade secrets.

The Department's enforcement efforts in these areas in the past 30 months, particularly in the area of on-line piracy, have been the most aggressive and successful in history, resulting in a significant increase in investigations, searches, arrests and prosecutions in intellectual property (IP) cases. The increased focus on digital IP piracy has, in turn, had a tremendous impact on the international on-line piracy groups that dramatically harm the interests of copyright holders both large and small. The Department is continuing to actively pursue these international groups in a series of investigations, and is dedicated to continuing to disrupt this worldwide distribution system, which often release the pirated works ultimately distributed throughout the world in various formats, including across peer-to-peer networks. For too long, people involved in the world of digital piracy believed that they operated beyond the reach of law enforcement. The Department's focused efforts in this area have altered the perception that on-line piracy is a risk-free endeavor. The Department of Justice is committed to identifying, investigating and prosecuting the people and organizations engaged in this type of illegal activity.

The primary responsibility for federal enforcement of intellectual property laws rests with the 94 U.S. Attorneys' Offices with the support and coordination of the Department of Justice Criminal Division's Computer Crime and Intellectual Property Section (CCIPS). Primary investigative responsibility for IP cases rests with the Federal Bureau of Investigation (FBI) and the U.S. Immigration and Customs Enforcement (ICE). The Department of Justice has made the enforcement of intellectual property laws a high priority, and has committed substantial new resources to training specialized prosecutors and developing aggressive prosecution strategies to deal with the growing threat of piracy and high-tech crime.

### 1. Ensuring Adequate Prosecutorial Resources and Training

The Department of Justice has worked diligently to ensure that the prosecutorial resources necessary to address intellectual property crime are in place. During the past twenty-four months, the Attorney General has used additional resources provided by Congress to establish or expand Computer Hacking and Intellectual Property (or CHIP) Units in thirteen U.S. Attorneys' Offices across the nation. These specialized units consist of dedicated federal prosecutors, whose primary focus is on prosecuting high tech crimes, including IP crimes.

The CHIP units ensure that the Department of Justice has a ready supply of prosecutors to pursue IP cases. The expertise of the various CHIP Units helps the Justice Department keep pace with the changing face of high-tech crime. Rapid advances in technology bring new challenges to the investigators and prosecutors who handle these cases, and the

establishment of these specialized units ensures that the individuals who misuse technology to support their criminal activity will not find a safe haven in the United States.

The CHIP Units complement the already existing network of Computer and Telecommunications Coordinators (CTCs) prosecutors who serve in each United States Attorney's Office. The CTCs regularly receive specialized training in the investigation and prosecution of high-tech crimes, including intellectual property crimes. Many of the ninety-four 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 CCIPS. Created as a Unit in 1991 by then-Assistant Attorney General Robert Mueller and elevated to a Section in the Criminal Division in 1996, CCIPS is a highly specialized team of over thirty-five lawyers who focus exclusively on computer and intellectual property crime. CCIPS attorneys prosecute cybercrime and intellectual property cases; advise and train local, state, and federal prosecutors and investigators in network attacks, computer search and seizure, and IP law; coordinate international enforcement and outreach efforts to combat intellectual property and computer crime worldwide; and comment upon and propose legislation.

With the support of Congress, CCIPS has grown significantly in recent months, thereby allowing additional resources to address piracy both domestically and abroad. Moreover, for the first time, CCIPS has a Deputy Chief whose sole responsibility is to oversee and manage the attorneys in the Section dedicated to IP enforcement. At present, there are twelve CCIPS attorneys working full-time on the IP program. These attorneys are developing a focused and aggressive long-term plan to combat the growing threat of piracy. They are implementing the Department's overall anti-piracy strategy, assisting Assistant U.S. Attorneys in the prosecution of intellectual property crimes, and reaching out to international counterparts to ensure a more effective worldwide 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, which has resulted in significant prosecutorial success.

## 2. Department of Justice Prosecution Strategy and Cases

While working to ensure that substantial and adequate resources and training are available to combat piracy, the Department of Justice has also had significant prosecutorial success in the anti-piracy fight. In the past eighteen months, there has been an evolution in the prosecutorial approach of the Department concerning IP crime, with the focus turning toward disrupting the highly structured, on-line criminal groups that are responsible for the worldwide distribution of huge amounts of pirated goods. The rapid growth in technology, the information industry and the Internet has combined to create conditions ripe for new forms of IP crime over the Internet on a scale greater than any previously experienced. For example, on-line copyright piracy organizations, known as "warez groups," are now able to take copyrighted materials, defeat ("crack") copyright

protections included on the legitimate products, and distribute unlimited, perfect reproductions throughout the world — all within hours of obtaining the legitimate work. Frequently, pirated copies of these products appear on-line before legitimate copies are available for purchase by the public. While investigation and prosecution of these illicit organizations requires substantial coordination, time and resources, the Department has been highly effective at disrupting the burgeoning piracy community. With an increased focus on on-line intellectual property rights enforcement, the Justice Department has undertaken several groundbreaking multi-district, multi-agency cases. A representative sample of recent cases and convictions and ongoing cases is included below.[1]

## A. COPYRIGHT VIOLATIONS

### 1. International On-line Piracy

#### Operation Safehaven

In the first convictions resulting from a fifteen-month software piracy investigation known as Operation Safehaven, on October 2, 2003, Travis Myers, Terry Katz, Walter Kapechuk, and Warren Willsey all waived indictment and pleaded guilty to charges of conspiracy to commit criminal copyright infringement.

Myers, Katz, Kapechuk, and Willsey were all participants in the "warez scene," an underground on-line community that consists of individuals and organized groups who use the Internet to engage in the large-scale, illegal distribution of copyrighted software. In the warez scene, certain participants, known as "suppliers," are able to obtain access to copyrighted software, video games, DVD movies, and MP3 music files, often before those titles are even available to the general public. Other participants ("crackers") then use their technical skills to circumvent or "crack" the digital copyright protections; and yet others ("couriers") distribute the pirated software to various file servers on the Internet for others to access, reproduce, and further distribute. These "warez servers" are established for the illegal purpose of storing, copying, and reproducing copyright protected software.

In pleading guilty, Myers admitted that he was a member of several leading warez groups, including "DrinkOrDie," and that he acted as a distributor or "courier" for those groups. Katz admitted that he was responsible for operating and maintaining several computers used in the warez scene, including a file server that was used to illegally collect, store, and distribute tens of thousands of pirated software titles, games, movies, and music files. Likewise, Kapechuk admitted that he was responsible for operating and maintaining a number of warez servers located at the State University of New York at Albany, which were used to illegally collect, store, and distribute thousands of warez titles. Willsey admitted that he assisted periodically in the maintenance of the SUNY-Albany warez sites.

[1] A more complete list of DOJ IP prosecutions is contained at the CCIPS web site, www.cybercrime.gov.

Building on the success of the previous Customs investigation in "Operation Buccaneer" (see below), Operation Safehaven targeted a broader swath of warez participants. The investigation culminated in April 2003 with the simultaneous execution of over twenty search warrants nationwide, and resulted in the seizure of thousands of pirated CDs and DVDs, plus dozens of computers and servers, including the largest warez site ever seized in the United States to date.

This case was investigated by the U.S. Immigration and Customs Enforcement (ICE) and prosecuted by the U.S. Attorney's Office for the District of Connecticut and CCIPS.

**Operation Digital Piratez: United States v. Motter plea; United States v. Zielin, et al.**

On September 30, 2003, Christopher Motter of Iowa was sentenced to two years' imprisonment for violating federal copyright laws by engaging in large-scale software piracy on the Internet.

Motter is one of the first to be charged, convicted and sentenced under the two-year undercover operation known as "Operation Digital Piratez." The undercover operation uncovered several warez servers run by groups of software pirates, and secret Internet Relay Chat (IRC) channels they used to communicate in real time about their software piracy activities. After identifying the warez servers and their suspected operators, the FBI executed ten search warrants, and obtained consent for additional searches, on computers located in Florida, Georgia, Illinois, Iowa, Massachusetts, Minnesota, Nebraska, New Hampshire and Virginia.

Motter ran and maintained one of the warez servers, which had been seized. It was located in Ames, Iowa, and was known to his co-conspirators as the warez server "Wonderland." "Wonderland" had over 5,000 illegally pirated software applications stored within its 400 gigabytes of memory, and over forty active users and co-conspirators from across the country. Less than 1% of the total software on the server (a mere 53 applications) had a retail value of more than $500,000.

As part of the ongoing operation, five additional defendants were charged in November 2003. Jordan Zielin, of New York, New York, David Foresman, of Lombard, Illinois, Kenneth Woods, of Warrentown, Virginia, Daniel McVay, of North Easton, Massachusetts, and John Neas, of Holbrook, Massachusetts, were each charged with conspiracy to violate copyright laws. As part of Operation Digital Piratez, investigators gained access to the defendants' on-line conversations and warez servers containing millions of dollars of pirated software.

The FBI is in charge of the ongoing investigation, and the resulting charges are being prosecuted by the U.S. Attorney's Office for the District of New Hampshire.

### United States v. Griffiths

In the first ever case involving the extradition of an individual charged with on-line copyright infringement, on March 13, 2003, a federal grand jury in the Eastern District of Virginia indicted Hew Raymond Griffiths of Bateau Bay, Australia. Griffiths was the self-proclaimed leader of various Internet software piracy groups, including Drink Or Die, ViCE, and RiSC. A formal extradition request has been filed with Australian authorities. Griffiths faces up to ten years' imprisonment and a $500,000 fine.

The indictment charges Griffiths, known by his screen nickname as "Bandido," with being co-leader of Drink Or Die, an illegal Internet software piracy group founded in Russia in 1993. This warez group expanded internationally throughout the 1990's. During the three years prior to its dismantlement by federal law enforcement in December 2001, the group is estimated to have caused the illegal reproduction and distribution of more than $50 million worth of pirated software, movies, games and music.

This case was investigated by the U.S. Customs, and prosecuted by the U.S. Attorney's Office for the Eastern District of Virginia and CCIPS.

### Operation Buccaneer

The Department of Justice continues to investigate and prosecute a massive international copyright piracy conspiracy code-named "Operation Buccaneer." This undercover investigation 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. It was the largest Internet software piracy investigation and prosecution ever undertaken, and the first to reach across international borders to achieve coordinated enforcement action against domestic and foreign targets. The investigation targeted multiple top-tier, highly organized and sophisticated warez groups that specialized in "cracking" the copyright protection on software, movie, game and music titles and distributing tens of thousands of those titles over the Internet.

As a result of Operation Buccaneer, as of today, twenty-five U.S. defendants have been convicted of felony copyright offenses, nineteen of those in the Eastern District of Virginia. Eleven defendants have received prison sentences of between 30 to 46 months prior to any post-sentence reductions for substantial assistance, the longest sentences ever imposed for Internet copyright piracy. Five defendants are awaiting trial in the United Kingdom, and more prosecutions are expected to be brought in the U.S. as this investigation progresses. 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.

The CHIP Unit for the U.S. Attorney's Office for the Eastern District of Virginia prosecuted this case, with the assistance of the United States Customs Service and CCIPS.

### 2. Pre-Release Movie Piracy

**United States v. Gonzalez (The "HULK" case)**

Recently, the Department successfully prosecuted the man responsible for putting advanced copies of the motion picture "The Hulk" on the Internet before the movie was released in the theaters. A New Jersey man (Kerry Gonzalez) obtained a work print of "The Hulk" from the friend of a friend at an advertising agency hired to promote the movie. The work print had a "tag" embedded to help identify and trace unauthorized copies. Gonzalez made a digital copy, ran a program to defeat the tag, and then uploaded it to an Internet chat room frequented by movie enthusiasts. Visitors to the chat room could then copy "The Hulk," watch it, and distribute it themselves. Within weeks, thousands of copies of the movie were available on Internet sites throughout the world. FBI agents quickly identified Gonzales, and he pleaded guilty within three weeks of his illegal conduct -- only five days after "The Hulk's" theatrical release.

The speed of the investigation and prosecution was unprecedented, and was due to the Federal Government's giving priority to prosecuting intellectual property crimes committed over the Internet, which permitted the U.S. Attorney's Office for the Southern District of New York, the FBI, and the Department of Justice to work together to quickly resolve this matter.

### 3. Music — Copyright Piracy Conspiracy

**United States v. Shumaker**

The Department also successfully prosecuted Mark Shumaker, the former leader of the Internet music piracy group known as Apocalypse Crew. Shumaker pleaded guilty on August 21, 2003.

Apocalypse Crew was an Internet music piracy group specializing in the distribution of advance copies of digital music before its commercial release in the United States. Apocalypse Crew recruited music industry insiders, such as radio DJs and employees of music magazine publishers, in order to obtain pre-release copies of compact disks. Once released to the Internet, these advance copies would filter down to public distribution channels, such as the peer-to-peer (P2P) file sharing networks of KaZaa and Morpheus. In 2001, as a leading member of Apocalypse Crew, Shumaker coordinated the supply and unauthorized distribution of the group's music releases. He also operated the group's private, invite-only Internet Relay Chat (IRC) channel where members secretly discussed their illegal activities.

This case was prosecuted by the U.S. Attorney's Office for the Eastern District of Virginia, with the assistance of CCIPS.

**United States v. Davis**

In the first District of Columbia case charging music piracy, Alvin A. Davis pleaded guilty to criminal copyright infringement and was sentenced on April 30, 2003, to six months' imprisonment, restitution of $3,329.50, one year of supervised release, and an order not to use a computer for a one-year period.

Davis owned and operated the web site www.empirerecords.com, which offered compact disks (CDs) and cassette tapes of over 100 music compilations of Rap and Rhythm and Blues artists for sale. From April to July 2002, an FBI undercover agent purchased 209 CDs from Davis, at the retail unit price of $15.50 per unit, or a total of $3,329.50. The CDs were then shipped from New York to the District of Columbia. Neither Davis, Empire Records, nor any of the DJs referenced on the covers of the CDs, was licensed to reproduce or distribute phonorecords embodying the sound recordings purchased by the FBI Agent.

The case was investigated by the FBI, and prosecuted by the U.S. Attorney's Office for the District of Columbia, with the assistance of CCIPS.

**4. Hard Goods — Copyrighted Software**

**United States v. Ma, et al.**

On February 26, 2003, in a joint operation between federal and local law enforcement in New York City, four arrests were made and six people were charged (two remain fugitives) in conjunction with an investigation of the illegal distribution of Symantec and Microsoft software. At the time of the arrests, over $9 million worth of counterfeit software was seized from distribution centers in the New York area. The defendants are believed to have distributed thousands of copies of counterfeit software and received an estimated $15 million over two years in return for the pirated products. In a single two-month period, the defendants received nearly $2 million dollars as a result of their illegal activity.

This case was prosecuted by the U.S. Attorney's Office for the Eastern District of New York, with the assistance of the FBI, IRS, and NYPD.

## B. THE DIGITAL MILLENIUM COPYRIGHT ACT

**United States v. Whitehead (Operation Decrypt) — Use of Circumvention Devices to Receive Satellite Broadcasts**

In the first-ever jury trial conviction under the Digital Millennium Copyright Act (DMCA), on September 22, 2003, a federal jury in Los Angeles found Thomas Michael

Whitehead guilty of one count of conspiracy, two counts of selling devices designed to unlawfully decrypt satellite television programming, and three counts of violating the DMCA. Whitehead purchased software code necessary to reprogram DirecTV access cards, and paid a co-conspirator $250 a month to continually update the software to circumvent the latest DirecTV security measures. He then used the software to create and sell illegally modified DirecTV access cards (often stamped with the "JungleMike" moniker) to a nationwide client base.

As a result of the federal conviction, Whitehead now faces a maximum sentence of thirty years in federal prison and fines of up to $2.75 million. Sentencing is scheduled on January 26, 2004. This case was investigated by the FBI's Los Angeles Field Office, Cyber Crime Division, and prosecuted by the U.S. Attorney's Office for the Central District of California.

The Whitehead prosecution arose from another yearlong investigation known as Operation Decrypt, in which seventeen individuals were indicted on February 11, 2003, in the Central District of California, for their roles in developing sophisticated software and hardware used to steal satellite television signals. One of the individuals pleaded guilty and admitted to being responsible for nearly $15 million in losses to the victim companies. An additional nine defendants have also agreed to plead guilty to various crimes as a result of their involvement. The defendants in Operation Decrypt used on-line chat rooms to exchange information and techniques on how to defeat the sophisticated security protections utilized by satellite entertainment companies. In October of 2002, search warrants were executed in seven States as part of this operation. Operation Decrypt is being prosecuted by the U.S. Attorney's Office for the Central District of California.

**United States v. Rocci — Trafficking in Circumvention Devices**

In December 2002, David Rocci of Virginia, pleaded guilty to conspiring with others to traffic in illegal circumvention devices in violation of the Digital Millennium Copyright Act. Rocci was the owner and operator of the most prominent publicly accessible web site on the Internet dedicated to providing information about the "warez" scene and copyright infringement, www.iSONEWS.com. Rocci used his web site as the exclusive medium to conduct the illegal sale of circumvention devices known as "mod chips," which defeat security protections in the Microsoft Xbox and allow unlimited play of pirated games on the gaming console. As a condition of his guilty plea, Rocci transferred his domain name and web site to the United States, which was then used to spread a strong anti-piracy message to those visiting the site (see Section 4, below).

The case was investigated by the U.S. Customs Service, the Customs CyberSmuggling Center in Virginia, and the Washington RAIC Office in Virginia, and prosecuted by the U.S. Attorney's Office for the Eastern District of Virginia, with the assistance of CCIPS.

### United States v. Mynaf: Use of Circumvention Devices to Produce Pirated Goods

On February 13, 2003, a California man, Mohsin Mynaf, was sentenced in the Eastern District of California to 24 months in federal prison for multiple violations relating to copyright, including Digital Millennium Copyright Act violations, criminal copyright infringement, and trafficking in counterfeit labels. Mynaf operated a videocassette reproduction center that produced counterfeit movie videocassettes, which he would then sell at various locations throughout California. In addition to 24 months in federal prison, Mynaf must also pay in excess of $200,000 in restitution. Three other individuals have also been convicted and sentenced for their roles aiding and abetting Mynaf in his illegal activity. This case was successfully prosecuted by the U.S. Attorney's Office for the Eastern District of California.

## C. THE ECONOMIC ESPIONAGE ACT

In addition to enforcing traditional laws protecting intellectual property, the Department also plays a pivotal role in the ongoing development of more contemporary laws protecting rights holders, such as the Economic Espionage Act (EEA), which criminalizes the theft of trade secrets.

### Theft of Trade Secrets Cases

#### United States v. Serebryany

Concluding the first federal criminal case in Los Angeles involving the theft of trade secrets, on April 28, 2003, a 19-year old University of Chicago student, Igor Serebryany, pleaded guilty to stealing sensitive trade secret information regarding DirecTV's Period 4 conditional access card. On September 8, 2003, Serebryany was sentenced to five years probation, which includes six months of home detention. Additionally, United States District Judge Lourdes G. Baird ordered Serebryany to pay $146,085 in restitution to DirecTV and to the law firm where he stole the information.

DirecTV delivers digital entertainment and television programming to millions of homes and businesses throughout the United States. A consumer wishing to subscribe to DirecTV programming must first obtain necessary hardware items, including a conditional access card, to receive the satellite signals. The access card is a key component in the security and integrity system for DirecTV satellite programming. DirecTV invested more than $25 million to develop the Period 4 access card with the assistance of its security vendors. The three previous generations of DirecTV access cards were all compromised by hackers who had developed ways to circumvent DirecTV's conditional access technologies.

Serebryany stole secret information pertaining to DirecTV's Period 4 access card while he was working for a copying service that had been hired by DirecTV's legal counsel, Jones Day Reavis & Pogue in Los Angeles. DirecTV had provided the secret

information to Jones Day in connection with civil litigation between DirecTV and one of its security vendors, NDS Americas, Inc.

The case was investigated by the Cyber-crime Division of the FBI in Los Angeles, and prosecuted by the U.S. Attorney's Office for the Central District of California.

**United States v. Branch**

On June 25, 2003, Kenneth Branch and William Erskine were each charged in Los Angeles with conspiring to steal trade-secret information from the Lockheed Martin Corporation related to a multi-billion dollar rocket program for the United States Air Force, and with violating the Procurement Integrity Act.

Branch and Erskine are former managers of Boeing's Evolved Expendible Launch Vehicle (EELV) program. The EELV is a rocket launch vehicle system, such as the Atlas or Delta rocket system, used for the transportation of commercial and government satellites into space.

In 1997, the Air Force announced that it wanted to procure EELV services from both Boeing and Lockheed Martin, and that it wanted both companies to invest in the EELV program because there was a potential for substantial profits to be made by using EELVs to launch private communication satellites. The Air Force agreed to provide both Boeing and Lockheed Martin $500 million for development costs associated with the respective EELV programs.

On July 20, 1998, Boeing and Lockheed Martin submitted bids for 28 EELV contracts being awarded by the Air Force. The total value of the contracts was approximately $2 billion. On October 16, 1998, based largely on price and risk assessment, Boeing was awarded 19 out of the 28 contracts, and Lockheed Martin received the other nine EELV contracts.

In mid-June 1999, according to the affidavit, Erskine told another Boeing employee that "he had hired defendant Branch because defendant Branch, while still working at Lockheed Martin, came to defendant Erskine with an 'under-the-table' offer to hand over the entire Lockheed Martin EELV proposal presentation to aid in Erskine's proposal work in exchange for a position at Boeing if Boeing won the United Sates Air Force EELV contract award." Later in June 1999, a Boeing attorney assigned to interview Branch and Erskine regarding allegations that they possessed proprietary Lockheed Martin documents conducted a search of Erskine's and Branch's offices and, according to the affidavit, found a variety of documents marked "Lockheed Martin Proprietary/ Competition Sensitive" in their offices. In early August 1999, Branch and Erskine were terminated by Boeing.

If Branch and Erskine are convicted of all counts in the complaint, they face maximum possible penalties of 15 years in federal prison and fines of up to $850,000. This case

was investigated by the Defense Criminal Investigative Service, and is prosecuted by the U.S. Attorney's Office for the Central District of California.

## D. TRADEMARK INFRINGEMENT

In addition to on-line copyright cases, the Department has also successfully prosecuted people for selling counterfeit goods over the Internet. At least one ongoing investigation is tracing counterfeit goods into foreign countries located overseas. The Department is committed to continuing to investigate and prosecute these cases as well.

### Trafficking in Counterfeit Goods Cases

#### United States v. Farmer

On January 16, 2003, in the middle of trial, William Haskell Farmer entered a conditional plea of guilty in federal court in Columbia, South Carolina, to trafficking in clothing with counterfeit Nike and Tommy Hilfiger trademarks and two counts of money laundering.

Evidence presented during the trial established that during 1997 and 1998, Farmer obtained blank tee shirts from mills, which manufactured shirts for Nike, and then paid to have the shirts either embroidered or screen-printed with a Nike trademark. Farmer then sold the shirts to Carolina Apparel Trading, an off-price clothing jobber in Hendersonville, North Carolina. Mark Lewis, the owner of Carolina Apparel Trading, has already been sentenced to five months in prison, to be followed by three years of supervised release and five months of home confinement. Roy Steve Sutton, who managed Heritage Embroidery of Camden, South Carolina, has pleaded guilty to trafficking in counterfeit clothing and is awaiting sentencing. Joe Bolin, who owned Dixie Screen Printing of Gaffney, South Carolina, pleaded guilty to a conspiracy charge but died before he was sentenced.

During his trial, Farmer attempted to argue that he did not violate federal trademark law because the shirts on which he placed the Nike trademark had been manufactured for Nike. United States District Judge Cameron M. Currie ruled against Farmer and did not allow the defense argument. Judge Currie found that, as long as Nike did not authorize the placing of the mark on the goods, the mark was counterfeit, and thus the Government had established that Farmer violated the law. Following Judge Currie's ruling denying the proposed defense theory, Farmer entered a guilty plea.

Farmer was sentenced in May 2003. Judge Currie imposed a seven-year prison term and ordered Farmer to pay $3.4 million in restitution to Nike and $110,000 to Tommy Hilfiger. This case was investigated by U.S. Immigration and Customs Enforcement, and prosecuted by the U.S. Attorney's Office for the District of South Carolina.

**United States v. Lawler**

On July 1, 2002, John K. Lawler pleaded guilty to charges that between 1999 and February of 2002, he conspired with others in Florida, Massachusetts, New York, California, and Canada to traffic in counterfeit luxury items such as Rolex and Cartier watches over the Internet.

Lawler came to the attention of the FBI in March of 2001 when a private investigator, which had been hired by a legitimate watch manufacturer to investigate Lawler, provided information concerning a web site being used for the sale of counterfeit watches. The FBI conducted the investigation and learned that Lawler, along with his co-conspirators, ran two web sites on which they advertised and sold fake watches. Those watches were virtually identical in appearance to, and illegally carried the trademarks of, many legitimate companies including Rolex, Cartier, Omega, Movado and Tag Heuer. The watches were mailed from California in packaging, which falsely identified the point of shipment as Phoenix, Arizona.

At the plea hearing, Lawler admitted that, as part of the conspiracy, two Nevada corporations were established, each with a mailing address in Phoenix, Arizona, which were used to hide the true location of the businesses. All mail sent to Arizona was forwarded to Massachusetts where both companies were run and managed. Lawler also admitted that he hired several people in Massachusetts to answer phones and process orders as part of the conspiracy. Additionally, he admitted that during a one-year period he deposited over $1.6 million in sales proceeds into just one of his bank accounts used for the conspiracy.

Lawler is scheduled to be sentenced on December 1, 2003, at which time he faces up to five years in prison followed by a three-year period of supervised release and up to a $250,000 fine. He will also be ordered to make full restitution to all identifiable victims of his crime.

This case was investigated by the FBI and prosecuted by the U.S. Attorney's Office for the District of New Hampshire.

**United States v. Zhu et al**

Defendants Min Zhu and Qiuhui Huang were arrested and charged in the Southern District of New York with selling more than $200,000 worth of fake Louis Vuitton handbags to hundreds of victims across the country through auctions on the Internet auction sites eBay and Yahoo! The victims had won auctions advertising "genuine" Louis Vuitton handbags on the Internet auction sites eBay and Yahoo! had been directed through e-mail correspondence to mail checks to one of numerous addresses in Manhattan that had been opened by members of the conspiracy. The victims had subsequently received handbags in the mail bearing the Louis Vuitton trademark. When the victims brought their bags to Louis Vuitton, Louis Vuitton confirmed in each case that the handbags were fakes that were neither manufactured, nor sold by Louis Vuitton.

If convicted of the conspiracy, mail fraud and criminal trademark infringement counts charged in each Complaint, Zhu and Huang each face a maximum sentence of 20 years in prison and a $250,000 fine or twice the gross gain or loss resulting from the crime.

The U.S. Postal Inspection Service and the FBI continue to investigate the case. The case was prosecuted by the U.S. Attorney's Office for the Southern District of New York.

### 3. International Efforts

In addition to enforcing IP laws domestically, the Department of Justice works closely with foreign countries to improve global enforcement. The Department works with foreign law enforcement to prosecute cases, both in the United States and abroad. Additionally, attorneys from CCIPS frequently meet with officials from foreign nations to provide assistance in developing or strengthening the IP enforcement regimes in those countries. Piracy is a global problem, and the Department of Justice is committed to supporting the enforcement efforts of governments throughout the world.

Between March 2002 and August 2003, Department of Justice prosecutors met representatives of over 50 countries to discuss IP cases and train on IP-related matters. These countries include: Algeria, Antigua, Balkan countries, Brazil, Bulgaria, China, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Italy, Japan, Jordan, Korea, Macao, Malaysia, Mexico, Nicaragua, Panama, Paraguay, Philippines, Poland, Romania, Singapore, Taiwan, Thailand, United Kingdom, Venezuela, and Vietnam.

On several occasions, Department attorneys traveled to specific countries to work with law enforcement counterparts. For example, in July 2003, CCIPS attorneys traveled to Brazil to meet with prosecutors, police and legislators in Brasilia, Sao Paulo and Rio de Janeiro about increasing effective IP enforcement in Brazil, as well as increasing cooperation between the United States and Brazil on IP enforcement matters.

Similarly, CCIPS attorneys spent 2 ½ weeks in China in October 2003, meeting with numerous law enforcement officials of the Chinese government in four cities -- Beijing, Shanghai, Guangzhou and Hong Kong -- to discuss ways of improving mutual assistance in cross-border cases of computer and Internet crime, including IP crime. The DOJ attorneys were also the featured presenters in a conference attended by over 300 Chinese prosecutors, judges, and police on the criminal enforcement of intellectual property rights. The conference, which was the first of its kind with Chinese law enforcement, was held for two days in each of three cities -- Beijing, Shanghai and Guangzhou -- and consisted of candid discussions of China's IP problems, as well as ways to address those problems and improve China's overall IP enforcement regime.

As noted earlier, the Department has made significant strides in cracking down on international on-line piracy groups and is continuing to actively pursue these international groups in a series of investigations dedicated to continuing to disrupt this worldwide distribution network.

The presence of organized criminal organizations in traditional hard-goods piracy continues to grow. These highly structured groups are a challenge to law enforcement, as their operations are highly compartmentalized and sophisticated. As Deputy Assistant Attorney General John Malcom stated in testimony before the Subcommittee on Courts, the Internet and Intellectual Property of the House Committee on the Judiciary:

> The continued emergence of organized crime poses substantial challenges for law enforcement. Highly organized criminal syndicates frequently have significant resources to devote to their illegal operations, thus increasing 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.

These groups are not opposed to threatening or using violence to intimidate those who try to stand in their way. Responding to this growing threat requires a coordinated international effort. The Department is committed to working closely with foreign governments to address this growing problem.

**4. Public Awareness**

A critical aspect of the Department's enforcement efforts is making the public aware of the problem of IP piracy. To that end, the Department seeks out opportunities to develop a clear, consistent anti-piracy message in the context of specific prosecutions.

One particularly novel and effective educational effort developed from the Operation Buccaneer convictions. Beginning in the Spring of 2003, two of the convicted defendants, Mike Nguyen and Kentaga Kartadinata, along with their counsel and the government, have implemented and refined an Anti-Piracy presentation aimed primarily at middle school students. The program usually begins with an introduction of the participants and poll of whether the students (generally 10-13 years of age) understand the nature of on-line or copyright piracy. Generally, from 90-100% of the students admit that they have or have watched others *wrongly* download copyrighted MP3 song or computer game files. Defendants Nguyen and Kartadinata then provide the children with a detailed recitation of their first encounters with law enforcement, during the execution of federal search warrants in the early morning hours of December 11, 2001, and the seizure of their personal and work computers.

After a thorough recitation of the fear and embarrassment each felt during the initial search and subsequent investigation, each defendant then explains the effect the case has had on his family and friends. The defendants go on to describe how each initially began trading games and music in school, noting that everybody seemed to be doing it. As each defendant's knowledge of and use of computers expanded, so did the ability to copy and trade copyrighted material. The defendants conclude their presentation by illustrating to

students the harmful effects of piracy on the multitude of persons involved in the making and distribution of copyrighted material.

Counsel and the government then provide the audience with a variety of other intellectual property/computer crimes scenarios, including computer hacking, sexual predators, auction or credit card fraud, in an effort to educate the children about the dangers present on the Internet. To date over 1,300 students have attended these presentations, and future lectures are already scheduled. This novel program was featured on the cover of the Los Angeles Daily Journal on July 25, 2003, and a Los Angeles television network filmed the September 3, 2003, presentation at Saint Joan of Ark School in West Los Angeles. These efforts may also lead to a professionally produced DVD, which would allow a much broader distribution of the anti-piracy message to the middle school audience.

Another creative approach to spreading the anti-piracy message arose in the context of the prosecution of David Rocci, discussed above. Beginning on February 25, 2003, the Department of Justice engaged in a groundbreaking and highly successful public education effort as part of Rocci's conviction, originally obtained in December of 2002. Upon taking control of the domain name, the United States replaced iSONEWS.com with a new web page providing information about United States v. Rocci, as well as a general anti-piracy message outlining the potential criminal consequences for engaging in illegal piracy. This case marks the first time that the United States has assumed control of an active domain name in an intellectual property case. In the first three days, the new law enforcement site received over 238,000 hits from Internet users worldwide. As of March 11, the two-week mark, the site received over 550,000 hits.

The Department continues its educational mission through the CCIPS web site, www.cybercrime.gov, where the public can quickly access information including press releases about cases, relevant statutes and IP guidance, and links to other Intellectual Property resources.

As these examples illustrate, the Department feels a strong sense of responsibility to educate the public about the need to respect intellectual property rights and will look for additional opportunities like this to build upon successful prosecutions of those who willfully violate those rights.

## 5. Conclusion

The Department of Justice is actively pursuing intellectual property criminals engaged in a wide array of illegal activity, and doing so, using all of the various statutes at our disposal. The Department's efforts are beginning to pay off, and the Department has success in its battle with global piracy. The Department is not however resting on its laurels and is aware that there is much work to be done. The Department remains committed to this effort and will build on its success by continuing to prosecute piracy aggressively.

# U.S. DEPARTMENT OF STATE, BUREAU OF ECONOMIC, BUSINESS AND AGRICULTURAL AFFAIRS

## SUMMARY OF AGENCY MISSION

The Department of State's primary contributions to intellectual property law enforcement coordination are carried out by the leadership of the IPR Training Coordination Group, via sponsorship and development of the International IPR Training Database Web Site, and through funding targeted training and technical assistance programs for foreign law enforcement using Foreign Assistance Act anti-crime funds. While other NIPLECC members have the lead on substantive IPR and law enforcement issues, the Department of State's near-universal overseas presence enables it to facilitate coordination with foreign officials, policy-makers, and civil society, and to provide essential government-to-government enforcement training.

### IPR Training Coordination Group (IPR TCG)

The Department of State's Economic and Business Affairs (EB) and International Narcotics and Law Enforcement Affairs (INL) Bureaus co-chair the IPR Training Coordination Group (IPR TCG). Founded in 1998,the IPR TCG is comprised of U.S. Government agencies and industry associations that provide IPR-related informational programs, training, and technical assistance to foreign officials and policy makers. The Departments of Justice and Commerce, the Office of the U.S. Trade Representative, the Federal Bureau of Investigation, the Department of Homeland Security/Bureau of Customs and Border Protection (formerly U.S. Customs Service), the U.S. Patent and Trademark Office, and the Copyright Office all participate in the IPR TCG. The International Intellectual Property Alliance and the International Anti-Counterfeiting Coalition, umbrella organizations for entities like the Business Software Alliance and the Pharmaceutical Researchers and Manufacturers' Association, are just a few of the active private sector participants.

In short, the IPR TCG is a forum that allows participants to identify and match needs with available resources. State brings to the table its awareness of broad U.S. foreign policy objectives, as well as human resources in Washington (our Desk Officers) and overseas (our Ambassadors, Principal Officers, and economic, political/economic, educational and cultural affairs, and anti-crime officers and foreign service nationals at over 200 embassies, missions and consulates). Ambassadors coordinate the work of all civilian USG agencies and can bring considerable persuasive force to bear to achieve favorable outcomes. For example, Ambassadors work to bring consistent pressure for reform to trading partners on the Special 301 Watch List.

The IPR TCG works to establish priorities for USG-funded training and technical assistance, in the context of decision criteria developed in the Special 301 and TRIPS accession review process, input from our overseas Posts, and each member organization’s specific expertise. Although the IPR TCG has no funding of its own, its various members take the recommendations of the TCG into account in planning and carrying out

their funding of activities to fight IPR crime  The IPR TCG represents a commitment by each of its members to maximize the benefits of limited USG training resources by proper coordination, to eliminate redundancy, and to close gaps while providing much-needed IPR assistance to our trading partners. In FY 2003, for example, INL doubled its funding to international law enforcement training to a half million dollars to meet increasing demand for assistance to key nations identified by the TCG.

**International IPR Training Database Web Site (www.training.ipr.gov)**

State/EB, after extensive consultation with NIPLECC members and other members of the IPR TCG, sponsored the design of a web site to host a database of IPR training provided by the U.S. Government and our industry partners to our trading partner governments. State had administered a primitive training database in previous years, primarily to assemble the USG response to an annual WTO survey of IPR technical assistance. Under Article 67 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement), developed countries assumed the obligation to assist developing and least-developed WTO members in drafting and enforcing laws that protect IPR. However, despite its value, this database was difficult to manage and not easily shared with agencies, industry, or foreign governments.

NIPLECC members agreed that an on-line database of international IPR training was a needed resource. By posting the database to the World Wide Web, it is now immediately available to anybody with access to the Internet. NIPLECC members and other registered IPR training providers may add and update information about their own programs. The database is more complete, and continues to expand, enabling NIPLECC members to plan better, share resources, and quickly and easily respond to reporting requirements. It also permits NIPLECC members, other USG providers of IPR training, and the IP industry to better cooperate and coordinate their efforts to improve the protection of intellectual property rights worldwide.

**International Training and Technical Assistance to Law Enforcement**

INL funds a growing amount of training and technical assistance programs designed to provide foreign law enforcement partners with the capacity to meet their TRIPs and other IPR enforcement responsibilities. INL funding enables the Department of Justice and other USG agencies to deliver assistance bilaterally in the host country or, especially when reaching a regional audience, through the network of International Law Enforcement Academies (ILEAs). The ILEAs currently operate in Budapest, Bangkok, Gaborone and Roswell, N.M., and INL expects to open a fifth ILEA in San Jose, Costa Rica. The training provided at the ILEAs covers both general law enforcement techniques as well as specialized training for mid-level managers. The ILEA course menu includes training courses in fighting IPR crime. INL works closely with U.S. Missions to assess and meet the demand of our foreign law enforcement partners for assistance. In the last several years, INL has seen a growing demand for IPR-related law enforcement training, and is working on increasing its resources in order to meet this demand.

# UNITED STATES PATENT AND TRADEMARK OFFICE

## SUMMARY OF AGENCY MISSION

The mission of the United States Patent and Trademark Office (USPTO) is to promote industrial and technological progress in the United States, and to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, fosters entrepreneurial spirit, and enhances the quality of life for everyone.

For over 200 years, the basic role of the USPTO has remained the same: to promote the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their respective discoveries as laid out in Article 1, Section 8, of the United States Constitution. In addition, the USPTO has a unique role to play in providing technical training on intellectual property enforcement issues and by providing the Executive Branch with intellectual property policy guidance.

## INTERNATIONAL ENFORCEMENT ACTIVITIES

### International Enforcement Monitoring

The USPTO actively participated over the past year in U.S. delegations to the World Trade Organization TRIPs Council, which continued to review the IPR regimes of numerous countries.

The USPTO advised and assisted the Office of the United States Trade Representative in the administration of the "Special 301" provisions of the U.S. trade law by providing legal and technical analyses of the IP laws of several countries, and by having USPTO staff participate in numerous bilateral consultations and negotiations by USTR under Special 301 and discussions with the Ukraine as a result of its designation as a Priority Foreign Country. In addition, USPTO provided technical analysis and advice to the USTR on Section 306 monitoring for China and Paraguay.

### International Organization Coordination

World Intellectual Property Organization

In June 2003, USPTO participated in Geneva, Switzerland, as part of the official U.S. Government delegation at the annual meeting of the WIPO Advisory Committee on Enforcement, supporting the expanded technical assistance and training proposals on IPR enforcement put forth by the International Bureau.

In July 2003, USPTO co-organized in Geneva and Washington, a USPTO/WIPO Asia and Pacific Program for the Judiciary on Intellectual Property Rights Enforcement for various members of the appellate and supreme court judiciary from Bangladesh,

Cambodia, India, Indonesia, Mongolia, Nepal, Pakistan, the Philippines, Sri Lanka, and Thailand on IPR protection and enforcement issues, which included a meeting with Members and staff of the House Committee on the Judiciary.

United Nations Economic Commission

In November 2002, USPTO co-sponsored and participated in the United Nations Economic Commission for Europe (UNECE) seminar on intellectual property enforcement in Russia held in Moscow. The seminar was well attended by Russian Federation government officials representing the State Duma and the Ministries of Defense, Culture, Education, and Science and Technology.

In December 2002, USPTO participated in the UNECE regional enforcement program held in Kyrgystan. The program was attended by officials from the Kyrgyz Republic, Tajikistan, Kazakhstan and Uzbekistan, and addressed compliance with obligations under the TRIPs agreement with regard to civil, criminal and border enforcement.

Asian Pacific Economic Cooperation

The USPTO continued to participate as the lead agency in representing the U.S. Government in the activities and work of the APEC Intellectual Property Experts Group (APEC-IPEG) on intellectual property technical standards and enforcement issues, including the coordinated promotion of proposals dealing with transparency, and optical disc media regulation and enforcement.

**Trade-Related Activities**

In connection with the free trade agreement negotiations and trade and investment framework agreements, USPTO participated on both the Australia and Morocco FTA negotiating teams representing the United States in negotiations regarding the IP enforcement aspects of the agreements, and provided technical expert advisors on trade-related enforcement issues at trade-related meetings and digital videoconferences with Algeria, Bahrain, Cambodia, Dominican Republic, Egypt, Indonesia, Jordan, Pakistan, Philippines, Qatar, South Korea, Sri Lanka, Thailand, Tunisia, and Vietnam.

USPTO also participated as technical expert advisors during the negotiations over the Chile and Singapore Free Trade Agreements, and the ongoing negotiations over the Free Trade Area of the Americas, and the U.S.-Central American Free Trade Agreement regarding the IPR enforcement aspects of the agreements.

**Intellectual Property Enforcement Assistance**

Asia

In October 2002, in cooperation with the International Intellectual Property Institute (IIPI), STAR/Vietnam, the U.S. Embassy, and the Government of Vietnam, USPTO

participated in a series of seminars and workshops for the judiciary, government officials, private sector business people, policymakers, and enforcement officials on the implementation of the IPR enforcement provisions of the Vietnam-U.S. Bilateral Trade Agreement, held in Hanoi and Ho Chi Minh City, Vietnam.

In November 2002, USPTO, in coordination with the World Intellectual Property Organization, held a four-day conference on Intellectual Property Border Enforcement: The Changing Landscape. Border enforcement officials from China, India, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, and Tonga attended the conference. The purpose of the conference was to focus on the establishment of a border enforcement system that complies with TRIPs obligations, and, working with rights holders, to provide effective, on-the-ground enforcement efforts.

Working with USTR, the State Department, the Justice Department, the International Trade Administration, and other agencies, USPTO held numerous bilateral meetings with South Asian IPR and trade officials, including WTO-related review of IPR regimes in countries in the region. In addition, bilateral digital videoconferences were held with India on a wide-ranging area of IPR issues, with extensive discussion on civil and criminal enforcement. Enforcement discussions were held with Bangladesh, Sri Lanka, Pakistan, and India, on topics including: sentencing guidelines, case management, and the use of civil contempt orders.

Supporting USTR's efforts, USPTO provided extensive comments on continuing civil, criminal, and optical media enforcement difficulties in Taiwan, and analyzed the proposed amendments to Hong Kong's copyright law, which would have altered criminal enforcement in end-user piracy cases and border enforcement of copyrighted works.

Eastern Europe

Working closely with the Department of Commerce Commercial Law Development Program, USPTO participated in October 2002 in a training workshop for the Yugoslavia IP Office, enforcement officials, and the private bar; in November 2002, participated in a judicial education program on IPR enforcement issues in Russia; and in December 2002, participated in an IPR enforcement seminar for judges, customs officers, law enforcement officials, and prosecutors from Kazakhstan.

In May 2003, USPTO conducted its annual Intellectual Property Enforcement Academy in Washington in coordination with the Commercial Law Development Program, with government officials from Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Serbia and Montenegro attending the program, which focused on civil, criminal, border enforcement and enforcement of intellectual property rights in a digital environment.

Western Hemisphere

In December 2002, a USPTO speaker participated at the Caribbean Latin American Action Workshop on Current IPR Issues, in Miami, Florida, addressing current IPR enforcement issues relating to copyright and trademark protection, and in August 2003, USPTO participated as a workshop speaker on current IPR enforcement issues, focusing on the protection of artistic and musical works on the Internet, at the Fifth Annual Caribbean Commercial Law Workshop, in Miami, Florida.

USPTO also participated as the keynote speaker at a seminar on intellectual property law and enforcement held in Santo Domingo, Dominican Republic. Judges, prosecutors and industry representatives attended the seminar, hosted by the U.S. Embassy, and the aim was to raise the level of awareness regarding ongoing intellectual property protection issues in the Dominican Republic.

Middle East and Africa

In January of 2003, USPTO participated in a one-week seminar for Egyptian judges in Cairo, Egypt. The program, hosted by the Commercial Law Development Program, was attended by over 100 Egyptian judges and provided a basic primer on intellectual property law and enforcement.

In August 2003, USPTO, in cooperation with the Jordan Intellectual Property Association, International Intellectual Property Institute, USAID, and the Government of the Hashemite Kingdom of Jordan, presented a series of workshops and seminars on IPR-related protection, trade and enforcement issues at the Jordan IP Week, a workshop and conference held in Amman, Jordan, attended by several hundred government officials, business and industry people, and judges.

Other Enforcement Technical Assistance and Training Activities

In November 2002, USPTO held its annual IPR Enforcement Academy Program in Washington for foreign government IPR enforcement officials from Bulgaria, China, Czech Republic, Dominican Republic, Egypt, El Salvador, Honduras, Nicaragua, the Philippines, Romania, and Turkey.

In February 2003, USPTO developed and conducted for the Department of State Foreign Service Institute an exercise in negotiating IPR enforcement provisions in FTAs for new Foreign Service officers.

In May 2003, USPTO organized and presented an IPR Enforcement Issues Briefing for Foreign Embassy Representatives from Bahrain, Barbados, Brazil, Burma (Myanmar) Costa Rica, Czech Republic, Egypt, El Salvador, Eritrea, Estonia, Grenada, Guatemala, Hungary, Indonesia, Kazakhstan, Lebanon, Macedonia, Malaysia, Morocco, Peru, the Philippines, Saudi Arabia, Serbia and Montenegro, Slovenia, Thailand, Turkey, Ukraine, Uruguay, and Venezuela on the basics of IPR protection and enforcement, including a

presentation on the types of technical assistance and training resources available from the U.S. Government to foreign countries on IPR enforcement issues.

In July 2003, USPTO made presentations to the U.S. Foreign Service Institute training class on IPR protection and enforcement obligations under the TRIPs Agreement.

Throughout the year, USPTO briefed participants in either the Department of Commerce Commercial Law Development Program or the Department of State International Visitor Program on IPR protection or enforcement issues, including program participants from Algeria, Bahrain, Bulgaria, Cambodia, Chile, China, Czech Republic, Egypt, Georgia, Indonesia, Kenya, Laos, Mauritius, Mexico, Morocco, Namibia, Nigeria, Pakistan, the Philippines, Poland, Russian Federation, South Africa, South Korea, Sri Lanka, Taiwan, Thailand, Tunisia, Vietnam, and Zambia.

Finally, USPTO held two Visiting Scholars Programs, in May 2003 and October 2003, for government IP officials from Albania, Algeria, Bosnia-Herzegovina, Brazil, Bulgaria, Cape Verde, China, Croatia, Czech Republic, Dominican Republic, Egypt, Germany, Hungary, India, Jamaica, Kuwait, Macedonia, Morocco, Namibia, Nepal, Romania, Serbia and Montenegro, South Korea, Taiwan, Tunisia, and Turkey, with part of the program covering IPR enforcement obligations under the TRIPs Agreement.

# U.S. COPYRIGHT OFFICE

## SUMMARY OF AGENCY MISSION

By statute (Public Law No. 106-58, Section 653(c)), the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) is required to consult with the Register of Copyrights on law enforcement matters relating to copyrights and related matters.

### Responsibilities: General

The Copyright Office provides expert assistance and advice to Congress, federal departments and agencies and the Judiciary on domestic and international copyright and related matters.

In this capacity, the Copyright Office is often responsible for analyzing and assisting in drafting copyright legislation and legislative reports, mediating discussions between interested private parties, testifying in Congressional hearings, and undertaking Congressionally requested studies on copyright and related questions. The Copyright Office also offers advice to Congress on compliance with multilateral agreements such as the Berne Convention for the Protection of Literary and Artistic Works.

Internationally, the Copyright Office works with the State Department, the U.S. Trade Representative's Office, and the Patent and Trademark Office in providing technical expertise in negotiations for international intellectual property agreements and provides technical assistance to other countries in developing their own copyright laws. Through its International Copyright Institute, the Copyright Office promotes worldwide understanding and cooperation in providing protection for and enforcement of intellectual property.

The Copyright Office is also an office of record, a place where claims to copyright are registered and where documents relating to copyright may be recorded when the requirements of the copyright law are met. In addition, the Copyright Office furnishes information to the public about the provisions of the copyright law, including the procedures for making registration. Administratively, the Copyright Office sets copyright policy through rule making and the administration of compulsory licenses contained in the copyright law.

### Statutory Mandate

In addition to the various administrative functions and duties described in the Copyright Act, the Copyright Office has a statutory mandate to:

1. Advise Congress on national and international issues relating to copyright, other matters arising under [U.S.C. Title 17], and related matters;

2. Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters;

3. Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority;

4. Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

5. Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in [U.S.C. Title 17]."

## Activities in IPR Enforcement

### General

The Copyright Office is not a law enforcement agency and has no direct role in law enforcement liaison. However, many of the Office's obligations and responsibilities intersect with activities in the law enforcement arena. For example, the Office works with the Federal Bureau of Investigation and the Bureau of Customs and Border Protection when necessary to provide information and documentation pertaining to a specific copyright claim that is the subject of an investigation by those agencies. This past year, for instance, the Copyright Office has advised and assisted the Bureau of Customs and Border Protection this year in resolving issues and in developing new procedures related to border enforcement. The Copyright Office also advises Congress on copyright legislation regarding law enforcement. For example, the Copyright Office has actively assisted in the drafting of the "Piracy Deterrence and Education Act of 2003" (H.R. 2517) and has been instrumental in mediating discussions among the Bureau of Customs and Border Protection and private industry interests.

### International Activities

Internationally, the Copyright Office actively participates in a number of activities related to the enforcement of copyright laws. It regularly participates in bilateral trade negotiations relating to enforcement issues with various countries in which enforcement of intellectual property rights is of particular concern. For instance, in 2003 it has participated in the development and negotiation of a new Memorandum of Understanding on Intellectual Property Rights with the Government of Paraguay and has engaged in

bilateral discussions regarding enforcement concerns with India, Pakistan, Philippines, Thailand, Sri Lanka, and Ukraine, among others. Moreover, it has assisted in providing information to other countries relating to optical media disc piracy and the regulation thereof and in the development and implementation of optical media disc regulations as a means of deterring optical disc piracy. The Copyright Office has also assisted and advised USTR in the negotiation of the enforcement texts of the Free Trade Agreements between the United States and Chile, Singapore, Central America, Australia, and Morocco. The Copyright Office has also participated in roundtables and other forums with government and business leaders in discussions related to enforcement issues, including Ambassador Randt's "IPR Roundtable" in Beijing.

The Copyright Office also participates in the activities of the World Intellectual Property Organization (WIPO) that are related to enforcement, in particular the WIPO advisory committee on enforcement, as well as the enforcement related activities of the WTO's TRIPs Council. In addition, Copyright Office staff regularly meets with visitors from foreign governments regarding intellectual property enforcement issues. Further, the Copyright Office participates actively in USTR's annual Special 301 reviews and reports, as well as bilateral follow-up with countries, as appropriate.

## PROGRAMMATIC ACTIVITIES

Copyright Office staff routinely participates in training organized by law enforcement agencies such as the Federal Bureau of Investigation, the Department of Justice and the U.S. Customs Service. Copyright Office staff also participates extensively in international training organized by other U.S. agencies, such as the United States Patent and Trademark Office and State Department, and international organizations, such as the World Intellectual Property Organization (WIPO) on intellectual property enforcement issues. In addition, this year, Copyright Office staff has assisted in developing and conducting training programs in connection with the negotiation of free trade agreements.

Unrelated to law enforcement training, the Copyright Office conducts and participates in a range of intellectual property training. In light of WTO member countries' obligations to comply with the TRIPs agreement and the enforcement provisions therein, the Copyright Office has been actively engaged in training so that countries may meet their international obligations and U.S. interests are preserved. Specifically, the Copyright Office participates on training in the areas of:

- Awareness of international standards, as well as the U.S. legal and regulatory environment;

- Substantive legal training on both basic and complex areas of U.S. copyright law; and

- Legal reform and statutory drafting assistance.

Lastly, the Copyright Office hosts a well-regarded workshop every year in conjunction with WIPO. The International Copyright Institute (ICI) was created within the Copyright Office by Congress in 1988 and provides training for high-level officials from developing and newly industrialized countries and encourages development of effective intellectual property laws and enforcement overseas.

## OPERATIONAL ACTIVITIES

Public and industry outreach on copyright and related matters takes place on both a formal and informal basis. The Copyright Office regularly conducts public hearings on different intellectual property subjects, and maintains ongoing informal relationships with most members of the intellectual property community. The Office also maintains an extensive web site that includes news-alert services, copies of intellectual property laws and regulations, and public information circulars.

# ATTACHMENT A

# FEDERAL REGISTER NOTICE REQUESTING INDUSTRY COMMENTS

FEDERAL REGISTER

Vol. 68, No. 208

Notices

DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF COMMERCE (DOC)

United States Patent and Trademark Office (USPTO)

**[Docket No. 2003-C-028]**

# Request for Comments on Agenda for the National Intellectual Property Law Enforcement Coordination Council

68 FR 61398

DATE: Tuesday, October 28, 2003

**ACTION:** Notice and request for public comments.

**SUMMARY:** The National Intellectual Property Law Enforcement Coordination Council (the Council) seeks public comments relating to the agenda and mission of the Council. Interested members of the public are invited to present written comments on how to improve overall coordination and the topics outlined in the Supplementary Information section of this Notice.

**DATES:** All comments are due by November 28, 2003.

**ADDRESSES:** Persons wishing to offer written comments should address comments to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 1450, Alexandria, VA 22313-1450, marked for the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305-7575, or by electronic mail through the Internet to *Elizabeth.shaw2@uspto.gov.* All comments will be maintained for public inspection in Room 902, Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Shaw by telephone at (703) 305-1033, by fax at (703) 305-7575, or by mail marked to her attention and addressed to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and [*61399] Trademark Office, Box 1450, Alexandria, VA 22313-1450.

**SUPPLEMENTARY INFORMATION:**

## Background

The National Intellectual Property Law Enforcement Coordination Council (the Council) was created pursuant to 15 U.S.C. 1128. The Council's mission is "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities." The Council consists of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, co-chair of the Council (The Honorable James E. Rogan); the Assistant Attorney General, Criminal Division, co-chair of the Council (The Honorable Christopher A. Wray); the Under Secretary of State for Economic, Business, and Agricultural Affairs (The Honorable Alan P. Larson); the Deputy United States Trade Representative (Ambassador Peter Allgeier); the Commissioner of Customs (The Honorable Robert C. Bonner); and the Under Secretary of Commerce for International Trade (The Honorable Grant Aldonas). By statute, the Council shall also consult with the Register of Copyrights (The Honorable Marybeth Peters).

The work of the Council is a United States Government effort aimed at coordinating domestic and international intellectual property law enforcement among Federal and foreign entities. This coordinating role may be divided into two parts. The first is to provide a vehicle for agencies to share information on their activities relating to enforcement of intellectual property rights and related training activities. The second role involves projects that the Council itself may undertake.

The Council has identified the following areas of focus in fulfilling its mission: law enforcement liaison, training coordination, industry and other outreach, and increasing public awareness.

On August 5, 2002, the Council published a notice in the **Federal Register** seeking public comment on issues associated with the Council's mission (67 FR 50633 (2002)). A summary of comments previously received is published in the Council's 2000 Annual Report, available on the Internet at *http://www.uspto.gov*.

## Issues for Public Comment

How the Council may best address the areas of focus listed above.

Activities the private sector is engaged in relating to public awareness campaigns involving intellectual property rights protection.

How the Council may be effective in coordinating a public awareness campaign.

Guidelines for Written Comments.

Written comments should include the following information: the name, affiliation, and title of the individual providing the written comment; and if applicable, an indication of whether the comments offered represent the views of the respondent's organization or personal views.

Parties offering written comments should also provide comments in an electronic format. Such submissions may be provided via Internet electronic mail or on a 3.5" floppy disk formatted for use in either a Macintosh or MS-DOS based computer. Electronic submissions should be provided as unformatted text (*e.g.* ASCII or plain text) or as formatted text in one of the following formats: Microsoft Word (Macintosh, DOS or Windows versions); or WordPerfect (Macintosh, DOS or Windows versions).

Information provided pursuant to this notice will be made part of the public record and may be made available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who rely on confidential information to illustrate a point are requested to summarize, or otherwise submit, the information in a way that permits its public disclosure.

Dated: October 22, 2003.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office.*

Dated: October 6, 2003.

**Christopher A. Wray,**

*Assistant Attorney General for the Criminal Division, Department of Justice.*

[FR Doc. 03-27155 Filed 10-27-03; 8:45 am]

# ATTACHMENT B

# INTERNATIONAL ANTI-COUNTERFEITING COALITION




November 21, 2003

James E. Rogan
Under Secretary of Commerce
for Intellectual Property and Director
of the U.S. Patent and Trademark Office (USPTO)
Box 1450
Alexandria, VA 22313-1450

***RE***: Request for Comments on Agenda for the National Intellectual Property Law Enforcement Coordination Council (68 Fed. Reg. 61,398 (2003))

Dear Under Secretary Rogan:

The International AntiCounterfeiting Coalition, Inc., (IACC), appreciates the opportunity to provide comments regarding the National Intellectual Property Law Enforcement Coordination Council (NIPLECC). We are writing in response to the October 28, 2003 Federal Register notice Request for Comments (RFC) referenced above.

The IACC is a Washington, D.C.-based non-profit trade organization dedicated to promoting improved standards for the protection and enforcement of intellectual property rights. Formed in 1979, the IACC is comprised of a cross section of business and industry – from autos, consumer goods, apparel, and pharmaceuticals, to food, software and entertainment – the members' combined annual revenues exceed $650 billion.

As indicated in the RFC, NIPLECC consists of numerous federal agencies. The IACC interacts with most, if not all, of the agencies listed on various substantive intellectual property matters. Examples of the IACC's contacts with federal agencies include both regularly scheduled meetings and ad hoc meetings and invitations to participate in programs.

The IACC has participated in regularly scheduled meetings that include:

- Attendance at the industry-interagency Training Coordination Group (TCG) meetings initiated by the State Department (generally on a monthly basis); and
- FBI-initiated quarterly meetings with industry.

The IACC has also participated in numerous USPTO and joint USPTO/WIPO[2] enforcement training programs held during the past year for foreign judges, prosecutors and other enforcement officials. In addition, the IACC is in contact with USPTO regarding international training programs and other substantive IP issues that arise on a day-to-day basis. Because of the USPTO's participation on inter-agency delegations that negotiate various free trade agreements, there is a dialogue with various USPTO officials regarding progress on various issues in the negotiations.[3]

We have also worked with the U.S. Copyright Office in order to monitor developments relating to the World Summit on the Information Society. This interaction has included the submission of comments on the proposed documents for the upcoming Summit. Both the U.S. Copyright Office and the State Department have provided notification of meetings and other developments regarding this event.

The IACC is also in contact with the Office of the U.S. Trade Representative (USTR) on a regular basis because of member interests in various countries such as China and Paraguay. In addition, USTR has contacted the IACC regarding potential intellectual property enforcement training programs for foreign officials. Thus, there is significant contact between the IACC and USTR because of

- member interests in numerous countries, as reflected in our Special 301 submissions,
- the current negotiations of free trade agreements, and
- interests concerning assistance to foreign officials,.

The IACC has a regular domestic training program that seeks to deliver product identification training to the Department of Homeland Security (Bureau of Customs and Border Protection (BCBP)) and has invited BCBP to speak at IACC events. We are not aware of any significant DHS/BCBP Headquarters outreach program to industry groups.

Because of our interaction with federal agencies, the IACC's view is that the Government's activities as a whole are not Council activities, but activities of the various agencies. In view of the requests for the IACC to support and participate in activities of the various agencies, it is not clear if any of the activities are "NIPLECC" activities, but the activities of the separate agencies to fulfill their respective missions. Insofar as this has been the apparent mode of operation since the creation of NIPLECC, the IACC

[2] "WIPO" is the World Intellectual Property Office headquartered in Geneva, Switzerland.
[3] The IACC is represented on the U.S. Commerce Department's Industry Functional Advisory Committee of cleared industry advisors for intellectual property.

believes that the questions posed to industry may be more appropriate for an internal assessment as to whether NIPLECC's Principals seek changes.

Based upon the IACC's involvement with the various agencies, we plan to continue our participation and attendance at the TCG meetings and quarterly FBI meetings. In addition, we will continue to provide substantive input to agencies regarding members' views on issues that are being negotiated, support training and education programs to the extent possible, and respond to formal requests for comment as deemed appropriate.

If you have any questions, please do not hesitate to contact me.

Respectfully,



Timothy P. Trainer
President

# ATTACHMENT C

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

1747 PENNSYLVANIA AVENUE, NW • SUITE 825 • WASHINGTON, DC • 20006-4637 • TEL (202) 833-4198 • FAX (202) 872-0546 • WWW.IIPA.COM • EMAIL: INFO@IIPA.COM

November 25, 2003

*Via electronic submission*
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
Attention: Elizabeth Shaw
Box 4
Washington, DC 20231

Re: Request for Comments on the Agenda for the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), 68 Fed. Reg. 61398 (October 28, 2003)
Docket No. 2003-C-028

To the Council:

The International Intellectual Property Alliance (IIPA) submits this document in response to the October 28 request for public comments issued by James E. Rogan, Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, and Christopher A. Wray, Assistant Attorney General for the Criminal Division at the U.S. Department of Justice, the co-chairs of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC).

IIPA[4] and its members greatly appreciate the work each federal agency undertakes to support effective copyright laws and enforcement, both here and abroad. We work closely with the U.S. government interagency on international trade and copyright-related matters globally. On the domestic front, our member associations and their companies work with U.S. enforcement agencies on operational matters, including criminal investigations and border enforcement. We, individually and collectively, remain committed to supporting our U.S.

[4] The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of six trade associations, which in turn represent over 1,300 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

government colleagues in efforts to ensure the continued vitality of one of our nation's most vital and importance economic sectors -- the copyright-based industries.

**IIPA's Comments on NIPLECC Functions**

NIPLECC's statutory mission is broadly "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities." In this docket, the "[t]he Council has identified four areas of its mission and requested comments on how it might best address these areas: law enforcement liaison, training coordination, industry and other outreach, and increasing public awareness." Last year, IIPA submitted detailed comments to NIPLECC and we continue to support those recommendations.[5]

IIPA and its members do believe there is value in interagency communication and coordination on many copyright-related matters, domestic and international. We have worked hard with the staff of these agencies (all of which are NIPLECC member agencies) to establish contacts, exchange information and consult with each other to achieve tangible objectives.

However, we have not seen much action or any results taken by NIPLECC itself -- as an interagency body -- in the past year. Therefore, IIPA has only a few observations to share about NIPLECC and no specific recommendations for NIPLECC's 2004 agenda at this time. Rather, we will continue our ongoing coordination efforts with the various U.S. agencies, both individually and collectively.

**Law Enforcement Liaison**: IIPA continues to view NIPLECC as a vehicle through which its inter-agency members can productively share information and promote common "non-operational" law enforcement interests. Such contributions could include actions such as: (1) U.S. law enforcement working with its fellow U.S. agencies; (2) more enforcement training for U.S. federal law enforcement officials; (3) U.S. law enforcement working with their international colleagues; (4) improved U.S. law enforcement coordination within the U.S. Embassies abroad.

**Training Coordination**: IIPA sees this training coordination element as including coordination for U.S.-funded training for foreign intellectual property law experts (both abroad and in the U.S.) as well as enforcement training for U.S. government agencies involved in domestic operational matters here in the U.S. We have several observations here.

- IIPA and its members have participated in the development of the IPR Training Database (www.training.ipr.gov), and have participated in over 120 industry-led and/or -sponsored training events provided to foreign officials during the U.S. government's fiscal year (October 2002-September 2003). In fact, that number would be far greater if industry participation in the numerous U.S. government-sponsored events were included.

[5] See IIPA Submission to NIPLECC, September 4, 2002, available at http://www.iipa.com/rbi/2002_Sep4_NIPLECC.pdf.

- IIPA requests that more concerted action be taken to obtain greater transparency in the development of the IPR technical assistance programs funded by U.S. government agencies, especially U.S. Agency for International Development (USAID).

- We request that the interagency continue to work with the private sector to prioritize U.S. intellectual property-related trainings, here and abroad. We have appreciated this kind of coordination/communication in years past.

- Greater efforts are needed to evaluate the impact of and follow-up on the U.S. government trainings of foreign officials.

- We urge that intellectual property components should be incorporated into judicial reform projects sponsored by both the U.S. government and other institutions. Incorporating an IPR component in each of these myriad "rule of law" and similar programs would greatly support the U.S. government's and industries' goals to improve IPR protection and enforcement around the world.

**NIPLECC Outreach:** With respect to NIPLECC as an entity improving its own outreach, IIPA offers the following observation. NIPLECC should continue to encourage its members to take all actions to communicate with their respective foreign counterparts to make clear that the U.S. government places a high degree of importance on the effective legal protection and enforcement of copyright and other intellectual property rights abroad. For example, the Office of the U.S. Trade Representative has articulated a series of copyright-related goals with our trading partners.[6] IIPA strongly supports this agenda, and urges that it be used consistently by all U.S. government agencies in their representations with other nations.

**Public Awareness by NIPLECC:** Publicizing enforcement actions is extremely important in educating the public about the value of copyright and the deleterious impact of piracy. NIPLECC's member agencies could take several steps to strengthen their own messaging to the public such as: (a) improving press/media outreach on domestic operations; (b) improving government outreach to the copyright industry on press matters; and (c) coordinating educational messages among domestic law enforcement.

IIPA has been informed that NIPLECC is working toward creating a public awareness program on the international front, and specifically, program(s) to support the Central American Free Trade Agreement (CA-FTA) may be its initial endeavor.

**Public Sector Activities**: The U.S. copyright industries have been very active in promoting respect for copyright.

[6] For example, the U.S. Trade Representative has outlined several key international policy goals in the IPR context, for example: implementing the WTO TRIPS Agreement, controlling optical media production, fighting internet piracy and encouraging countries to ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and supporting other governments to modernize their software management systems and use legitimate software. See Office of the United States Trade Representative, 2003 Special 301 Report, April 30, 2003, at http://www.ustr.gov/reports/2003/special301.htm

- IIPA and its six associations all maintain websites with detailed information on copyright law and piracy issues, all of which are easily accessible to the public: www.publishers.org; www.afma.com; www.bsa.org; www.theESA.com; www.mpaa.org; www.riaa.com; and www.iipa.com.

- All six of the IIPA member associations have press affairs offices which work to deliver the associations' messages on everything from ongoing litigation, to policy papers, to testimony, to other industry-specific activities.

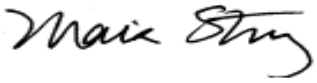
- Many of the IIPA member associations, as well as their member companies, are involved in ongoing criminal anti-piracy enforcement (at the federal level, at the state level, and internationally) as well as civil litigation to protect their members' legal rights under copyright and related laws.

Many IIPA member associations have also embarked on public campaigns to educate corporations and universities regarding the legal and illegal use of copyrighted content on their information systems (this would include computer systems, stand-alone computers, licensing issues, and reprographic matters, for example).

**Conclusion**

IIPA and our member associations will continue to work with NIPLECC and the individual NIPLECC member agencies on both domestic and international copyright-related enforcement matters.

Sincerely,



Maria Strong
Vice President and General Counsel
International Intellectual Property Alliance

# ATTACHMENT D

# SOFTWARE & INFORMATION INDUSTRY ASSOCIATION

Software & Information
Industry Association
www.siia.net




November 25, 2003

The Honorable James E. Rogan
Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office
Box 1450
U.S. Patent and Trademark Office
Alexandria, VA 22313-1450

Re: Request for Comments on Issues Related to Policies and Agenda for the National Intellectual Property Law Enforcement Coordination Council

Dear Under Secretary Rogan:

The Software & Information Industry Association ("SIIA") is the principal trade association of the software and information industry and represents over 600 high-tech companies that develop and market software and electronic content for business, education, consumers, the Internet, and entertainment. SIIA members represent a wide range of diverse business interests. While our members' interests may be wide-ranging and diverse there are at least two things most of them have in common: (1) they are owners of intellectual property, and (2) they have had their intellectual property infringed or stolen by someone at some time. It should therefore come as no surprise, that SIIA and its members have an interest in ensuring that their intellectual property is protected against theft and that they have at their disposal tools to enforce their intellectual property rights that are effective, transparent and not unduly burdensome. It follows that SIIA and our members are extremely interested in the policy issues and agenda items relating to the enforcement of intellectual property rights that will be addressed by the National Intellectual Property Law Enforcement Coordination Council ("the Council").

In response to the "Request for Comments on Agenda for the National Intellectual Property Law Enforcement Coordination Council" published in the Federal Register on October 28, 2003 by the U.S. Department of Justice ("DOJ") and the U.S. Patent and Trademark Office ("PTO"), SIIA hereby files the following comments on behalf of its members.

Through SIIA's anti-piracy efforts, we have worked a great deal with the Office of the U.S. Trade Representative ("USTR"), DOJ, PTO, the Bureau of Immigration and Customs enforcement (BICE), and the U.S. Copyright Office. Over the years, these agencies have represented the interests and concerns of U.S. intellectual property rights owners -- and in particular those of SIIA and its members -- with extraordinary skill and effectiveness. The institutional intellectual property knowledge and expertise of these agencies serves U.S. industry

Tel: +1.202.289.7442
Fax: +1.202.289.7097

**www.siia.net**

well. Despite the outstanding efforts by these agencies and the other government agencies that play a role in combating domestic and international piracy, software piracy rates remain quite high.
We cannot stress enough how important it is to SIIA and its members that all countries -- and most importantly, the United States -- have in place adequate and effective enforcement mechanisms for dealing with the theft of intellectual property. As you well know, without workable means for enforcing one's intellectual property rights, the rights themselves have essentially little or no value. It is, therefore, imperative that the Council not erect any new barriers to enforcement -- whether bureaucratic or substantive -- and that, where appropriate, it take appropriate steps to remove existing barriers to enforcement and improve enforcement abroad. It is SIIA's view that this ought to be the Council's primary directive.

In the international context, the standards and effectiveness of the U.S. intellectual property enforcement regime take on additional importance. The Council should understand that as the world's leading producer of intellectual property products and services, the intellectual property laws and enforcement practices of the United States are closely monitored by our trading partners. To the extent there exist barriers to enforcement in the United States that become known to and exploited by our trading partners, these barriers adversely affect our ability to achieve higher standards of intellectual property protection abroad. It is, therefore, imperative that the U.S. intellectual property enforcement regime be irreproachable not only to ensure effective protection of intellectual property in the United States, but also to ensure that U.S. industry is able to achieve similar protections abroad.

One of the main reasons for industry to use the criminal copyright enforcement system is for the purpose of deterrence. Education and training activities also serve as an effective deterrent against piracy. Only by education can the public come to fully understand that value of intellectual property and the damage that is incurred from piracy. The public needs to understand that intangible assets protected by copyright and other intellectual property laws are indispensable to the culture and the economy of the United States and other countries. They must also recognize that acts of piracy discourage intellectual property owners from creating new content and making it available for public consumption. The economic impact of piracy stems well beyond those industries that rely on intellectual property protection -- it harms economies worldwide in the form of substantial numbers of jobs lost, greatly diminished tax revenues, and inhibiting electronic commerce. Thus, ultimately it is the public that loses out from piracy.

Training of legislators, judges, and other government officials tasked with enforcement responsibilities is also an extremely important aspect of and enforcement regime. Unfortunately, while many U.S. Government agencies conduct extensive training programs and spend significant amounts of money and resources training individuals here and abroad, from our perspective it appears that these initiatives lack the requisite focus and coordination that would make them significantly more effective.

For example, many intellectual property enforcement training programs conducted in other countries often lack a true intellectual property component or the person performing the training lacks the expertise required of this often complex subject matter. It is also important that the training programs be taught by those who understand international intellectual property

enforcement issues. This is especially important, given the limited amount of qualified individuals to perform the training. By focusing the limited training resources on specific target countries and developing an organized training plan administered and taught by experts in the field, we are more likely to see beneficial intellectual property enforcement regimes emerge from these target countries.

For its part, SIIA offers numerous educational programs. For the past ten years, SIIA has been offering its Certified Software Manager (CSM) seminar in the United States. We also have taught the course in China, Australia and Canada. The CSM seminar addresses the specific needs of software managers, technical support specialists, purchasing agents and value added resellers who must ensure their organizations are software compliant. By taking the CSM seminar participants learn how to identify and prevent corporate software piracy, among other things. In addition to the CSM course, SIIA offers numerous other educational materials, including posters, videos, textual materials and online courses.

To accomplish the goals outlined above it is important for the various government agencies involved in training and education to coordinate their activities. Because of the limited monetary and personnel resources the only way the training programs can be improved is through continued increased coordination and communication among the agencies.

Once again, I would like to thank you for the opportunity to provide our comments to the Council. If you have questions regarding our comments or would like any additional information please feel free to contact me.

Sincerely,



Ken Wasch
President

# ATTACHMENT E

# OTHER COMMENTS RECEIVED

November 28, 2003

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
ATTN: Elizabeth Shaw
Box 1450
Alexandria, VA 22313-1450
**Via E-mail**

**RE: Docket No. 2003-C-028;**
**Request for Comments on the Agenda for the National Intellectual Property Law Enforcement Coordination Council**

Dear Secretary,

We write to comment on the Agenda for the National Intellectual Property Law Enforcement Coordination Council (the Council). As organizations representing the interests of citizens and consumers on intellectual property law and policy issues, we appreciate the difficult task of enforcing intellectual property laws.

We recommend that the Council pursue a balanced public awareness campaign and devote significant resources to educating the public about intellectual property laws in partnership with education organizations, respected public interest groups, the American Library Association and the nation's many universities, colleges, librarians and local educators.

**Public Awareness is Vital to Effective Enforcement of Intellectual Property Laws**

We commend the Council for recognizing the need to increase public awareness of intellectual property laws. Our own experience reveals the benefits of increasing citizens' knowledge of intellectual property laws and of the balance of interests these laws preserve and promote. Public understanding of the often-complex principles of intellectual property increases not only appreciation for creativity and innovation, but also empowers citizens to innovate and create on their own.

We fully support educating the public about intellectual property laws and stress that any awareness campaign should present a comprehensive and balanced view of intellectual property laws. It is important to convey that intellectual property laws not only protect against the improper use of property, but also ensure that citizens enjoy certain freedoms to utilize purchased materials and can sometimes use others' intellectual property for limited purposes without permission. In addition, Americans should be taught the constitutional objectives of intellectual property laws – to promote creativity and innovation for the public good.

Copyright law, for instance, not only grants rights to copyright owners, but also promotes commentary, criticism, education and future creativity by ensuring that some ***unauthorized*** uses of copyrighted materials are permitted. The limitations and exceptions inherent within intellectual property laws are important to communicate so that the public receives a full understanding of the boundaries between public rights and intellectual property. A complete understanding of the balances created by intellectual property laws will in turn help people appreciate the important role intellectual property plays in promoting and enabling future creativity and innovation.

Focusing solely on intellectual property infringement and remedies would create a mistaken view of intellectual property and the purpose behind protecting it. An educated public should respect intellectual property rights not solely for the fear of penalties, but also for an appreciation of how the laws work to promote art, music, innovation, education, news, future creativity, new delivery mechanisms and even public safety.

An effective public awareness campaign would benefit with the input and assistance of those experienced in educating consumers and the public. Universities, colleges, libraries, groups like the American Library Association and local education boards all present excellent resources for the Council to coordinate and plan its efforts. Additionally, consumer advocates, public interest organizations and broad Internet community education initiatives have experience educating the public and valued reputations as trusted sources of information. By working with these resources, and by taking advantage of the knowledge and know-how of these organizations, the Council will be able to begin a comprehensive public awareness campaign.

We urge the Council to make public awareness of intellectual property laws a top priority and we look forward to providing further assistance as an education campaign is developed.

Respectfully Submitted,

Emily Sheketoff
Executive Director
American Library Association
Washington Office

Nathan Mitchler
Intellectual Property Analyst
Public Knowledge

Alan Davidson
Associate Director
Center for Democracy & Technology

-----Original Message-----
From: mail@consumer.net [mailto:mail@consumer.net]
Sent: Friday, November 07, 2003 6:31 PM
To: Shaw, Elizabeth (Exec)
Subject: comment The National Intellectual Property Law Enforcement Coord. Council

The Council has identified the following areas of focus in fulfilling its mission: law enforcement liaison, training coordination, industry and other outreach, and increasing public awareness.

Comments from:

Russ Smith, Director, Consumer.net
Comments are made on behalf of Consumer.net

I believe an additional area of focus should be added concerning the regulating of the intellectual property legal community. The ontinuous streams of ridiculous claims and heavy-handed tactics undermine any attempts at increased public awareness. Some examples of the abuses include the wild and ridiculous trademark claims, domain disputes concerning generic names, RIAA and MPAA heavy-handed tactics, and patents granted to such things as one-click ordering.

These issues are a tremendous drain on the economy and only serve to stunt innovation. This is true throughout the history of technology development when comparing such things as the advent of TV (regulated and stunted) versus the development of home computers (unregulated and virulent). These issues are rarely addressed in reports issues by organizations such as WIPO.

Reading these reports would lead someone to believe that the only issue is the trademark holders being victimized by hoards of infringers. These reports, much like many of the claims of the intellectual property community lack credibility, whether they are correct or not. No committee is going to change that until the industry is cleaned up.

Sincerely

Russ Smith

-----Original Message-----
From: ds@bmec.hscbklyn.edu [mailto:ds@bmec.hscbklyn.edu]
Sent: Friday, November 07, 2003 2:40 PM
To: Shaw, Elizabeth (Exec)
Subject: Comment on Agenda for Nat'l IP Law Enforcement Coordination Council

I have two questions regarding the priorities of the National Intellectual Property Law Enforcement Coordination Council:

1. Will educational efforts directed towards consumers explain what activities are allowed under the Fair Use doctrine as well as what activities are restricted by statute or standard contracts and licenses?

2. To what extent will law enforcement efforts focus on individuals engaged in file-sharing or digital sampling as opposed to the transnational organized crime groups with ties to terrorism that are involved with bootleg music, videos and software on a large scale?

--
David Solomonoff, Library Systems Manager
SUNY Downstate Medical Center Research Library
450 Clarkson Ave., Box 14, Brooklyn, NY 11203-2098
email: ds@hscbklyn.edu phone: 718 270-7428 fax: 718 270-7461

# ATTACHMENT F

# INTERAGENCY DATABASE OF IP TRAINING