









REPORT TO THE PRESIDENT AND CONGRESS ON COORDINATION OF INTELLECTUAL PROPERTY ENFORCEMENT AND PROTECTION

SEPTEMBER 2006

The National Intellectual Property Law
Enforcement Coordination Council

REPORT TO THE PRESIDENT AND CONGRESS ON COORDINATION OF INTELLECTUAL PROPERTY ENFORCEMENT AND PROTECTION

THE NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL

SEPTEMBER 2006

UNITED STATES COORDINATOR FOR
INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT

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

UNITED STATES COPYRIGHT OFFICE (ADVISOR TO THE COUNCIL)

National Intellectual Property Law Enforcement Coordination Council

Principals

Chris S. Israel
U.S. Coordinator for International Intellectual Property Enforcement

W. Ralph Basham
Commissioner of Customs, U.S. Customs and Border Protection
United States Department of Homeland Security

Karan K. Bhatia
Deputy United States Trade Representative
Office of the United States Trade Representative

Jon W. Dudas
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

Alice S. Fisher
Assistant Attorney General for the Criminal Division
United States Department of Justice

Franklin L. Lavin
Under Secretary for International Trade
United States Department of Commerce

Julie L. Myers
Assistant Secretary, U.S. Immigration and Customs Enforcement
United States Department of Homeland Security

Josette S. Shiner
Under Secretary for Economic, Business and Agricultural Affairs
United States Department of State

Table of Contents

I. Table of Contents v

II. Letter of Transmittal ix

III. Executive Summary 1

IV. Introduction 5

Supporting American Business 5

The STOP! Initiative 10

The Role of NIPLECC 12

The Coordinator's Office 16

V. Looking Ahead 21

VI. Results of Coordination 31

China: Concerted action to address a top priority 31

The G8 IP Initiative: Leadership supported by interagency coordination 35

Brazil: Interagency and private sector efforts yield progress on copyright enforcement 37

El Salvador: An example of how interagency coordination combines to produce results 38

Training programs empower rightsholders at home and abroad 40

VII. Overview of U.S. Government Functions and Accomplishments 43

A. Working with U.S. Industry and Engaging our Trading Partners 45

Department of Commerce 47

U.S. Patent and Trademark Office 47

I. Summary of Agency Mission 47

II. USPTO IPR Enforcement Activities 48

III. Accomplishments 64

IV. Looking Forward 65

International Trade Administration 67

I. Summary of Agency Mission 67

II. Coordination with U.S. Industry 72

III. International IP Regional Programs 74

IV. Commercial Law Development Program 77

Department of State 81

I. Summary of Agency Mission 81

II. General IPR Activities 82

III. Accomplishments 84

IV. Additional Initiatives 87

U.S. Trade Representative 91

I. Summary of Agency Mission 91

II. Engagement with U.S. Trading Partners and Special 301 Review 91

III. Free Trade Agreements and Implementation 93

IV. STOP! Initiative 94

V. Generalized System of Preferences (GSP) Reviews 95

VI. WTO Dispute Settlement and Other Tools 95

Copyright Office 97

I. Summary of Agency Mission 97

II. Domestic Enforcement Activities 99

III. International Enforcement Activities 101

IV. Programmatic Activities 103
V. Operational Activities 108
VI. Looking Forward 109
B. Pursue Criminal Enterprises Involved in Piracy and Counterfeiting 111
Department of Justice 113
I. Enforcing and Protecting IPR 113
A. Interagency Efforts 113
B. Criminal Enforcement Efforts 114
C. Legislative Efforts 128
D. Civil Enforcement Efforts 132
E. Antitrust Enforcement Efforts 133
F. International Efforts 135
II. Implementing the DOJ IP Task Force Recommendations 135
A. Criminal Enforcement Recommendations 136
B. International Cooperation Recommendations 138
C. Civil Enforcement 139
D. Antitrust Recommendations 139
E. Prevention Recommendations 140
C. Increase Efforts to Seize Counterfeit Goods at Our Borders 141
Department of Homeland Security 143
I. Summary of Agency Mission 143
II. U.S. Customs and Border Protection IPR Efforts 145
III. U.S. Immigration and Customs Enforcement IPR Efforts 150

II. Letter of Transmittal

To the President of the United States and to the Committees on Appropriations and the Judiciary of the Senate and House of Representatives:

This is the fifth annual report on the activities of the National Intellectual Property Law Enforcement Coordination Council ("NIPLECC" or "Council") submitted pursuant to 15 U.S.C. 1128(e). Its format has been changed, and its contents expanded from prior reports, primarily as a result of Public Law 108-447 which established at the head of the Council a Coordinator for International Intellectual Property Enforcement ("Coordinator") and charged the Council with coordinating and overseeing the federal government's intellectual property protection and enforcement efforts.

The task of protecting intellectual property has never been more important to our country. As stated in the 2006 Economic Report of the President, today intellectual property protection plays an important role in many industries in which the United States has a comparative advantage and contributes to the size, growth, and exports of the American economy. Protecting intellectual property is vital to advances in science and industry and to creation of content enjoyed throughout the world. And the failure to protect intellectual property has potentially serious health and safety consequences.

At the same time, the task of protecting intellectual property has never been more challenging. Theft in foreign markets of intellectual property belonging to Americans is significant. Technology has made it easier to manufacture and distribute counterfeit and pirated products -- creating a global illicit market in competition with genuine products -- and has complicated the ability to detect and take action against violators. High profits and low risk have attracted organized criminal networks. And public awareness of the issues and consequences behind intellectual property theft often lags behind.

As the following pages describe in detail, the Bush Administration and the NIPLECC agencies in particular have made important strides in protecting intellectual property over the past year. Those accomplishments, as well as several promising new measures and initiatives, flow from and advance the objectives of the Strategy Targeting Organized Piracy (STOP!), announced in October 2004. These accomplishments and initiatives reflect the fact that intellectual property protection is receiving greater emphasis and attention throughout the federal government, aided in part by the efforts of the Coordinator's Office. These efforts serve to assure creators and consumers of intellectual property alike that the U.S. government is committed to preserving a future filled with the fruits of American innovation.

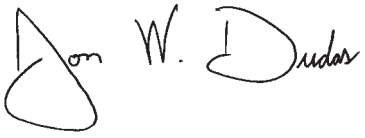
Submitted September, 2006.



CHRIS ISRAEL

U.S. Coordinator for International Intellectual Property Enforcement

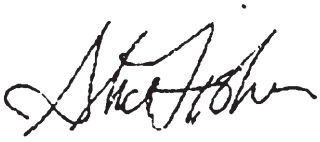
National Intellectual Property Law Enforcement Coordination Council



JON W. DUDAS

Under Secretary of Commerce for Intellectual Property and

Director of the United States Patent and Trademark Office



ALICE S. FISHER

Assistant Attorney General for the Criminal Division

United States Department of Justice

III. Executive Summary

Why is Intellectual Property Important?

The reasons for the Administration's leadership on intellectual property (IP) enforcement and for its prioritization are clear. Few issues are as important to the current and future economic strength of the United States as our ability to create and protect intellectual property.

The theft of American intellectual property strikes at the heart of one of our greatest comparative advantages – our innovative capacity. Through the applied talents of American inventors, researchers, entrepreneurs, artists and workers, we have developed the most dynamic and sophisticated economy the world has ever seen.

The world is a much better place due to these efforts. We have delivered life-saving drugs and products that make people more productive. We have developed entirely new industries and set loose the imaginative power of entrepreneurs everywhere. And, we set trends and market best-of-class products to nearly every country in the world.

The enforcement of intellectual property rights (IPR) also carries great consequence for the health and safety of consumers around the world. The World Health Organization estimates that 10% of all pharmaceuticals available worldwide are counterfeit.

A thriving, diversified and competitive economy must protect its intellectual property rights. In the 2006 State of the Union, President Bush outlined the American Competitiveness Initiative (ACI). ACI strengthens the President's ongoing commitment to innovation. We are creating a business environment

that encourages entrepreneurship and protection of intellectual property. And this Administration is doing everything that we can to open markets and level the playing field.

We value our heritage of innovation and exploration – it is not only part of our history; it is the key to our future. And this future – a future of innovation, exploration and growth that benefits the entire world -- rests on a basic, inherent respect for intellectual property rights and a system that protects them.

What is NIPLECC?

The National Intellectual Property Law Enforcement Coordination Council (NIPLECC), established in 1999, brings together the leaders of the key operational entities within the federal government that are responsible for IP enforcement, providing the infrastructure that supports the Administration's efforts. The Council includes the Office of the U.S. Trade Representative; the Department of Commerce – including the U.S. Patent and Trademark Office and the International Trade Administration; the Department of Homeland Security, which includes U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement; the Department of Justice; and the State Department. The U.S. Copyright Office serves in an advisory capacity.

The Office of the U.S. Coordinator for International Intellectual Property Enforcement, established in 2005, works to leverage the capabilities and resources of the United States to promote effective, global enforcement of intellectual property rights. Under the leadership of the White House, the Coordinator's Office leads interagency initiatives such as STOP! (Strategy Targeting Organized Piracy) and outreach with the private sector and our international partners.

What have we done?

Through effective coordination U.S. government agencies are working more closely together, and we have made significant progress. We are achieving results, delivering on the commitments of senior Administration officials, institutionalizing an unprecedented level of coordination within the federal government and

receiving attention around the world. The message that we are delivering is that the United States takes the issue of intellectual property enforcement very seriously, we are leveraging our resources to address it and we have high expectations of all of our global trading partners. Highlights of our efforts include:

1. We are working to implement the IP enforcement priorities established by President Bush and other leaders within the G8 and through the U.S.- European Union (EU) IPR Action Strategy.

2. The Department of Justice is working to implement the recommendations laid out by their Intellectual Property Task Force.

3. The Department of Homeland Security reports that seizures of fake and counterfeit goods at America's borders have doubled since 2001.

What are we planning to do?

This Report includes a number of IP enforcement priorities set for the upcoming year by the agencies and departments that comprise NIPLECC. Highlights include:

1. We are working to set objectives and establish priorities that will enable us to strengthen and better coordinate our education, training and capacity building activities around the world.

2. The Bush Administration is continuing to expand the presence of U.S. IP policy and law enforcement attachés around the world. Having IP attachés stationed at our embassies will enhance our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR.

3. The Bush Administration is working with Congress to strengthen laws and penalties related to intellectual property rights enforcement.

4. We are redoubling our efforts to work with U.S. industry to provide better resources and assistance to small businesses. We will explore the utilization of technology to protect IP and assure that U.S. enforcement efforts and activities are well coordinated with industry enforcement activities and priorities.

IV. Introduction

Supporting American Business

American producers of intellectual property are independent by nature. Their creative contributions to science, the arts, business and industry reflect that American spirit of independence. Their esteemed brands, popular works and revolutionary inventions carry the mark of originality, resourcefulness and ingenuity.

But when it comes to protecting their creative output from infringement, American intellectual property owners sometimes need help. Indeed, they need help precisely because their works are so popular, so useful and so original that rather than compete with them, others seek to obtain, imitate and profit from them illegally.[1]

Today, however, the help and support that rightsholders need is available as never before. American businesses that discover that counterfeit copies of its products are being produced overseas and distributed for sale to foreign and domestic markets now have the following options for action:

- American businesses will find abundant, user-friendly means of educating themselves about their rights and options. For example, they can visit the U.S. government website ***www.StopFakes.gov*** to access information ranging from basic steps for protecting intellectual property to announcements of

[1]This introduction focuses on preserving the conditions essential to innovation. It is well-established, however, that the adverse economic impact of counterfeiting and piracy sweeps broadly, affecting downstream jobs, investment, growth and revenue collection. Counterfeiting and piracy also pose potentially serious health and safety risks to consumers. Government actions against IP violators generally address these other societal interests as well. See, for example, Chapter 10 of the 2006 Economic Report to the President, "The Role of Intellectual Property in the Economy."

training seminars in their area to country-specific IPR toolkits to the email addresses of U.S. government contacts abroad.[2]

- They will find government specialists on intellectual property rights ready to assist them by phone. For example, they can call a toll-free hotline (1-866-999-HALT) to speak with experts at the U.S. Patent and Trademark Office (USPTO) or reach counselors at the Office of Intellectual Property Rights at the Department of Commerce who work with rightsholders to develop strategies for addressing problems overseas.[3]

- They will find that the government is using technology to simplify and facilitate the process of registering and protecting copyrights and trademarks. For example, they can go online to ***www.cbp.gov*** to record their registered copyright or trademark directly with the U.S. Customs and Border Protection (CBP), better enabling customs officers to identify and seize fake or counterfeit products at the border.[4]

- They will find accessible resources that explain their rights and facilitate the reporting of suspected violations. For example, they can consult the Justice Department's "Guide for Victims of Counterfeiting, Copyright Infringement and Theft of Trade Secrets" which provides practical tips and a checklist for reporting an offense. They can report suspected counterfeit imports or IP crime by completing an online referral form or by phoning the National Intellectual Property Rights Coordination Center at 1-866-IPR-2060.[5]

- They will find an increasing number of law enforcement resources deployed to fight IP crime at the federal level. For example, the FBI and Immigration and Customs Enforcement (ICE) have established special cyber crime operations centers to support IP investigations in field offices

[2]There have been over 1.8 million visits to the StopFakes website since its inception.

[3]The hotline is on pace to receive 1,400 calls in FY 2006, outpacing the FY 2005 total by over 50%.

[4]DHS seized 8,022 shipments under its IPR program in FY 2005, a 10.5% increase over FY 2004.

[5]Rightsholders can also email or call CBP's IPR Branch with legal questions or its Los Angeles Strategic Trade Center IPR Help Desk to obtain assistance developing product identification training materials.

nationwide and in attaché offices overseas. On the prosecutorial side, the Justice Department has established 25 Computer Hacking and Intellectual Property (CHIP) Units and designated a CHIP Coordinator in every U.S. Attorneys' Office, bringing the number of specially-trained IP prosecutors to more than 230 nationwide.[6]

- Should the IP violations that a business identifies be criminally prosecuted or should the business decide to pursue civil action, it will benefit from ongoing efforts by government agencies and Congress to ensure that U.S. intellectual property laws keep current with ever-evolving means of infringing IP. For example, the Stop Counterfeiting in Manufactured Goods Act, which the President signed into law in March 2006, strengthens laws against trafficking in counterfeit labels and packaging.[7]

- Businesses will find that the federal government makes resources available to help business pursue actions to be taken overseas. The Office of Intellectual Property Rights at the Department of Commerce provides information to aid in navigating foreign legal systems -- including lists of local investigative firms and attorneys -- and shares experiences and expertise in particular countries. In some cases, U.S. government officials abroad can look into or raise questions based upon information the business provides.[8]

- Should the matter require the attention of foreign law enforcement or IP protection authorities, U.S. businesses will benefit from the extensive and sustained efforts by U.S. government agencies to educate, train and motivate their foreign counterparts to protect the interests of all IP rightsholders.[9]

[6]Between FY 2003 and FY 2005, the number of open FBI IP investigations rose 22%. Between FY 2004 and FY 2005, the number of defendants charged with IP offenses increased 98%.

[7]On July 8, 2006, the Department of Justice announced the indictment of a Georgia man on charges of trafficking in illicit certificates of authenticity associated with copyrighted computer software. This is the first case charged under the Intellectual Property Protection and Courts Amendments Act of 2004 -- the immediate predecessor to H.R. 32.

[8]The number of IP experts stationed abroad by U.S. government agencies to assist rightsholders or work on their behalf is growing. Since 2004, PTO has had an intellectual property attaché in Beijing. This year it will add two more in China, along with regional IP attachés in Bangkok (Asia), Sao Paulo (Latin America), Cairo (the Middle East and Africa), Moscow (Russia/CIS) and New Delhi (India/Central Asia). The Justice Department has designated an Intellectual Property Law Enforcement Coordinator (IPLEC) for Asia in Bangkok and is working with the State Department to locate an IPLEC in Eastern Europe.

[9]Through June 30, 2006, PTO alone had conducted 82 IPR training and technical assistance programs in the U.S. and abroad – reaching participants from over 90 countries.

Indeed, in certain circumstances, they can avail themselves of existing working relationships that have been developed with particular foreign agencies or officials.[10]

- If business encounters problems with the foreign government response, they will find that the U.S. government is very interested in their experiences. Their situation may inform ongoing efforts to evaluate and report on the adequacy and effectiveness of IP protection around the world, secure compliance with the commitments and obligations undertaken by our trading partners, and decide upon and pursue appropriate actions.[11]

- If business needs to rely upon protection for their intellectual property overseas, they will benefit from longstanding, persistent and ongoing efforts by U.S. government agencies to improve the legal landscape and functional infrastructure provided by our trading partners around the world. Such efforts include negotiation of trade agreements that require protection and enforcement of intellectual property rights: negotiation of agreements among members of the World Intellectual Property Organization, and participation in and/or sponsorship of a wide range of bilateral and multilateral initiatives.[12]

- If business seeks to partner with their industry counterparts in obtaining redress or otherwise pursuing concerns, they will find that the U.S. government is actively engaged with rightsholder

[10]By way of example, the Commerce Department's China "Case Referral Mechanism" brings individual U.S. companies' IPR complaints to the attention of China's Ministry of Commerce. The U.S.-EU Joint Action Strategy on IPR promises to increase cooperation between customs authorities to improve border enforcement. CBP actively participates in the World Customs Organization IPR Strategic Working Group.

[11]On April 28, 2006, USTR released its "Special 301" annual report on the adequacy and effectiveness of intellectual property rights protection provided by trading partners around the world. The report identifies governments that need to take stronger actions to combat piracy and counterfeiting, for example, by cracking down on illegal optical disc production and Internet piracy, or stepping up border enforcement against trade in fake goods. The report lists 48 countries: concerns regarding China and Russia feature prominently throughout.

As part of the private sector advisory committee system, an "Industry Trade Advisory Committee" focuses specifically on providing advice to the USTR and the Department of Commerce on issues related to IPR and trade policy. In addition, USTR and other agencies seek private sector input through formal notices in the Federal Register, at public hearings and through a variety of consultations with interested constituencies.

[12]Recently concluded trade agreements include the Bahrain Free Trade Agreement, the Oman Free Trade Agreement, the Peru Trade Promotion Agreement, the Colombia Trade Promotion Agreement, and the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) (with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic).

groups on IP issues. For example, should they attend a meeting of the Coalition Against Counterfeiting and Piracy (CACP) -- a group led by the U.S. Chamber of Commerce and the National Association of Manufacturers -- they will find government IP officials regularly in attendance, reporting on pending matters, answering questions and seeking input from industry representatives.[13]

From the micro to the macro, American businesses will discover that the federal government is working hard on their behalf to remedy specific instances of infringement and to improve conditions for intellectual property protection globally. They will find new resources, tools, and a willingness which did not exist previously. They will find that government attention, action and expertise are more available and, importantly, more *coordinated*.



President George W. Bush signs H.R. 32, the Stop Counterfeiting in Manufactured Goods Act, during ceremonies, March 16, 2006, in the Eisenhower Executive Office Building. Looking on are, from left: Secretary Carlos Gutierrez, Department of Commerce; Secretary Elaine Chao, Department of Labor; Attorney General Alberto Gonzales; U.S. Rep. Jim Sensenbrenner (R-Wis.); U.S. Rep.Joe Knollenberg (R-Mich.), and U.S. Rep. Bobby Scott (D-Va.). (Source: The White House)

[13]As part of the private sector advisory committee system, an "Industry Trade Advisory Committee" focuses specifically on providing advice to the USTR and the Department of Commerce on issues related to IPR and trade policy. In addition, USTR and other agencies seek private sector input through formal notices in the Federal Register, at public hearings and through a variety of consultations with interested constituencies.

The STOP! Initiative

The Bush Administration launched the Strategy Targeting Organized Piracy (STOP!) initiative in October 2004. STOP! represents the high priority that the Administration places on and the level of commitment it has made to intellectual property protection. STOP! calls upon government agencies to expand and make more effective the many and varied efforts underway to assist rightsholders -- and to seek out new approaches and solutions. STOP! brings direction and greater cohesion to those efforts.

STOP! focuses on five key objectives:

- Empowering American innovators to better protect their rights at home and abroad
- Increasing efforts to seize counterfeit goods at U.S. borders
- Pursuing criminal enterprises involved in piracy and counterfeiting
- Working closely and creatively with U.S. industry
- Aggressively engaging our trading partners to join U.S. efforts

A number of the government programs outlined in the preceding section -- and other initiatives described more fully below -- trace their origins to the STOP! initiative. STOP! charged executive branch agencies and officials with elevating their attention to IP protection and with being innovative in their approaches, and STOP! energized those efforts.

Thus, Customs and Border Protection (CBP) diversified its approaches to IPR enforcement to include new techniques that complement traditional enforcement methods. In the period since STOP! was announced, CBP tested and began implementing its IPR risk model, applying statistical analysis techniques and external information to the assessment of IPR risk. In FY 2005, CBP included IPR audits in its national

audit plan for the first time and trained a new group of employees, its regulatory auditors, on IPR to enable them to apply their auditing skills to the enforcement of intellectual property rights.

Similarly, as part of STOP!, both the U.S. Trade Representative (USTR) and the State Department are actively promoting the adoption of best practices for enforcement internationally. As part of this effort, USTR and State, in coordination with other agencies, are introducing new initiatives in multilateral fora to improve the global intellectual property environment. Key initiatives have gained endorsement and are undergoing implementation in the G8, the U.S.-EU Summit, the Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum.

The June 2006 Progress Report of the Department of Justice's (DOJ) Task Force on Intellectual Property describes the Department of Justice's participation in the STOP! initiative. DOJ has made important contributions to the broad mission outlined by STOP!, through implementation of the detailed recommendations of the Task Force set forth in the 2004 Report. DOJ has coordinated closely with other agencies on numerous international and domestic policy issues and joined those agencies in visits abroad, that it has participated in business outreach efforts and that it has helped raise public awareness of legal protection for intellectual property.

As part of STOP!, the International Trade Administration (ITA) and USPTO are promoting protection of IPR at domestic and international trade fairs. Their efforts include educating trade fair organizers, exhibitors, and attendees about IPR and helping U.S. businesses guard against infringement at trade fairs. ITA will continue to explore opportunities to promote IPR protection at trade fairs and pavilions that Commerce operates, certifies, or supports.

The list of efforts stimulated and energized by STOP! includes the creation of the 1-866-999-HALT hotline and the establishment by USPTO of the Global Intellectual Property Academy. It includes recent actions by the Small Business Administration to make available through its website resources and information about U.S., foreign and international laws and procedures produced by other government

agencies. And, as discussed later in this report, it includes the revitalization of the U.S. – EU IP relationship and the efforts behind the G8 IP initiative.

STOP! has raised the priority of, and set much of the agenda for, the Administration's IP protection programs. The sections that follow describe the framework and key mechanisms for leading that agenda forward.

The Role of NIPLECC

In all of their dealings with the federal government, the average business will probably never hear the name "NIPLECC," the acronym for the National Intellectual Property Law Enforcement Coordination Council. Nonetheless, NIPLECC has become an important part of the government's IP protection apparatus. As a behind-the-scenes organizational framework, NIPLECC is increasingly serving as an infrastructure for coordinating IP protection efforts across government agencies.

The 1999 law establishing NIPLECC charged it with coordinating domestic and international intellectual property enforcement among federal and foreign entities.[14] In 2005, Congress broadened NIPLECC's charter to include setting policies, objectives and strategies concerning international intellectual property protection and intellectual property enforcement; promulgating a strategy for protecting American intellectual property overseas; and coordinating and overseeing the implementation by government

[14]NIPLECC was established in 1999 by Section 653(a) of Public Law 106-58 (the Treasury and General Government Appropriations Act). Section 653(b) set out NIPLECC's duties: "The Council established in subsection (a) shall coordinate domestic and international intellectual property law enforcement among federal and foreign entities."

agencies of those policies, objectives and priorities and the execution of that strategy.[15] To lead NIPLECC's efforts, Congress created the U.S. Coordinator for International Intellectual Property Enforcement ("the Coordinator").

The Bush Administration moved quickly to respond to Congress's action and to align the NIPLECC structure with the strategy outlined by STOP! The President appointed Chris Israel to serve as Coordinator and as the point person for the Administration's IP enforcement efforts. The Administration has made considerable progress in moving the STOP! initiative forward and in carrying out the Congressional mandate during its first year. The progress made promises to have long term benefits. NIPLECC itself gives permanence to the priority that the Administration and Congress have placed on increasing and coordinating IP protection efforts.[16] It is a statutory entity that, since 2005, receives funds and is subject to Congressional oversight. The existence of a reporting requirement and the creation of a NIPLECC Coordinator ensure accountability to Congress and greater transparency to the private sector and the general public.

These and other recent actions have brought about a series of positive changes:

- Congress' specification of NIPLECC's charter as set out in Public Law 108-447 has fused together NIPLECC's strategic and coordinating responsibilities. Installation of a U.S. Coordinator for International Intellectual Property Enforcement and associated staff has provided needed leadership and visibility.

[15]In the 2005 Consolidated Appropriations Act, Congress revisited NIPLECC's role. Public Law 108-447 provides that NIPLECC shall:

"(1) establish policies, objectives, and priorities concerning international intellectual property protection *and* intellectual property law enforcement,

(2) promulgate a strategy for protecting American intellectual property overseas

(3) coordinate and oversee implementation by agencies with responsibilities for intellectual property protection and intellectual property law enforcement of the policies, objectives, and priorities established under paragraph (1) and the fulfillment of the responsibilities assigned to such agencies in the strategy described in paragraph (2)."

(Emphasis added.) Notably, the statutory language charges NIPLECC with coordinating and overseeing IP protection and enforcement activities conducted not only by NIPLECC agencies but by any agency with IP responsibilities. This change helps overcome any formal difficulties arising from the slightly differing memberships of NIPLECC and STOP!

[16]Whether subsequent administrations continue STOP! or set a different direction in response to changing circumstances affecting IP protection, NIPLECC will remain a Congressionally-mandated framework for coordinating executive branch activities.

- Execution of the STOP! initiative has given NIPLECC a more clearly defined mission and charge.

- Increased interaction and communications among NIPLECC agencies has led to improved coordination.

- Elevation of intellectual property protection into a significant trade and economic issue regularly addressed by senior Administration officials in their contacts with trading partners has set the foundation for progress abroad.

- The formation of the DOJ's Task Force on Intellectual Property, the service by a senior Justice Department official as NIPLECC's Deputy Coordinator and the involvement of the FBI and ICE in NIPLECC have ensured active participation by the law enforcement community.

- The formation of the Coalition Against Counterfeiting and Piracy (CACP) and conscientious efforts by NIPLECC leadership to engage with CACP and its task forces has yielded higher levels of cooperation and coordination between government and industry.

As a result, NIPLECC has assumed a more central role and filled a gap that had inhibited coordination in the past. Even in the course of detailing NIPLECC's historical shortcomings, the 2004 GAO report on U.S. efforts to protect IP abroad included this observation from a State Department official, "NIPLECC is the only forum for bringing enforcement, policy and foreign affairs agencies together at a high level to discuss intellectual property issues."[17] Over time, that observation has become less of an aspiration and more of a reality.

[17]GAO Report GAO-04-912 (September 2004), p.38.

Importantly, NIPLECC does not seek to assume the independent authority, mission and operation of its member agencies. Each NIPLECC agency is separately charged with carrying out its statutory responsibilities and brings to the performance of those tasks specialized knowledge, invaluable expertise and, in some cases, literally centuries of experience. This separateness has operational, practical and even legal dimensions, such as in the standards that govern the activities of law enforcement agencies and the need of law enforcement agencies to protect sensitive information from disclosure.[18]

National Intellectual Property Law Enforcement Coordination Council					
Department of Justice The Department of Justice is the lead U.S. law enforcement agency. It enforces a variety of federal IP statues and engages with law enforcement couterparts around the world.	**Department of Commerce** The Department of Commerce seeks to foster, promote, and develop foreign and domestic commerce through economic development, technological advancement and international trade.	**Department of State** The Department of State seeks to create a more secure, democratic, and prosperous world for the benefit of the American people and the international community.	**Department of Homeland Security** The Department of Homeland Security is responsible for securing our borders while also facilitating the flow of legitimate trade and travel. DHS is also responsible for the enforcement of federal immigration laws, customs laws, and air security laws.	**U.S. Trade Representative** USTR is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries.	**U.S. Coordinator for International Intellectual Property Enforcement** The Coordinator's office works to leverage the capabilities and resources of the Unites States Government to promote effective, global enforcement of intellectual property rights.
NIPLECC member: • Assistant Attorney General, Criminal Division	**NIPLECC member:** • Under Secretary for IP and Director of the PTO • Under Secretary for International Trade	**NIPLECC member:** • Under Secretary for Economic, Business, and Agricultural Affairs	**NIPLECC member:** • Commissioner, U.S. Customs and Border Protection • Assistant Secretary for Immigration and Customs Enforcement	**NIPLECC member:** • Deputy U.S. Trade Representative	**NIPLECC member:** • U.S. Coordinator for International Intellectual Property Enforcement

[18]Some industry groups have signaled the view that NIPLECC *should* eschew an operational role. For example, a 9.4.02 letter from the International Intellectual Property Alliance (IIPA) to NIPLECC states: "IIPA continues to view NIPLECC as a vehicle through which its interagency members can productively share information and promote common *non-operational* law enforcement interests without requiring authority or mandate to approve or disapprove of any single agency's ongoing activities." (Emphasis added).

The U.S. Coordinator for International Intellectual Property Enforcement

The office of the U.S. Coordinator for International Intellectual Property Enforcement was createdby Congress to lead NIPLECC in carrying out its function. President Bush moved expeditiously to fill this post, appointing Chris Israel in July 2005. Arif Alikhan, Senior Counsel to the Deputy Attorney General at the Department of Justice, serves as NIPLECC's Deputy Coordinator. The staff of the Coordinator's office is composed of employees or detailees from a number of NIPLECC agencies.

In its first year of operation, the Coordinator's office has been very active -- interacting on a sustained and intensive basis with government agencies, industry representatives, trading partners, Congress and the general public. The office has contributed to progress on a number of fronts that are central to the STOP! initiative and long a part of the NIPLECC agenda.

As stated, the STOP! initiative has provided the direction and the strategic overlay for the Coordinator's office and for NIPLECC agencies generally. Indeed, almost all of the activities of the Coordinator's office execute on elements of the STOP! initiative.

- Leadership by the Coordinator's office in helping to revitalize the U.S. - EU IPR relationship has directly served the STOP! objective of "aggressively engaging our trading partners to join our efforts." Shortly after the November 2005 ministerial meeting that established the U.S. - EU IPR Working Group, an interagency team began working with their EU counterparts on a strategy for strengthening customs cooperation, focusing mutual efforts on IP protection issues in China, Russia, and elsewhere, and engaging their respective private sectors. The U.S. – EU Action Strategy for the Enforcement of Intellectual Property Rights was launched just prior to the recent U.S. – EU Leaders Summit in Vienna.



President George W. Bush delivers a statement during the June 2006 U.S.-EU Summit with Chancellor Wolfgang Schuessel of Austria, center, and European Union President Jose Manuel Barroso at the Hofburg Palace in Vienna. At the Summit leaders announced the U.S.-EU Action Strategy for the Enforcement of Intellectual Property Rights. (Source: The White House)

- The Coordinator's office has worked to support the NIPLECC-wide focus on improving IP protection internationally and in particular regions and countries. The broad interagency composition of the U.S. delegations led by the Coordinator on official visits to China, Russia, Japan, the EU and India reflects the role played by the office in promoting and facilitating interagency coordination in the pursuit of greater cooperation with our trading partners in protecting IP.

- Overall, the Coordinator's office works to promote and support regular and consistent communications by senior Administration officials regarding IP protection in their contacts. For example, the Coordinator's office has assumed the task of preparing country-specific memoranda that provide at-a-glance information on the background of U.S. engagement on IP issues, the status of enforcement and policy issues, and key priorities and challenges. The memoranda also bring together prior statements by Administration officials regarding IP protection in particular countries.

- From his senior position within the Department of Justice, NIPLECC's Deputy Coordinator, Arif Alikhan, has provided leadership in focusing and leveraging the efforts of law enforcement agencies to protect intellectual property. The Department of Justice Task Force Report, released in June 2006, contains accounts of coordination between a number of law enforcement agencies on particular investigations and prosecutions, as well as between federal law enforcement and non-law enforcement agencies on matters involving training, law reform and outreach. The NIPLECC Deputy Coordinator brings that inclusive perspective to the work of the Council.

- Continuous engagement by the Coordinator's office with rightsholder groups and representatives has helped to advance the STOP! objective of "working creatively with U.S. industry." The Coordinator and the Deputy Coordinator have exchanged views privately and publicly with representatives of industry groups in a wide range of settings. For example, they have participated in dozens of industry-sponsored events -- including several sponsored by U.S. trading partners -- and the Coordinator has provided updates on Administration IP initiatives at nearly all of the monthly meetings of the Coalition Against Counterfeiting and Piracy.

- Regular public appearances and presentations, aimed at sharing information about the federal government's IP enforcement and protection efforts have served to promote the STOP! objective of "empowering American innovators to better protect their rights at home and abroad" and helped to build greater public awareness regarding the government's efforts.

- The Coordinator's testimony before Congress, his meetings with Members and Congressional staff and his role as a spokesman for IP protection efforts generally have brought greater accountability, increased public understanding and a more coordinated perspective to the efforts of various governmental agencies. The Coordinator has, in essence, given a unified public voice to the Administration's IP protection efforts.

Many, if not all, of the activities of the Coordinator's office have been carried out in cooperation with representatives of one or more of the NIPLECC agencies. In some cases, the Coordinator's office has joined or supported pre-existing, agency-led initiatives. In others, the office has spearheaded the initiative

and enlisted agency participation. The touchstone throughout has been to optimize results by engaging the most appropriate and complete combination of government IP enforcement and protection resources.

The Coordinator's office contributes to interagency coordination in more routine and often less visible ways. For example, the Coordinator holds quarterly NIPLECC meetings to discuss ongoing IP matters and -- in conjunction with the White House -- convenes regular STOP! meetings to discuss overall IP strategy. The Coordinator has worked to engage the FBI and the Food and Drug Administration -- two agencies with IP enforcement responsibilities which are not by statute formally part of NIPLECC. On a continuing basis, the Coordinator seeks out opportunities to use the office's resources to support agency activities.

In just one year, the Coordinator's office has built a foundation for enhanced and coordinated government-wide support for intellectual property protection. Going forward, the overarching task will be to secure and expand upon these gains. Effective, consistent leadership and the capacity to set priorities are essential to meeting the evolving challenge of IP protection. Delivering meaningful results calls for a long-term commitment of energy and resources. And achieving solutions will require a sustained effort working within the Federal government, with Congress and with American rightsholders.

V. Looking ahead

The STOP! initiative has provided overall direction for the government's IP protection efforts. NIPLECC, principally through the Coordinator's office, has sought to leverage and support those efforts. Since the filing of the last NIPLECC report, the NIPLECC agencies, in their separate capacities, have recorded a number of significant accomplishments, as detailed in Section VII. Any satisfaction with this progress must be tempered by the recognition that the challenge of protecting IP is, in many ways, becoming larger and more complex, underscoring the need to continually expand and improve governmental efforts.

Many governmental sources detail the growing importance and difficulty of protecting intellectual property. U.S. IP industries account for over half of all U.S. exports. They represent 40% of U.S. economic growth and employ 18 million Americans -- who earn 40% more than the average U.S. wage. The 2006 Economic Report of the President states that IP accounts for over one third of the value of all publicly traded U.S. corporations, an amount equal to almost half of the U.S. Gross Domestic Product. The ability to ensure a secure and reliable environment for intellectual property around the world is critical to the strength and continued expansion of the U.S. economy.

But the challenges of IP protection are mounting. The 2006 Special 301 Report provides a daunting summary:

> Global IPR theft and trade in fakes and pirated materials have continued to grow, threatening innovative and creative economies around the world. Counterfeiting has developed from a localized industry concentrated on the copying of high-end designer goods into a massive, sophisticated global

business involving the manufacture and sale of counterfeit versions of a vast array of products, including soaps, shampoos, razors, batteries, cigarettes, alcoholic beverages, golf clubs, automotive parts, motorcycles, medicines, and health care products, to name a few. Counterfeiting of such a broad range of products on a global scale affects more than just the companies that produce legitimate products. While it has a direct impact on the sales and profits of those companies, counterfeits also hurt the consumers who waste their money and sometimes put themselves at risk by purchasing fake goods.[19]



Secretary of Commerce Carlos Gutierrez discussing intellectual property enforcement on Capitol Hill with Sen. Orrin Hatch (R-UT) and U.S. Chamber of Commerce President and CEO Tom Donohue in April 2006. (Source: U.S. Chamber of Commerce)

The 2006 Economic Report to the President details the vital economic contribution that intellectual property makes to the U.S. economy and notes a number of the emerging and potentially worrisome

[19]2006 Special 301 Report, p. 5.

trends. Its discussion of the role of technological change in facilitating counterfeiting and piracy is illustrative:

> Some peer-to-peer networks provided technology that enabled individuals to freely download copyrighted music from the computers of other individuals on these networks. Moreover, current technology can less expensively and more faithfully reproduce some intellectual property-related materials than previous technologies could. These illegal copies are difficult to detect. In the United States and internationally, this has resulted in a significant increase in the production and sale of counterfeit products. Those counterfeit copies may directly harm consumers through the sale of fake medicines and defective products, such as batteries, automotive parts, and airplane parts. Furthermore, in the long run, counterfeiting harms all consumers by reducing the profitability of and the incentive to produce new and interesting innovative products and creative works.[20]

And, as noted in the recent Progress Report of the Department of Justice's Task Force on Intellectual Property, the costs of piracy and counterfeiting are not limited to their adverse impact on the economy and on public health and safety.

> In addition . . . intellectual property theft is a concern because it can fund other criminal activities. Modern technology has . . . made intellectual property theft easier and more anonymous. Computer technology and the Internet generate inexpensive and far-flung opportunities for piracy and distribution. Such ease and profitability attract organized criminal enterprises to these offenses, and some of those enterprises may even have ties to terrorist organizations.[21]

What follows is a partial list of particular initiatives to which the Coordinator's office and the NIPLECC agencies will be directing special attention in the months to come.

[20]2006 Economic Report to the President, Chapter 10, "The Role of Intellectual Property in the Economy," p. 227.

[21]Progress Report of the Department of Justice's Task Force on Intellectual Property, June 2006 ("TFR"), p.13.

The Coordinator's Office:

- Execute on key elements of the U.S.-EU and G8 intellectual property action strategies.

- Enhance coordination of U.S. IP training and capacity-building programs, building upon the work of the IPR Training Coordination Group.[22]

- Work with the private sector to maximize government support for industry-led IP enforcement activities and to build a better understanding of technological approaches being deployed to protect IP.

- Support development of an expanded repository of information on global IP enforcement actions.

Department of Commerce/U.S. Patent and Trademark Office:

- Pursue plans to post seven additional IP attachés abroad in late 2006: in Bangkok for the Asia region, in Sao Paolo for Latin America, in Cairo for the Middle East and Africa, in Moscow for Russia and the CIS, in New Delhi for India and Central Asia and two additional IP attachés in China.

- Extend ongoing Global Intellectual Property Academy Programs for foreign officials at the USPTO training academy in Alexandria and provide IPR training, trade capacity building, and technical assistance in the U.S. and abroad.

- Extend IP education outreach events for small and medium sized businesses, including China-focused programs; increasing the USPTO presence at trade shows.

[22]In its 11.25.03 submission to NIPLECC, the International Intellectual Property Alliance observed that NIPLECC might add value to training by working to enhance the IPR training database, secure greater transparency in USG technical assistance programs (particularly USAID), continue to consult with the private sector on prioritization, improve evaluation of and follow-up on training exercises and incorporate IP components into judicial reform projects.

Department of Commerce/International Trade Administration:

- Build upon principles contained in IP cooperation agreements with Japan and the EU (developing best practices, sharing information, streamlining procedures and strengthen technical assistance efforts).

- Work with the Coalition Against Counterfeiting and Piracy to further develop the "No Trade in Fakes" program (voluntary guidelines for companies to protect their supply chains from counterfeit products).

- Create, in conjunction with the Small Business Administration, an IP chapter for the Globally Accessible Database for Small and Medium Enterprises to help educate and guide American businesses operating overseas on securing effective protection and enforcement of their IPRs.

- Promote protection of IPR at domestic and international trade fairs through educational campaigns and official relationships.

Department of Homeland Security/U.S. Customs and Border Protection:

- Continue improving CBP's Intellectual Property Rights e-Recordation (IPRR) system by adding an online recordation renewal feature.

- Create online infringement allegation forms for both rightsholders and CBP field personnel in order to streamline Headquarters' review and response process.

- Work towards full implementation by year's end of the IPR risk-assessment model to enhance the identification of counterfeit and pirated goods at U.S. borders.

- Continue Post-entry Verifications ("IPR audits") to help rid supply chains of fakes and deprive counterfeiters and pirates of illicit profits.

- Establish a link from the U.S. Copyright Office website to the CBP's Intellectual Property Rights eRecordation system to make it easier for right owners to provide information on their rights to CBP.

- Enhance CBP's ability to detect counterfeit and pirated goods by promoting product identification training sessions with industry representatives.

Department of Homeland Security/U.S. Immigration and Customs Enforcement:



U.S. Customs Agents inspecting incoming goods. The Department of Homeland Security reports that seizures of fake and counterfeit goods at America's borders have doubled since 2001. (Source: Department of Homeland Security)

- Increase outreach efforts to industry and government partners to better identify vulnerabilities through which counterfeit goods can be trafficked.

- Continue to partner with foreign governments to enhance joint transnational IPR investigative and enforcement activities, particularly focusing on foreign manufacturers and distributors of counterfeits.

- Enhance the use of the National IPR Coordination Center to initiate industry outreach presentations and to refer investigative leads to field offices.

- Support enhanced efforts of the ICE/Cyber Crimes Center (C3) in targeting criminal organizations responsible for producing, smuggling and distributing counterfeit products via the Internet.

Department of Justice:

- Support enactment of legislation and ratification of treaties protecting IP.[23]

- Increase the deployment of domestic and foreign-based resources focused on IP investigations and prosecutions.[24]

- Establish through the Asia IP Law Enforcement Coordinator an Intellectual Property Prosecution and Investigation Network.

- Launch the National Educational Prevention Teacher Training Initiative co-sponsored and co-funded by DOJ and USPTO.



Attorney General Alberto Gonzales speaking to students and faculty at an October 2005 CourtTV event on intellectual property enforcement, at the University of Texas-Austin. (Source: University of Texas)

[23]Specifically, the Intellectual Property Protection Act.

[24]For example, the FBI is scheduled to open four new Regional Computer Forensic Laboratories by the end of 2006 (TFR p. 45) and DOJ is working with the State Department to locate a new IPLEC in Eastern Europe in the next several months (TFR p. 54).

Department of State:

- Support implementation of the G8 and U.S.-EU Action Plans on IP Enforcement.

- Build upon the significantly expanded training of Embassy staffs in IPR issues to increase their effectiveness as first responders to U.S. industry, as implementers of other agencies' IP agendas, as advocates for enforcement improvements and as outreach specialists in building support for IP protection abroad.

- In 2005, State staged two major IP training events for officers in Africa and Latin America, bringing them together with U.S. Government IP experts and U.S. industry representatives. New tactics were identified and enforcement partnerships formed. Recognizing the contribution these events have made to U.S. Government effectiveness on IP issues in the field, State has made this cycle of training events permanent and in 2006 will conduct its next training event for officers serving in the Middle East and Europe.

- Institutionalize and expand the new "Musical Ambassadors for IPR" international program, which employs an existing public-diplomacy funded program for U.S. musicians touring abroad to deliver "protect IP and protect your local culture" message to international musicians and audiences.

Office of the U.S. Trade Representative:

- Achieve the priorities of the new Intellectual Property office and the newly-created Chief Negotiator for Intellectual Property Enforcement; the new Chief Counsel for China Trade Enforcement and the newly-formed China Enforcement Task Force.

- Work closely with other U.S. government agencies to deepen intellectual property alliances worldwide by means of positive engagement through bilateral trade dialogues (such as with the EU,

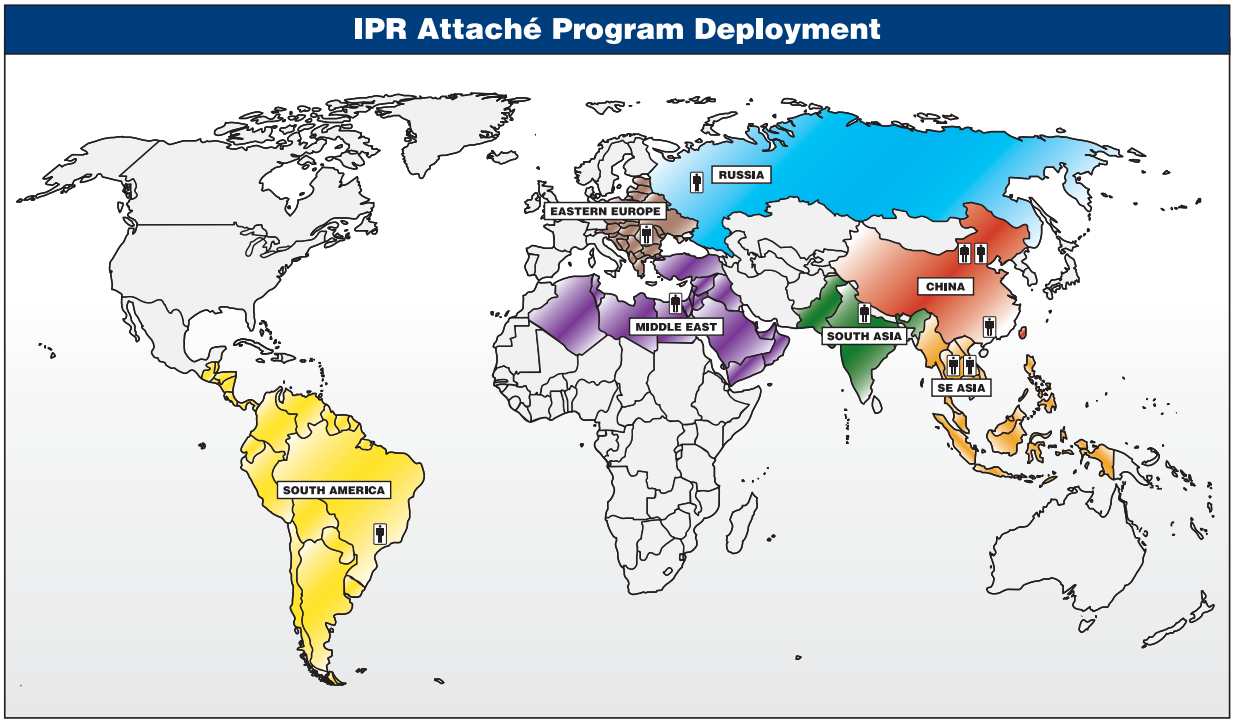
Japan, and India, among others), and through the G8, APEC, the Security and Prosperity Partnership (Canada and Mexico) and other multilateral fora.

- Use the Special 301 process and other trade tools, including World Trade Organization (WTO) tools, as appropriate to seek resolution of U.S. concerns regarding IP protection and enforcement. Key activities will include Special 301 reviews of U.S. trading partners, the unprecedented special provincial review of China, and continued engagement with Russia through both bilateral and multilateral avenues.

- Ensure that the intellectual property provisions of U.S. trade agreements under negotiation (for example, the recently announced FTA negotiations with the Republic of Korea and Malaysia) meet U.S. objectives in the field of intellectual property, such as reflecting a high standard of protection similar to U.S. law and providing for strong enforcement.

The Copyright Office:

- Continue its mission of providing useful education and training on copyright internationally by hosting semi-annual workshops in conjunction with WIPO. The workshops are attended by high-level officials from developing and newly-industrialized countries and are designed to encourage the development of effective intellectual property laws and enforcement overseas.



The Bush Administration is continuing to expand the presence of U.S. IP policy and law enforcement attachés around the world. Having IP attachés stationed at our embassies will enhance our ability to work with local government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR

VI. Results of Coordination

China: Concerted action to address a top priority

A full account of the IP protection initiatives pursued by the NIPLECC agencies follows in Section VII. But nowhere is the degree of governmental focus and coordinated action more evident than in the effort to improve the protection of intellectual property in China, one of the Administration's top IP enforcement priorities. Here initiatives undertaken by the Bush Administration signify an approach to IP protection that brings the full array of government expertise to bear in a complementary and concentrated fashion.

The efforts of the U.S. government to promote stronger IP protection in China are built on five pillars: bilateral engagement; effective use of our trade tools; expanding law enforcement cooperation; education and capacity building; and working with the private sector.

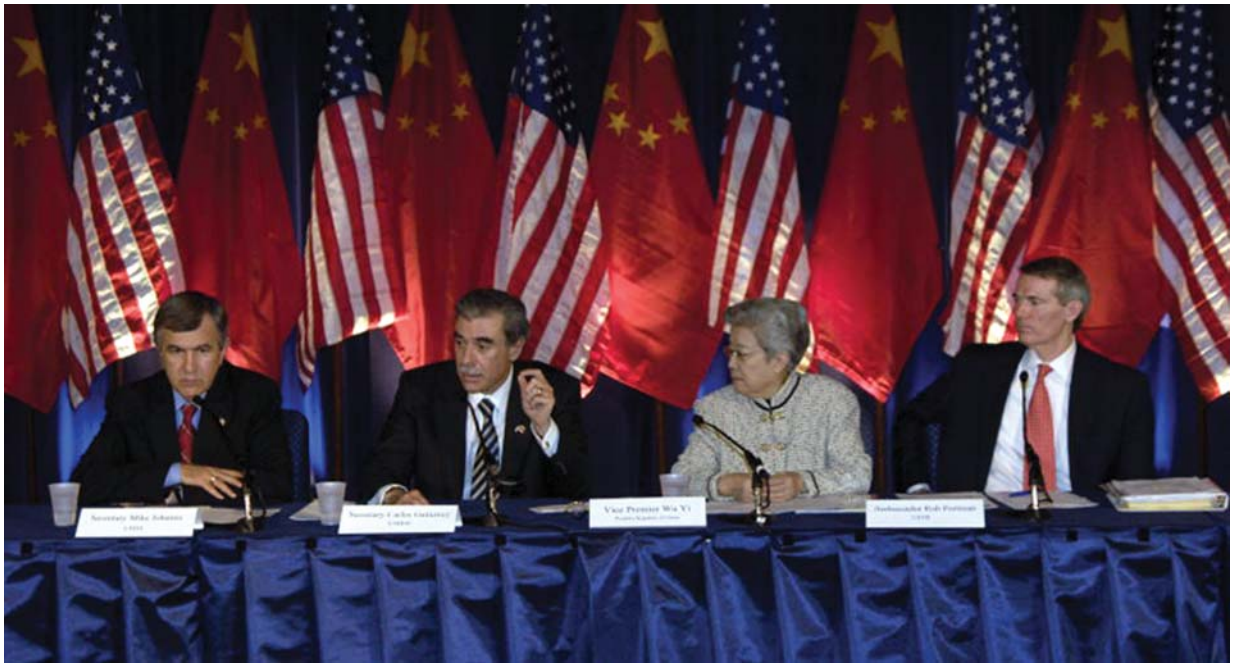
Agency and interagency actions directed at supporting this strategy and improving conditions in China include the following:

- The April 2006 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) had a significant focus on IPR and yielded some important results. The Chinese government agreed to ensure the widespread utilization of legal software at all levels of the government, indicated that it would increase pressure against retail markets that sell counterfeit goods and agreed to step up action against facilities that produce pirated optical discs. The JCCT meeting also saw the release of a comprehensive Chinese Action Plan for IP Protection.

- This year's Special 301 Report – itself the result of extensive interagency input and deliberations -- maintains China on the Priority Watch List and continues Section 306 monitoring. It also announces an unprecedented special review of IPR enforcement and protection at China's provincial level, as well as stepped up consideration of WTO dispute settlement options.

- USTR appointed its first Chief Counsel for China Trade Enforcement to ensure China's compliance with international trade commitments, particularly its WTO and U.S.-China Joint Commission on Commerce and Trade obligations. The Chief Counsel will also co-chair USTR's newly formed China Enforcement Task Force.

- USTR followed up on its October 2005 WTO transparency request, made along with Japan and Switzerland, that China provide additional IPR enforcement data pursuant to Article 63.3 of the TRIPS Agreement. Although China still has not provided a full response to the October 2005 request, a dialogue opened in March 2006 has achieved some progress in improving transparency.



Secretary of Agriculture Mike Johanns, Secretary of Commerce Carlos Gutierrez, Chinese Vice-Premier Wu Yi, former U.S. Trade Representative Rob Portman participate in the April 2006 U.S.-China Joint Commission on Commerce and Trade (JCCT) meetings in Washington, DC. The JCCT meetings yielded a number of significant commitments to strengthen IP enforcement in China. (Source: Department of Commerce)

- U.S. Ambassador to China Clark Randt holds an annual IPR Roundtable in Beijing which brings together senior U.S. and Chinese officials and U.S. business representatives. The Roundtable gives U.S. rightsholders the opportunity to raise and discuss the problems they are encountering and to work towards solutions.

- USPTO is moving ahead with plans to add two additional IP attachés in China before the end of the year in order to augment the work of the current attorney-advisor who has served since 2004 as resident intellectual property attaché to the U.S. Embassy in Beijing.

- USPTO sponsored or participated in twenty IP enforcement training and capacity building programs in China over the past year, reaching judges, prosecutors, trade groups, law firms, investigators and a range of government officials.

- USPTO sponsored or participated in many programs in the U.S. focused on IP protection in China -- often in conjunction with other agencies such as the International Trade Administration at the Commerce Department, the State Department's Foreign Service and the Justice Department's Computer Crime and Intellectual Property Section. Those programs included a conference for U.S. government personnel and seminars in many cities for companies ranging from small businesses contemplating entering the Chinese market to large corporations with an established presence in China.

- The Commerce Department established several programs designed to assist small and medium-sized businesses on IP issues in China, such as the free *China IPR Legal Advisory Program* (which operates in conjunction with the American Bar Association, the National Association of Manufacturers and the American Chamber of Commerce in China to provide legal counseling) and the "Case Referral Mechanism" (which brings individual U.S. companies' IPR complaints to the attention of China's Ministry of Commerce). In May 2006, Commerce launched a web-based seminar series on IPR issues in China for U.S. businesses.

- The U.S. government conducts many training and capacity building programs with Chinese government officials. For example, through the Global IP Academy, the USPTO trains Chinese judges and IP specialists; and recently, the State Department sponsored five Chinese officials to come to the United States under State's International Visitor Program.

- In January 2006, the Department of Justice assigned an attaché to the U.S. Embassy in Bangkok to serve as an Intellectual Property Law Enforcement Coordinator (IPLEC) for the Asia region. The IPLEC is working, among other things, to increase criminal enforcement of IP laws in China and to build a network of key IP prosecutors and investigators from countries in the region.

- DOJ has worked with Chinese officials to establish a new IP law enforcement working group that will focus on building better operational relationships between U.S. and Chinese law enforcement officials. The group will aim to increase information sharing, mutual assistance and the number of actions against pirates.

- DOJ's recently issued "Progress Report of the Department of Justice's Task Force on Intellectual Property" cites several examples of IP prosecutions with a China nexus. Those prosecutions include cases involving counterfeit pharmaceuticals, organized crime and optical disk manufacturing.

- Several of those prosecutions arose from investigations in which ICE Special Agents used existing relationships to obtain cooperation from Chinese authorities. In "Operation Ocean Crossing," ICE agents conducted an investigation involving an Internet site owned and used by a U.S. citizen to distribute bulk quantities or counterfeit Viagra and Cialis manufactured in China. Chinese officials cooperated, arresting eleven individuals in China and seizing 600,000 counterfeit Viagra labels and packaging, 440,000 counterfeit Viagra and Cialis tablets and 260 kilograms of raw materials. In February 2006, the U.S. citizen was convicted of importing counterfeit pharmaceuticals.

- In "Operation Spring," ICE agents conducted a joint criminal law enforcement effort with Chinese law enforcement authorities involving the manufacture and global distribution of pirated DVDs. As a result of the investigation, a U.S. citizen -- along with two Chinese nationals and another U.S.

national -- was convicted in Chinese court. The U.S. citizen was brought to the United States where he was recently convicted as well. In the course of the case, Chinese law enforcement authorities seized more than 210,000 pirated motion picture DVDs and located and destroyed three warehouses used to store counterfeit DVDs.

- The Coordinator's office has sought to support these initiatives and the ongoing effort to raise the issue of IP enforcement to a higher priority level with Chinese officials. Through multiple trips to China, regular communication with Congress and industry and establishment of an interagency China IP working group that meets monthly to discuss priorities, concerns and actions, the Coordinator's office is helping to keep a multitude of China efforts in focus and connected.

The G8 IP Initiative: Leadership supported by interagency coordination

At the 2005 G8 Summit in Gleneagles, Scotland, the U.S. led an effort to develop a strong statement on the importance of intellectual property and the need to improve global enforcement. The G8 nations represent the world's leading economies and account for 49% of global exports.

Under direction from the White House, the State Department, Department of Justice and DHS, with assistance from other agencies, worked on a proposal to enhance the cooperation and joint operations of customs agencies within the G8 and on a plan to establish a formal IP law enforcement infrastructure within the G8.

At the 2006 G8 Leaders Summit in St. Petersburg, a comprehensive IP enforcement strategy was announced that delivered upon the commitment made in 2005. The G8 Statement on Combating IPR Piracy and Counterfeiting has several key objectives:

- To keep the spotlight on trade in counterfeit and pirated goods and secure agreement on projects that promote greater cooperation among national law enforcement and customs officials

- To link victims of IPR infringement to national enforcement authorities

- To build capacity in developing countries to combat trade in counterfeit and pirated goods

- To further research the economic impact of piracy and counterfeiting on national economies, brands, rightsholders and public health/safety

- To task relevant law enforcement work (including online piracy) to the Lyon-Roma Anti-Crime and Terrorism Group (LR/ACT)

The statement provides a clear framework for the ongoing work and collaboration of customs agencies from the G8 countries and creates a formal structure for the pursuit of joint law enforcement operations targeted at IP crimes.



Secretary of State Condoleezza Rice participates in the 2006 G8 Foreign Ministers meeting in Moscow, Russia. At the 2006 G8 leaders summit in St. Petersburg, a comprehensive IP enforcement strategy was announced. (Source: State Department)

Brazil: Interagency and private sector efforts yield progress on copyright enforcement

Brazil has repeatedly appeared on the Special 301 Priority Watch List and that has been the subject of a petition to review its status under the Generalized System of Preferences (GSP) filed by the International Intellectual Property Alliance (IIPA). The 301 and GSP processes have involved extensive interagency analysis -- and consultation with rightsholders -- resulting in a focus on criminal enforcement in Brazil as a key to protecting U.S. rightsholders and capitalizing on Brazil's developing will to protect IP.

As part of that effort, USTR, along with the State Department, the Department of Justice and the Department of Homeland Security have worked extensively with the Brazilian National Council to Combat Piracy and Counterfeiting, providing U.S. input on law enforcement and border protection techniques and on drafting effective criminal IP laws. The work included meetings and extensive informal contacts to discuss specific enforcement questions and training by ICE, DOJ and the FBI.



U.S. Trade Representative Susan Schwab discussing trade issues in Brazil in July 2006. The U.S. government has worked extensively with Brazilian leaders to strengthen intellectual property enforcement. (Source: USTR)

The joint effort by the United States has already been successful in helping Brazil to increase the enforcement of IP rights. For example, during "Operation Site Down," an FBI investigation revealed that a Brazilian citizen was illegally copying and posting to the internet the software of a small American company. Utilizing Brazilian law enforcement contacts developed in the bilateral IP consultations, the Department of Justice and FBI were able to supply detailed investigative information which resulted in a raid, search and arrest of the Brazilian citizen responsible for the theft.

IIPA's comments in January when the U.S. closed its GSP review of Brazil's copyright enforcement practices summarize the progress that has been made. While emphasizing that there is much more work to be done, IIPA observes that its members

> are heartened by developments in Brazil, including cooperation between the copyright private sectors and the National Council to Combat Piracy and Intellectual Property Crimes . . . . Seizures of infringing copyrighted materials at the borders have been high, public seminars on anti-piracy are numerous, training cooperation between Brazilian and U.S. law enforcement continues, and there is growing cooperation between Brazilian law enforcement authorities at the federal and state levels.

Credit for the progress so far in Brazil goes to the Brazilian leaders and officials who are working to bring it about. The work of improving foreign legal regimes, raising awareness, changing behaviors – effecting broad cultural and societal change – requires years of cooperation and perseverance. The support and attention of U.S. government agencies, working in coordination with one another, can help to establish a favorable international climate for this kind of institutional progress.

El Salvador: An example of how interagency coordination combines to produce results

Two years ago, El Salvador signed the U.S. - Central America – Dominican Republic Free Trade Agreement (CAFTA), committing to, among other things, high standards of protection for intellectual property rights. In the ensuing months, U.S. government agencies worked with Salvadoran officials to ensure that El Salvador's legislative and regulatory regimes lived up to the agreement, resulting in implementation earlier this year. The negotiations behind CAFTA's IP chapter and the consultations and assistance leading up to its implementation were multi-year processes, involving intensive interagency collaboration in which all of the NIPLECC agencies played a significant role.

One of CAFTA's provisions requires authorities to act *ex officio* (under the inherent authority of their office) against piracy and counterfeiting. In its report on CAFTA, the Industry Functional Advisory Committee on Intellectual Property Rights called the existing requirement that rightsholders first submit a

formal complaint before action could be taken "a major enforcement impediment" and called for the treatment of piracy and counterfeiting as "public" crimes against which authorities have a standing mandate to act.

As part of El Salvador's implementing law reforms, the existence of such *ex officio* authority was made explicit. Moreover, as part of the U.S. government's program of capacity building and assistance, NIPLECC agencies worked to train Salvadoran judges, prosecutors and police on conducting IP investigations and law enforcement actions. Of particular note in this regard are recent training sessions led by the ICE attaché at the U.S. Embassy in San Salvador -- in which U.S. rightsholders and IP experts from other countries in the region have participated. Nearly 200 judges, prosecutors and investigators attended one such session.



U.S. and El Salvadoran law enforcement officials cooperated to dismantle a large-scale counterfeiting operation. (Source: Department of Homeland Security)

In April 2006, police from the Salvadoran Division de Finanzas carried out the first raids conducted under the new *ex officio* authority. During "Operation Cyclone," the police confiscated 8,500 DVDs, a large stock of raw materials and numerous manufacturing devices. The ICE attaché, in consultation with U.S. rightsholders, has encouraged and supported the new focus on upstream manufacturing. He is presently working to expand actions to include pharmaceuticals and clothing and to create a task force with the Salvadoran customs authority.

There is no need to overstate the impact of the recent enforcement activity in El Salvador to recognize its significance. If, as has been said, FTAs merely mark the "end of the beginning," successful enforcement actions mark progress much further along the line. Moreover, such actions demonstrate the real-world benefits that flow from the IP commitments secured by FTAs and the complementary role that U.S. government agencies (here all of the NIPLECC agencies) play in pursuing associated objectives in the field of intellectual property, advancing both the Administration's trade agenda and the STOP! objectives -- many of which were present in this case.

Training programs empower rightsholders at home and abroad

All of the NIPLECC agencies participate in, if not sponsor, IP training programs for foreign officials, and one of the Coordinator's priorities in 2007 is to enhance coordination of those efforts. While systematic quantification is difficult to define, there is ample evidence of their impact and effectiveness.

The Philippines. For example, during the past eighteen months, Philippine customs officials have received enforcement training from USPTO and other agencies on half a dozen occasions, including at an ASEAN workshop in Bangkok co-sponsored by USPTO and the Justice Department. The head of the Intellectual Property Unit of the Philippines Customs Bureau attended the March 2006 Global Intellectual Property Academy program at the USPTO. The Department of Justice, the FBI, CBP and the Coordinator's Office participated in the program and made presentations.

In a communication to senior USPTO officials, the Philippines Customs Bureau head reported that upon returning to the Philippines from that program, he used the enforcement knowledge he had acquired to teach fellow customs personnel in his country. The official reported that this year Philippines customs agents raided a mall and confiscated counterfeit goods (including bags, wallets, belts, perfumes, shoes, school supplies, DVD and CDs and caps) worth between U.S. $3-4 million. On a subsequent raid, customs agents raided a compound with at least 26 warehouses and seized truckloads of branded shoes and clothing and a large volume of branded school supplies, cellular phone housing, bags, toys and other goods.

Morocco. In 2006, following the January 1 entry into force of the U.S.-Morocco Free Trade Agreement, the USPTO with the help of DHS conducted a training program in Morocco for customs officials. The program was assisted by a major U.S. corporation which found that by working with the U.S. government, local officials better understood the problem the company faced from counterfeiters. Subsequent to the program, Moroccan authorities seized more than 5,500 cartons of counterfeit versions of the company's products, valued at more than U.S. $88,000. The company believes that collaboration with the U.S. government helped call attention to counterfeiting problems the company faced within the country.

USPTO's Small Business Outreach Campaign. Participant surveys taken during the USPTO's Small Business Outreach Campaign indicates that it is popular and effective. Findings include:

- Awareness that the best time to apply for IP protection is before the product is brought to market jumped from 19% before the campaign to 85% at the end;

- More than half (52%) of small businesses in target markets say they have taken steps to ensure protection overseas, compared to 18% nationally;

Among those attending the Small Business Outreach Conferences, USPTO received the following feedback:

- "This is the best use of my taxes that I have ever seen." –*San Diego participant*

- "More government agencies should follow this model of bringing the government to the grassroots level." –*San Diego participant*

- "The whole program shattered the myth of lazy, apathetic federal government workers. Great program." –*Austin participant*

- "I would highly recommend this conference to all of my business partners." –*Miami participant*

VII. Overview of U.S. Government Functions and Accomplishments











A. Working with U.S. Industry and Engaging our Trading Partners







U.S. Department of Commerce

United States Patent and Trademark Office

I. SUMMARY OF AGENCY MISSION

The Department of Commerce's United States Patent and Trademark Office (USPTO) is responsible for promoting technological, scientific and industrial progress by administering the United States' patent and trademark systems and advocating strong intellectual property protection, not only in the United States, but around the world. The USPTO is focused on strengthening the U.S. economy by ensuring that innovators and entrepreneurs are rewarded for their creative efforts through free and fair markets, and that citizens of the U.S. and countries around the world have the opportunities and benefits provided by new technologies.

USPTO registers patents and trademarks; administers U.S. patent and trademark laws; advises the President of the United States, the Secretary of Commerce, and other U.S. Government agencies on intellectual property policy, protection and enforcement; and promotes stronger and more effective intellectual property protection around the world.

The USPTO promotes effective intellectual property protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong intellectual property provisions in free trade and other international agreements. It also provides training, education and capacity building programs designed to foster respect for intellectual property and encourage the development of strong intellectual property enforcement regimes by U.S. trading partners.

II. THE USPTO'S IPR ENFORCEMENT ACTIVITIES

Promoting Strong IPR Enforcement In and Through International Agreements

In support of the United States Trade Representative (USTR) and other U.S. Government agencies, the USPTO assists in the negotiation and drafting of intellectual property provisions of free trade and other international agreements. These provisions generally require U.S. trading partners to provide stronger, more effective protection for intellectual property than is required under the World Trade Organization's Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Specific USPTO activities in 2005 and 2006 in support of international trade agreements and international trade generally include:

- Supporting USTR on numerous negotiating rounds and/or implementing legislation for free trade agreements (FTA's) with: the Andean region, Morocco, Thailand, United Arab Emirates, and Oman;
- Preparing for and supporting USTR negotiations of trade and investment framework agreements (TIFAs) with Malaysia, Brunei, Turkey, and Philippines;
- Providing comments, analysis, and questions in connection with WTO TRIPS Council or Trade Policy Reviews;
- Analyzing IPR enforcement components, provisions and ramifications in international documents, including position papers or proposed policy statements of the World Health Organization, World Intellectual Property Organization, Asian-Pacific Economic Cooperation, Association of Southeast Asian Nations, and Caribbean Community and Common Market; and
- Advising USTR in connection with decisions made pursuant to the "Special 301" provisions of U.S. trade law.

Training and Capacity Building

The USPTO coordinates, organizes and participates in IPR training, IPR trade capacity building, and IPR technical assistance programs throughout the world, to aid the development of effective IP legal regimes. Activities towards this end include the following:

China

- Participated in the Ambassador's Roundtable Meeting and training in China in January 2005;
- Participated in a seminar on copyright protection and case strategies in China in January 2005;
- In March 2005, USPTO participated in a Seminar on Judicial Interpretation of IPR and IP Protection with officials in China;
- Participated in U.S. Chamber IP Enforcement seminars in Guangzhou and Nanjing, China in March 2005;
- In April 2005, participated in a meeting/training with local Chinese officials on IP Enforcement in Yiwu, China;
- Participated in a program with Temple University and Qinghua University on IP Enforcement for Chinese prosecutors in China in April 2005;
- Participated in training on trade secret protection for trade associations, law firms, and private investigators in Shanghai, China in June 2005;
- In June 2005, USPTO participated in a program on IP Criminal Law Training in Guangzhou, China;

- USPTO participated in American Chamber of Commerce Programs on IP Enforcement in Shanghai and Guangzhou, China in June 2005;

- In June and July 2005, participated in regional IPR roundtable forums in Guangzhou and Shenzhen;

- In August 2005, participated in an IP seminar in China;

- Organized and conducted IPR training for Chinese officials in the Pearl River Delta region of China in September 2005;

- Monitored trade fairs in Guangzhou, China in October 2005;

- In November 2005, USPTO participated in industry roundtable programs focusing on legal services, high tech and R&D, and trade secret issues in Shanghai;

- In November 2005, USPTO participated in an automotive anti-counterfeiting seminar in Shanghai, China;

- Participated in the Ambassador's Roundtable Meeting and training in China in December 2005;

- In February 2006, Under Secretary Jon Dudas hosted the head of China's State Intellectual Property Office and agreed to a work plan on future collaboration between offices;

- USPTO participated in Trade Fair Enforcement and a Customs Training program in China in April 2006;

- Conducted a Geographical Indications training conferences in China in May 2006;

- In June 2006, USPTO held a conference in China on Traditional Knowledge, Geographical Indicators, and Folklore; and

- Participated in meetings and training with IP judges from China in Alexandria, Virginia in May 2006.

The USPTO also continued to detail to China an attorney-advisor who is an expert in Chinese language, culture, and IPR law as a resident intellectual property attaché to the U.S. Embassy in Beijing, China. The official coordinates with Chinese Government officials and U.S. businesses in China to improve Chinese IPR laws, regulations, and enforcement procedures. In late 2006, there will be 2 additional IP attachés in China.

Asia (excluding China)

- Organized and conducted an Intellectual Property Enforcement Program for 28 judges from Vietnam in Ho Chi Minh City, Vietnam in February 2005;

- Participated in an Intellectual Property Education Program for 26 judges from Vietnam in Hanoi, Vietnam in February 2005;

- In March 2005, participated in an IP Judicial Education Program for 36 judges from four Asian countries in Bangkok, Thailand;

- Organized and participated in an Intellectual Property Seminar for 120 people from Thai industry in Bangkok, Thailand in March 2005;

- USPTO participated in a Digital Video Conference with Hong Kong regarding judicial interpretation on criminal IPR in March 2005;

- USPTO/ASEAN and U.S. Department of Justice IP Enforcement Workshop for 56 customs and enforcement officials from 10 Asian countries in Bangkok, Thailand in April 2005;

- Meeting and training with Government of Vietnam officials regarding amending IP enforcement laws in Vietnam in April 2005;

- Met with a representative from the Taiwan prosecutor's office regarding enforcement at the USPTO in May, 2005;

- In June 2005, organized and participated in USPTO/ASEAN Seminar on IP Enforcement for 67 participants from SME's from 10 countries in Thailand;

- USPTO/IIPI Intellectual Property Enforcement program in Bangladesh in July 2005;

- In September 2005, USPTO conducted regional IPR Enforcement training in Hong Kong for officials from 10 Asian countries;

- Participated in WIPO Asia Pacific Regional Symposium on IP Enforcement in Kuala Lumpur for 120 officials from 22 countries in September 2005;

- In September 2005, USPTO officials met with IP enforcement officials in Thailand and Malaysia;

- Organized and participated in a USPTO/ASEAN workshop in Bangkok, Thailand in September 2005;

- In October 2005, USPTO/ASEAN Workshop on IP Office Administration and Enforcement for 88 government officials from the Asian region from 12 countries;

- Discussion with the Philippines Optical Media Board regarding optical media piracy issues in Alexandria in January, 2006;

- USPTO conducted an IP training program for the Thai IP Court in Bangkok, Thailand in February 2006;
- Co-sponsored a USPTO/ASEAN IPR Enforcement Workshop in Bangkok in March 2006;
- In March 2006, conducted an IPR Enforcement program in Phnom Penh, Cambodia;
- Conducted an ASEAN +3 Training Seminar in March 2006 with the Japanese Copyright Office;
- Participated in an ASEAN Workshop on Optical Media Piracy for 85 regional government officials in Philippines in April 2006;
- In April 2006, participated in a U.S.-Government of Malaysia Roundtable event on IPR enforcement with government officials and business in Malaysia;
- Conducted lectures, meetings and training on IPR issues in China throughout Japan in April 2006;
- Participated in a Judicial Education Workshop on IP Law and Civil Procedures with U.S.AID for 70 judges in Vietnam;
- Conducted regional IPR Training for Law Enforcement Officials in Hong Kong in May 2006;
- In May 2006, USPTO conducted a training program on IPR Enforcement for 29 government officials in Jakarta, Indonesia; and
- Participated in an ASEAN Regional Workshop on IP Enforcement for prosecutors in Kuala Lumpur, Malaysia in May 2006.

In late 2006, the Department of Commerce/USPTO will post an IP attaché for the Asian region in the U.S. Embassy in Bangkok, Thailand.

The Americas and Caribbean

- Conducted a digital video conference (DVC) with officials from Suriname on IP laws, protection, and the value of strong IP laws in March 2005;

- In October 2005, participated in a USPTO/SIECA IP training for judges and prosecutors from 7 regional countries in Guatemala; and

- USPTO organized and participated in a program on the Enforcement of Intellectual Property Rights at the border for customs officials in Lima, Peru in October 2005.

- In November 2005, participated in a North America Biotechnology Initiative workshop on IP and Technology Transfer in Mexico City;

- In June 2006, participated in conferences for police and prosecutors in San Pedro Sula, Honduras, and for Honduran diplomats in Tegucigalpa, Honduras, focusing on IP enforcement obligations under DR-CAFTA.

In late 2006, the Department of Commerce/USPTO will post an IP attaché for South and Central America in the U.S. Embassy in Sao Paolo, Brazil.

Africa and the Middle East

- Organized and conducted a MEPI regional customs enforcement program with 11 Middle Eastern countries in Jordan in February 2005;

- In April 2005, organized and conducted an IP Judicial Training program on IPR Enforcement for over 50 judges in Algiers, Algeria;

- In April 2005, organized and conducted an IPR Enforcement seminar for over 245 graduating Magistrate students in Algiers, Algeria;

- USPTO-ASIP Symposium on Geographical Indications for 215 participants from 7 Middle Eastern countries in Abu Dhabi, UAE in April 2005;

- Organized and participated in an USPTO/MEPI IP Border Enforcement training for over 50 Algerian Customs officials in Algeria in June 2005;

- In June 2005, organized and participated in a USPTO/MEPI IP Enforcement training for over 70 Algerian judges in Oran, Algeria;

- Organized and participated in an IP Border Enforcement Program for 35 Moroccan Customs officials in Rabat, Morocco in July 2005;

- In September 2005, IPR Enforcement Seminar for Kuwaiti officials in Kuwait;

- Participated in a conference for 33 African officials regarding counterfeit medicines in Sub-Saharan Africa in Johannesburg, South Africa in September 2005;

- Co-sponsored a USPTO/MEPI regional judicial workshop for judges on IP Enforcement in Dubai, UAE in January, 2006;

- Co-sponsored a USPTO/MEPI regional workshop for prosecutors on IP Enforcement in Oman in January, 2006;

- In March 2006, co-sponsored a USPTO/MEPI IP Training Seminar on Pharmaceuticals for Drug, Regulatory, and Health Ministry officials in Tunisia;

- Co-sponsored a USPTO/MEPI program on Pharmaceuticals and IP in Algeria in March, 2006;
- In April 2006, conducted a Workshop on IP Enforcement for 70 enforcement officials in Kuwait; and
- Participated in a MEPI regional customs program for 43 government officials in Bahrain in May, 2006;
- In June 2006, organized and conducted a USPTO/MEPI Border Enforcement seminar for over 20 Moroccan Customs officials in Casablanca; and
- In June 2006, organized and conducted a USPTO/MEPI IPR Enforcement program for copyright enforcement officials in Rabat, Morocco.

In late 2006, the Department of Commerce/USPTO will post an IP attaché for Africa/Middle East region in the U.S. Embassy in Cairo, Egypt.

Europe, Russia/CIS, Central South Asia

- Participated in an Intellectual Property Enforcement Conference for 51 Azerbaijan government officials in Azerbaijan in March 2005;
- In April 2005, participated in a digital video conference with Russian officials on IPR Enforcement;
- Organized and participated in a USPTO/IIPI Intellectual Property Border Enforcement Workshop for customs officials and judges in Russia in June 2005;
- Participated in a WIPO-UNECE-WCO Subregional Seminar on Enforcement of IP Rights for 95 custom, judiciary, and police officials from 5 countries in Kazakhstan in July 2005;

- In June and September 2005, the USPTO organized and participated in a Russian Federation Border Enforcement Seminar for Russian customs officials on the protection of IP in St. Petersburg and Vladivostok, Russia;

- Participated in a digital video conference with Ukrainian IP Enforcement officials regarding IP enforcement in September 2005;

- In September 2005 participated in IPR roundtable in Madrid;

- In October 2005, participated in a CLDP Workshop on the Implementation and Coordination of IP Border Enforcement for 35 Customs officials from Russia and Ukraine;

- Met with Serbian judges at the USPTO regarding trademark protection in November 2005;

- In February 2006, USPTO participated in interagency IPR enforcement discussions with Russian government officials and industry in Moscow;

- Conducted an IP Enforcement program in Lithuania for government officials in April 2006;

- In April 2006, organized and conducted an IP Enforcement program for government officials from new EU member states on copyright infringement in the digital environment in Estonia;

- In April 2006, USPTO conducted an International IP Enforcement Training Event in Delhi, India; and

- In May 2006, USPTO participated in 4 IP Enforcement Training Seminars throughout India.

- In June 2006 organized and participated in a joint USPTO-UKPTO workshop on IPR border and market enforcement in Slovenia.

In late 2006, the Department of Commerce will post an IP attaché for Russia/CIS region in the U.S. embassy in Moscow, Russia. In addition, an IP attaché will be posted in the U.S. Embassy in New Delhi, India for the India/Central Asia region.

International Programs in the U.S.

In 2005, USPTO created the Global Intellectual Property Academy (GIPA), which consolidates and greatly expands the USPTO's curriculum of training and capacity building programs on intellectual property rights protection and enforcement. Through GIPA, USPTO brings foreign government officials including judges, prosecutors, police, customs officials, patent, trademark, and copyright officials and policy makers to the U.S. to learn, discuss, and strategize about global IPR protection and enforcement. The GIPA programs are offered by the USPTO acting in close cooperation with other U.S. federal government agencies.

- Organized and conducted a USPTO Enforcement Academy for 32 government officials from six Central American countries in February 2005;
- Organized and conducted a USPTO Visiting Scholars program for 26 government officials from 18 countries in April 2005;
- In May 2005, organized and conducted a USPTO Enforcement Academy and study tour for 20 judges from 8 Middle Eastern countries in the U.S.;
- Participated in the State Department's International Visitors Program in June 2005;
- In July 2005, organized and participated in a USPTO/WIPO IP Enforcement Program for Supreme Court and Appellate Court Judges from 23 countries;

- Participated in the State Department's International Visitors Program in July 2005;
- Organized and conducted a USPTO IP Enforcement Academy for 24 government officials from 18 countries from around the world in August 2005;
- In September 2005, organized and conducted an IP Enforcement Academy seminar for 21 government officials from 15 countries around the world;
- In October 2005, organized and conducted a Global Intellectual Property Academy Enforcement Seminar for 51 officials from CAFTA-DR countries plus Belize and Panama;
- In October 2005, organized and conducted an IP Visiting Scholars Program at the USPTO for 33 government officials from 21 countries;
- In December 2005, the USPTO organized and conducted the Global Intellectual Property Academy Enforcement Seminar for the MEPI region for 32 officials from 10 countries in Alexandria, VA;
- Conducted an IPR enforcement training session for 30 government participants as part of the Global Intellectual Property Academy in Alexandria in January 2006;
- In February 2006, USPTO conducted a Global Intellectual Property Academy Visiting Scholars Program in Alexandria for 29 foreign government officials;
- Conducted an enforcement training session for 31 foreign government officials as part of the Global Intellectual Property Academy in Alexandria in February, 2006;
- Participated in the State Department's International Visitors Program in March 2006;
- In March 2006, participated in CAFTA-DR training programs for Latin American officials in Florida;

- Sponsored a GIPA program on IP Enforcement for 31 officials in Alexandria in March 2006;

- GIPA Program on patents for 28 foreign government officials in Alexandria in May 2006;

- Participated in the Department of Commerce's Conference "China: Risks, Rewards, and How to Win" in Houston in May 2006; and

- In May 2006, organized one day program on IPR at U.S. Court of Appeals for the Federal Circuit, in conjunction with CLDP program for Tunisian judges;

- In June 2006, organized and conducted week-long Enforcement seminar followed by a study tour of the U.S. for 21 judges and prosecutors from throughout the Middle East and North Africa.

Training for U.S. Government Personnel

The USPTO also participates in and coordinates training for U.S. Government officials on intellectual property and intellectual property enforcement. For example:

- In May 2005, participated in State Department IP and Telecom training for Foreign Service Officers based in Africa;

- In December 2005, USPTO participated in the State Department IP training for Foreign Service Officers in Latin America;

- In FY 2005, the USPTO briefed more than 350 offices of the U.S. Congress including authorizing and appropriating committees on intellectual property matters ranging from patent reform and trademark disputes to trade agreements and international IP enforcement; and

- In June 2006, the USPTO held a two-day conference for U.S. government personnel on intellectual property protection in China.

STOP! Hotline for IP Assistance

As part of the Bush Administration's Strategy Targeting Organized Piracy (STOP!) initiative, the USPTO manages a hotline (1-866-999-HALT) that helps small-and medium-sized businesses leverage the resources of the U.S. Government to protect their intellectual property rights in the U.S. and abroad. Callers receive information from IP attorneys at the USPTO with regional expertise on how to secure patents, trademarks, and copyrights, and on enforcement of these rights.

Calls received on the STOP! Hotline:

- In FY 2005, the Hotline received 955 calls;

- In FY 2006, through June 14, the Hotline received 965 calls.

Training for U.S. Businesses and Industry

As part of the STOP! initiative, the USPTO began reaching out to Small and Medium-sized Enterprises ("SME's") through programs around the country on the basics of IP and IP protection entitled *Conference on Intellectual Property in the Global Marketplace*. The program provides presentations on the basics of patent, trademark, and copyright and in-depth information on enforcing and protecting IP both domestically and abroad. At each location, a local Department of Justice Attorney speaks about enforcement. These conferences were held:

- In Salt Lake City in May 2005;
- In Phoenix in July 2005;
- In Austin in September 2005;
- In Miami in September 2005;
- In San Diego in February 2006;
- In Northern Virginia in March 2006;
- In Columbus, OH in May 2006; and
- In Nashville in July 2006.

In conjunction with these programs, the USPTO reaches out to media outlets in each city to reach as broad of an audience as possible. The USPTO also launched a website for small businesses at ***www.stopfakes.gov/smallbusiness***. The site is designed to answer common questions of small businesses so they can better identify and address their intellectual property protection needs.

Additionally, the USPTO also began a China focused program in several U.S. cities for companies ranging from small businesses contemplating entering the Chinese market to large corporations with an established presence in China. Topics covered include a review of recent laws and regulations promulgated by the Chinese Government that affect protection and enforcement of intellectual property. In 2005-2006, these conferences were held:

- In Alexandria, Virginia in February 2005;
- In Baltimore in April 2005;
- In Detroit in June 2005;
- In Atlanta in March 2006;
- In Chicago in May, 2006; and
- In Seattle in July, 2006.

The USPTO also participated in conferences for industries that specifically were concerned with IP enforcement. Some of these conferences included:

- The Motor Equipment Manufacturing Association's Meeting in Detroit in January 2005;
- The IACC Anti-Counterfeiting Summit in New York City in February 2005;
- The AIPLA Conference in Philadelphia in May 2005;
- The U.S. Chamber of Commerce's Conference on Trade Roots in Seattle in September 2005;
- The American Apparel and Footwear Association Anti-Counterfeiting Conference in New York City in November 2005;
- In February 2006, the USPTO participated in the American Made Alliance's "The Buyer's Market of American Craft" trade show in Philadelphia;

- The National Confectioners Association Annual Meeting in Orlando in March 2006;
- The National Association of Manufacturers Meeting in Chicago in March 2006;
- In May 2006, IACC Anti-Counterfeiting Conference in Toronto; and
- The International Trademark Association Conference in Toronto in May 2006.

III. ACCOMPLISHMENTS

In 2006, the head of the Intellectual Property Unit of the Philippines Bureau of Customs attended a USPTO Global Intellectual Property Academy Enforcement Seminar. Upon returning to the Philippines he shared all that he had learned with his fellow customs personnel, in order to develop new customs enforcement strategies. This led to an operation where Philippines Customs raided a mall and confiscated counterfeit goods worth between U.S. $3-4 million. On a subsequent raid, 26 warehouses were searched, and Customs seized goods estimated to be worth U.S. $1 million.

In 2006, the USPTO, with the help of the Department of Homeland Security, put on a program in Morocco for customs officials. The program was assisted by a major U.S. corporation who found that by working with the U.S. government, local officials better understood the problem the company faced from counterfeiters. Subsequent to the program, Moroccan authorities seized more than 5,000 cartons of the company's counterfeit goods valued at more than U.S. $88,000. The company believes that collaboration with the U.S. Government helped call attention to counterfeiting problems the company faced within the country.

The USPTO has worked with CAFTA-DR countries to implement strong IP laws and has provided enforcement training. As a result, in April 2006, El Salvador the first CAFTA-DR country to pass

CAFTA-DR reforms to its IP laws reported their first raids ever conducted under the ex officio authority. As a result of "Operation Cyclone," Salvadoran police netted 8,500 confiscated DVDs.

The USPTO has received positive feedback regarding its Small Business Outreach Campaign. In 2005, research was conducted among the cities visited during the campaign. Among the findings of small businesses in these communities:

- Awareness that the best time to apply for IP protection is before the product is brought to market jumped from 19% before the campaign to 85% at the end;

- More than half (52%) of small businesses in target markets say they have taken steps to ensure protection overseas, compared to 18% nationally;

- Among small businesses that have patent, trademark, or copyright protection, only 18% of those in the national sample said they have taken steps to ensure protection overseas, compared to 52% among target markets.

IV. LOOKING FORWARD

In FY 2006, the USPTO will have conducted 15 Global Intellectual Property Academy Programs for foreign officials at its headquarters in Alexandria. The USPTO will continue to provide IPR training, trade capacity building, and technical assistance in the U.S. and abroad. In 2007, the USPTO plans to conduct 21 such programs domestically as well as countless other programs around the world.

In the coming year, the USPTO will continue to reach out to businesses and IP stakeholders. The office plans to hold more outreach events for Small Business Education as well as the China focused program for business. The USPTO will further educate business by increasing its presence at trade shows.

U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

I. SUMMARY OF AGENCY MISSION

Intellectual Property Compliance and Monitoring

The U.S. Department of Commerce's 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 with and implementation of international trade agreements by foreign governments, especially those agreements pertaining to intellectual property rights (IPR) enforcement.

ITA addresses intellectual property rights issues through close coordination between its Market Access and Compliance (MAC) unit and the U.S. and Foreign Commercial Service (US&FCS) unit. In 2005, ITA consolidated its existing IPR policy and compliance staff and resources into an IPR Office (OIPR) to more intensively focus its efforts in light of the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. The OIPR works with U.S. exporters and interagency colleagues, here in the United States and through our Embassies abroad, to develop strategies for successful resolution of IPR issues. MAC, through the OIPR and country-specific specialists, has the coordinating role within ITA on multilateral and bilateral efforts to promote effective worldwide protection and enforcement of intellectual property rights. The US&FCS provides vital linkages through its domestic and overseas offices. ITA works closely with the Office of the U.S. Trade Representative (USTR), the United States Patent and Trademark Office (USPTO), the U.S. Department of State's Office of Intellectual Property Enforcement, the U.S. Copyright Office, and the private sector to ensure a consistent and effective approach to improving intellectual property rights among our trading partners.

In conjunction with these agencies and industry, ITA helps to develop and implement 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. OIPR is responsible for coordinating the development of the Commerce Department's position concerning the status of countries under Special 301. ITA staff participate in developing IP "action plans" outlining key elements for foreign governments to implement in order to improve their IP regimes, and in 2005 USTR provided such action plans to Bulgaria, Canada, Indonesia, Korea, Paraguay, Philippines, Russia, Saudi Arabia, Slovak Republic, and Ukraine. Action plans are designed to identify specific benchmarks for improvement, such as increasing enforcement by closing down notorious pirate markets, creating and enforcing meaningful and deterrent penalties for IPR violators, or implementing certain types of legislation to cover inadequate areas of a country's IPR regime.

OIPR and MAC's country specialists monitor countries' implementation of various intellectual property agreements, including the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and bilateral IP agreements, such as those with Bulgaria, China, Croatia, Paraguay, and Ukraine. Additionally, country compliance teams monitor our Free Trade Agreement (FTA) partners' compliance with their FTA commitments and ensure that U.S. exporters receive fair treatment under these agreements, including enhanced protection of intellectual property rights. Further, OIPR monitors country implementation of 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. ITA staff and senior officials raise these and other IPR concerns during frequent bilateral consultations and ensure coordination among U.S. Government agencies.

OIPR also plays an important role in reviewing Generalized System of Preferences (GSP) petitions submitted by industry. OIPR is responsible for coordinating the development of the Commerce Department's position regarding whether to accept or reject an IP country practice petition and participates in the bilateral discussions with countries under review. In FY 2005, the U.S. Government reviewed IP country practice petitions for Brazil, Dominican Republic, India, Kazakhstan, Lebanon, Pakistan, Russia, Ukraine, and Uzbekistan.

OIPR represents the Commerce Department on official government delegations at meetings of the World Trade Organization's TRIPS Council, which provides an opportunity to raise concerns with and obtain information on countries' efforts to comply with TRIPS obligations. In addition, ITA staff participate in and provide policy input for IP-related bilateral and regional negotiations and consultations, which include FTAs, bilateral investment treaties (BITs), and trade and investment framework agreements (TIFAs).

ITA officials and staff meet frequently with our trading partners to help advance our intellectual property interests overseas. For example, in FY 2005, ITA engaged the following countries:

- Brazil, to address the tremendous patent backlog and stress the importance of improving domestic and border enforcement for copyrighted materials and proper government use of copyrighted software;

- Canada, to stress the importance of effective border enforcement against pirated and counterfeit goods, to hasten the ratification and implementation of the WCT and WPPT, and to protect confidential test data;

- Canada and Mexico, to continue efforts under the intellectual property working group of the Security and Prosperity Partnership (SPP);

- Chile, to address significant concerns regarding the implementation of the pharmaceutical data protection and patent linkage provisions of the U.S.-Chile FTA;

- China, to improve its enforcement against pirated and counterfeit goods;

- Egypt, to engage a broad range of government and private sector institutions on the importance of IPR in both the media and pharmaceutical sectors;

- India, to promote innovation, creativity, and technological advancement by providing a vibrant IPR regime, including the provision of pharmaceutical data protection, and to cooperate in the

field of IPR to include capacity building activities, human resource development and public awareness programs;

- Indonesia, to address the need for sustained IPR enforcement, especially in the area of optical disc piracy;

- Iraq, to encourage IP professionals to continue to attend USPTO's Global Intellectual Property Academy (GIPA) programs;

- Israel, to maintain national treatment for sound recordings, and to continue discussion of Israel's data protection regime for pharmaceuticals and patent term extension;

- Japan, to establish the "Joint Department of Commerce-Ministry of Economy, Trade and Investment Initiative for Enhanced Cooperation on IPR Protection and Enforcement and Other Global Issues";

- Latvia, to engage the Intellectual Property Council, established by the Latvian Cabinet of Ministers, in coordination with industry representatives and the development and implementation of an IPR activity plan;

- Lebanon, to improve domestic and border IPR enforcement, address optical media and cable piracy, and stop registration of unauthorized pharmaceutical copies;

- Malaysia, to take steps toward curtailing Malaysia's high piracy rates for optical media, and to address its role as an exporter of counterfeit and pirated products, especially entertainment software;

- Pakistan, to discuss implementation of a data protection regime and patent linkage system;

- Paraguay, to develop, monitor, and implement its IPR Memorandum of Understanding (MOU) with the United States;

- Peru, to coordinate the first ever Latin America Customs IPR Training workshop provided by USPTO to 80 Government of Peru officials, to establish a mutually acceptable solution regarding levies on blank recording media, and to open communication regarding the legal environment for pharmaceuticals in Peru;

- Philippines, to address the need for sustained IPR enforcement, and to provide U.S. Government input regarding the potential impact a draft Senate Bill may have on pharmaceutical patentee rights;

- Russia, to repeatedly raise concerns with its Civil Code reforms, data protection for pharmaceuticals, weak border enforcement, and unauthorized production and export of pirated optical media;

- Saudi Arabia, to address pharmaceutical concerns with the implementation of their patent law and to increase transparency in the judicial process;

- Singapore, to pass amendments addressing U.S. concerns regarding conformity with certain IPR provisions of the U.S.-Singapore FTA;

- Slovakia, to promote the creation of a patent linkage regime and create a permanent secure storage facility for confidential test data;

- South Korea, to amend the Enforcement Regulations of the Copyright Act of Korea, in an effort to address the problem of unauthorized public performances of motion pictures in motels, computer game rooms, and public baths and saunas;

- Spain, to organize a conference focusing on the enforcement of copyrights, and to discuss concerns with IPR enforcement in Spain with Secretary Gutierrez's Spanish counterpart;

- Thailand, to address concerns regarding optical media legislation, draft copyright amendments, copyright and trademark enforcement, data protection, and legislation on geographical indications;

- Tunisia, to discuss aspects of its data protection law for pharmaceuticals and agricultural chemicals;

- Turkey, to implement data protection for pharmaceuticals in compliance with TRIPS obligations;

- Ukraine, to pass amendments to its Optical Media Licensing Law, and to establish and operate a U.S. copyright industry - Government of Ukraine Enforcement Cooperation Group.

Additionally, intellectual property issues were raised bilaterally with Colombia, Dominican Republic, El Salvador, Guatemala, Morocco, Nicaragua, and Oman. 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. rightsholders.

II. COORDINATION WITH U.S. INDUSTRY

International Trade Administration's Compliance Initiative

International compliance and enforcement of U.S. trade agreements are the highest priorities of ITA. ITA works with both small and medium-sized enterprises (SMEs) and large U.S. companies and industry associations to ensure that trade problems related to IPR are promptly and aggressively addressed. Through its compliance program, ITA works with industry in a variety of ways, including:

- Actively researching and analyzing information supplied by companies to ascertain IP problems facing industry;

- Applying expertise to develop an implementation strategy to resolve problems;

- Working with industry associations to raise concerns with our trading partners regarding proposed and existing IPR legislation; 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.

The Department of Commerce, in collaboration with the U.S. Government agencies with IP policy oversight, published a brochure, "Protect Your Intellectual Property: Stop Trade in Fakes!" with key contact information to educate and assist U.S. firms in protecting and enforcing intellectual property both in the U.S. and overseas. Commerce also established a special telephone and web address where SMEs can contact DOC experts for assistance dealing with companies' international intellectual property concerns. These resources function in conjunction with Commerce's Compliance Program. During FY 2005, ITA staff has worked with companies with IPR problems in Canada, Australia, Bangladesh, Brazil, China, Colombia, Egypt, Germany, Guatemala, India, Lithuania, Malaysia, Mexico, Morocco, Peru, Russia, South Korea, Sweden, and Turkey. In addition to pressing our trading partners on a government-to-government basis to effectively implement and enforce their laws governing IPR protection, ITA also regularly provides information to assist private entities that choose litigation to enforce their rights under the IP laws of the countries where infringement occurs.

As part of ITA's compliance initiative, OIPR's sister office, the Trade Compliance Center (TCC) operates the 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 including IPR-related issues, from members and notifies the TCC and OIPR 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 to take part in the Compliance Liaison Program. Congressional and Senatorial offices and countrywide U.S. Export Assistance Centers (U.S.EACs) also actively participate in the Compliance Liaison Program.

Industry Trade Advisory Committee on IPR

One of the ways the Department of Commerce seeks input on various intellectual property protection outreach activities is through the Industry Trade Advisory Committee on Intellectual Property Rights (ITAC-15). This committee is one of sixteen Industry Trade Advisory Committees (ITACs) jointly administered by the Department of Commerce and USTR. ITAC-15 plays an active role in advising the U.S. Government on intellectual property trade negotiating objectives and priorities. Most recently, advice was sought during FTA negotiations with Australia, Central America, Dominican Republic, and Morocco; the WTO Doha Round of trade negotiations; and, for other bilateral and multilateral negotiations. Industry representatives serving on ITAC-15 provide advice and identify IP concerns in countries that are eligible beneficiaries under the Generalized System of Preferences (GSP) program. Advising U.S. trade negotiators on WTO members' implementation of and compliance with the WTO TRIPS Agreement is a priority issue of the Committee. In particular, the committee provides advice on WTO TRIPS Council compliance reviews and WTO dispute settlement cases. ITAC-15 also plays an essential role in channeling private sector advice into the annual Special 301 Review.

III. INTERNATIONAL INTELLECTUAL PROPERTY REGIONAL PROGRAMS

China: Through the STOP! initiative and our related policy efforts, ITA assists U.S. companies, especially SMEs, with protecting and enforcing their IPR in China.

- ITA's China office participates in IPR-related domestic programs and conducts many one-on-one consultations with companies. Many of these programs are done in conjunction with the USPTO and the U.S. Foreign & Commercial Service's "Doing Business in China" outreach seminars. Past programs were organized in: Chicago, IL; Atlanta, GA; Washington, DC; Manchester, NH; Cincinnati, OH; Cleveland, OH; Kansas City, MO; Indianapolis, IN; Dallas, TX; Austin, TX; Houston, TX; Newark, NJ; Minneapolis, MN; Dallas, TX; Newport Beach, CA; Atlanta, GA; Manhattan, NY; and Tampa, FL. ITA also launched a web-based seminar series on IPR issues in

China that any interested U.S. company can access online. In September 2004, an IPR videoconference was conducted between USPTO, MAC's China Office, USTR and 34 judges from Guangzhou to discuss IPR related topics.

- ITA offices will work closely with the Commerce Department's IP attachés to develop and implement IPR-related trade policies and to address IPR market access and compliance cases. In China these attachés will assist U.S. businesses with navigating China's IPR regime and ensure China lives up to its international commitments.

- ITA is working through a variety of channels to promote the *China IPR Legal Advisory Program*. Launched in November 2005 in partnership with several private sector organizations, the program provides one hour of free legal counseling for SMEs on IPR in China.

- ITA continues to utilize the "Case Referral Mechanism" (CRM) for bringing individual U.S. companies' IPR complaints to the attention of China's Ministry of Commerce. To date, five cases have been submitted that demonstrate long-standing, serious IP problems experienced by U.S. companies. The U.S. companies involved in this process have found the mechanism to be effective. The CRM has helped facilitate the communication of important guidance from Chinese IPR agencies to assist these U.S. companies with properly enforcing their IPR under Chinese laws and regulations. At the April 2006 Joint Commission on Commerce and Trade, China renewed its commitment to vigorously pursue cases raised through the CRM.

Africa: The Department of Commerce's Office of Africa and the U.S. Chamber of Commerce launched a Sub-Saharan Africa Intellectual Property Protection Initiative, which began with an introductory kick-off seminar on April 25, 2006. ITA's Office of Africa also organized a workshop at the annual African Growth and Opportunity Act Forum on June 6, 2006, which was attended by 37 African Trade Ministers. There are plans for a follow-up event to take place in Sub-Saharan Africa this fall to bring further attention to the importance of IP protection in the region.

Additionally, the Office of Africa is working closely with the U.S. Agency for International Development (U.S.AID) to respond to several West African countries' requests for IPR capacity building. The U.S.AID-funded African Global Competitiveness Initiative will provide funding for selected proposals on capacity building in Sub-Saharan African nations. The Office of Africa is working closely with the Department's Commercial Law & Development Program (CLDP) and the USPTO to craft project proposals addressing these requests.

Russia: ITA continues to hold periodic discussions, both in Russia and the United States, with representatives of U.S. industry associations and individual U.S. companies to obtain information on the situation and trends in Russia's enforcement of its IPR-related laws and regulations. From these discussions, ITA shares relevant feedback with other U.S. Government agencies and U.S. Embassy Moscow in preparation for government-to-government discussions with Russian officials. In September 2005, ITA's Russia office traveled to Russia to meet with representatives from the Russian copyright and trademark industries, including independent Russian record labels that face great difficulty combating music piracy, and to meet with the head of the American Chamber of Commerce Committee on Customs. The Russia office returned to Moscow shortly thereafter to represent the Commerce Department in an IPR working group, chaired by AUSTR Sean Donnelly and the head of Rospatent. In April 2006, the IPR working group traveled to Washington, D.C. to continue discussions regarding how to improve IPR protection in Russia.

An IPR attaché will be placed in Embassy Moscow during 2007. USPTO, the Resident Legal Advisor at Embassy Moscow, and the Commercial Law Development Program, will work with the attaché to provide technical assistance in an effort to bolster domestic enforcement and protection of IPR, particularly targeting law enforcement and customs authorities.

U.S. and Foreign Commercial Service IPR Initiatives

The Department of Commerce's US&FCS, through its mandate to promote U.S. exports, represent businesses internationally, and help businesses find qualified partners, is committed to serving the U.S. business community.

As part of the Strategy Targeting Organized Piracy (STOP!) Initiative, MAC is working with the US&FCS and USPTO to promote protection of IPR at domestic and international trade fairs. The program will include efforts to educate trade fair organizers, exhibitors, and attendees about IPR and to help U.S. businesses guard against infringement at trade fairs. ITA will continue to explore opportunities to promote IPR protection at trade fairs and pavilions that Commerce operates, certifies, or supports, and to demonstrate the U.S. commitment to protecting intellectual property and respecting the rule of law.

Commerce has assigned four US&FCS officers as IPR Specialists, posted across the country, to work with internal specialists in ITA and USPTO to help U.S. exporters understand both international and national IPR agreements. These specialists also coordinate and promote IPR-related training and education events for the tens of thousands of business clients served by US&FCS. For example, in May 2006, US&FCS hosted a presentation in Chicago at the "Protecting Your Intellectual Property in China & the Global Marketplace" seminar, and arranged for U.S. businesses to speak about their success in using US&FCS support in reclaiming a stolen trademark from a former Chinese distributor and in acquiring due diligence skills in international IPR protection. In March 2006, US&FCS facilitated an event at Disney's Contemporary Resort for Under Secretary Jon Dudas, attended by legal counsel for large and medium sized companies in the Greater Orlando Area. Under Secretary Dudas presented the President's economic agenda and discussed the importance of IPR to international competitiveness. He also reviewed the services available from the U.S. Patent and Trademark Office and US&FCS.

IV. 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 IPR. In particular, CLDP assists countries in their compliance efforts with the WTO TRIPS Agreement. In FY 2005, CLDP organized the following IPR activities:

Tunisia: Technology Management and Transfer

CLDP supported technology management and technology transfer initiatives that resulted in the development of Tunisian intellectual property rights, which are now viewed as a necessary component in the establishment of technology-based SMEs, a priority for the country.

Russia and Ukraine: Border Enforcement Officials Workshop

As part of CLDP's ongoing support of Russia and Ukraine's efforts to make the protection of IPR under their Commercial Codes more compliant with the TRIPS Agreement, CLDP conducted a five-day workshop for Russian and Ukrainian border enforcement officials nominated by the Russian and Ukrainian State Customs Services. The workshop was designed to provide the delegations with an opportunity to consult with their U.S. counterparts on current customs and border protection policies, techniques, and initiatives that lead to more effective border protection. The delegates also were familiarized with border protection requirements under TRIPS, and opened dialogue between the two countries on how to effectively stem the flow of illegal products across their borders. Experts on IPR protection and enforcement from the United States Patent and Trademark Office and the U.S. Customs and Border Protection shared their expertise with the delegates.

Russia: IPR Manual

Enforcement of IPR is an area that continues to be a serious issue in Russia's accession. CLDP, working with Russia's Patent and Trademark office (Rospatent), completed a comprehensive training manual to improve the knowledge and technical skills of intellectual property lawyers, regulators, and judges who are responsible for managing and implementing Russia's IP laws. This manual will also increase the knowledge of the rightsholders who are dependent on the protection of those laws. CLDP is currently working with Rospatent on the final details to publish the manual in Russian.

Ukraine: Rightsholders Negotiations

CLDP co-sponsored a one-day seminar in Brussels in May 2006, co-organized by Eversheds LLP and the Ukraine Embassy in Brussels. Senior Ukrainian IPR officials, rightsholders, representatives of rightsholders' organizations, and government officials based in Brussels attended the seminar. The seminar allowed an exchange of views between rightsholders and Ukrainian officials on the current state of IPR protection in Ukraine.

Ukraine: Appellate Proceedings Workshop

CLDP conducted a program for Ukrainian intellectual property officials. The program was designed to acquaint Ukrainian intellectual property officials with the substantive and administrative principles and processes of intellectual property appellate proceedings. Coordinating with USPTO, CLDP arranged presentations by USPTO staff and the visiting officials observed a Trademark Appellate Hearing and a Hearing at the U.S. Court of Appeals.

UNITED STATES DEPARTMENT OF STATE

BUREAU OF ECONOMIC BUSINESS & AGRICULTURAL AFFAIRS

BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS

I. SUMMARY OF AGENCY MISSION

The Department of State works closely with other U.S. Government agencies in Washington and abroad to develop and implement U.S. international intellectual property rights (IPR) policy. The Department of State contributes to the enforcement of intellectual property rights (IPR) and the fight against intellectual property (IP) theft overseas through our embassies, consulates, and missions.

The State Department:

- Plays an active role in shaping the international protection and enforcement policy of the U.S. government;
- Represents U.S. views in bilateral and multilateral settings;
- Builds international partnerships for IPR enforcement and helps develop new public-private partnerships;
- Implements the objectives and policies of our sister agencies overseas;
- Advocates IP interests on behalf of U.S. businesses and serves as first responder for U.S. businesses victimized by IP theft;

- Monitors third-country IP enforcement records on the ground and shares that information with the interagency IP team;
- Lobbies for improved IP-protective legislative and regulatory frameworks in host countries;
- Tracks the implementation of U.S. free trade agreement (FTA) IP provisions;
- Develops, funds and delivers IP training to our embassy officers and foreign government officials.

II. GENERAL IPR ACTIVITIES

The Department of State works with other agencies to implement the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. On a daily basis, U.S. embassies and consulates work with host governments at the highest levels on IP priorities identified by the U.S. Government and U.S. industries. The issues range from lobbying government officials and parliamentarians to strengthen their nation's legal and regulatory IP regimes (including, at times, assistance in drafting new legislation); working with law enforcement officials and the judiciary to increase their commitment and capacity to enforce IPR laws; and advocating ratification and implementation of international agreements.

The Department of State draws upon its broad experience promoting U.S. foreign policy objectives, as well as its human resources in Washington (Desk Officers) and overseas (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 U.S. Government agencies and bring considerable persuasive force to bear to achieve U.S. objectives. For example, U.S. Ambassadors work to bring consistent pressure for IPR reform on trading partners on the Special 301 Priority Watch and Watch Lists. Within U.S. embassies and consulates, State Department Officers work with Department of Justice (DOJ) Resident Legal Advisers, Federal Bureau of Investigation (FBI) Legal Attachés, Department of Homeland Security (DHS) Customs Attachés, and Department of

Commerce (DOC) Foreign Commercial Service Officers to leverage our effectiveness and ability to improve IP enforcement in the host country.

The State Department maintains an "open door" policy toward U.S. industries, and supports their efforts to protect and enforce their intellectual property rights abroad. In this respect, the State Department routinely interacts with foreign governments, raising U.S. industry concerns consistently and forcefully – both on a specific case level when violations occur, and more generally in addressing structural shortcomings.

The State Department is also an active "salesman" of the value of protecting IPR, showing other governments and industry why it is in their own self-interest to combat IP theft. State Department officials abroad work to build domestic coalitions to press for strong and sustainable IP enforcement. This includes programs to help developing country officials and citizens understand how the protection of innovation can contribute to long term economic development and the health and safety of consumers.

State developed and sponsors the International IPR Training Database website, coordinates training and technical assistance programs to priority nations/regions, leads the IPR Training Coordination Group (TCG), and funds targeted training and technical assistance programs for foreign law enforcement officers. Inside State, the Bureaus of International Narcotics and Law Enforcement Affairs (INL) and Economic and Business Affairs (EB) target crime funds that Congress has earmarked for comprehensive IPR training and technical assistance programs abroad. These funds are aimed at building the criminal enforcement capacity of foreign law enforcement partners. Initiatives range from providing legislative drafting assistance and working with executive and legislative officials to secure the passage of IP protective laws, to building strong enforcement regimes through the provision of government-to-government training for police, prosecutors, customs and border officials and judges to implement and enforce these laws. In addition to administering these criminal enforcement training funds, INL also works with major law enforcement entities in the U.S. and internationally, including INTERPOL and the G8 Anti-Crime and Terrorism Group, to address the protection and enforcement of IPR.

As mandated by Congress in the FY2005 budget, the State Department established the Office of International Intellectual Property Enforcement (IPE), in the Bureau of Economic and Business Affairs (EB) to coordinate IP issues. The office was created to raise the profile of IP issues within the agency. With this change, IP issues are now placed on an equal organizational footing with multilateral, bilateral and agricultural trade issues in State Department deliberations.

EB IPR officers work with other bureaus in the State Department, and with the State Department's training institute, the National Foreign Affairs Training Center (NFATC), to ensure that Embassy officers receive the education and support necessary to effectively represent U.S. interests in this increasingly complex subject matter.

III. ACCOMPLISHMENTS

Building International Partnerships

The State Department has:

- Played a key role in negotiating concrete, results-oriented IP enforcement action plans for G8 and U.S.-EU coordination;
- Guided establishment of optimal parameters for an OECD study on the global economic impact of IP crime;
- Helped strengthen APEC IP enforcement guidelines; and
- Contributed significantly, through the intensive work of Embassy teams, to key IP enforcement framework improvements in Kazakhstan, Kuwait, Pakistan, Philippines, Slovakia, Ukraine, and Uruguay.

Expanding Public Outreach and Awareness

In the area of public diplomacy, the State Department has:

- Created and launched the "Musical Ambassadors for IPR" international program, which employs an existing public-diplomacy funded program for U.S. musicians touring abroad to deliver "protect IP and protect your local culture" message to international musicians and audiences;
- Addressed several industry events, including domestic small and medium-sized business audiences
- Placed op-eds on IP's relevance to local interests in India and across Latin America, reaching well over a million readers;
- Increased the availability of country-specific, free, online Embassy IP "toolkits" for U.S. businesses to protect themselves in foreign markets; and
- Developed IP-awareness educational programs for children.

Building Embassy Effectiveness as First Responders and IP Advocates

The Department of State significantly expanded training of Embassy staffs in IPR issues in FY 2006 of the NIPLECC report. This training will increase their effectiveness as first responders to U.S. industry, as implementers of other agencies' IP agendas, as advocates for enforcement improvements, and as outreach specialists in building support for IP protection abroad.

In 2005, State staged two major IP training events for our officers in Africa and Latin America, bringing them together with U.S. Government IP experts and U.S. industry representatives. New tactics were identified and enforcement partnerships formed. Recognizing the contribution these events have made to

U.S. Government effectiveness on IP issues in the field, State has made this cycle of training events permanent and in 2006 will conduct its next training event for officers serving in the Middle East and Europe.

State has also:

- Expanded the scope and accessibility of an internal webpage that helps field officers exchange best practices and lessons learned, learn about the latest developments in international IP advocacy, and reach other agency's IPR subject matter experts;

- Started a virtual newsletter to IP-responsible officers around the world to report on the latest developments in IP protection and introduce new models for coalition-building internationally;

- Launched an IP distance-learning course to enable at-post officers to improve their substantive knowledge of IP issues cost-effectively, and

- Facilitating placement of new IPR attachés in China, Brazil, Egypt, Thailand, India and Russia.

Strengthening International Law Enforcement Capacity

State's Bureaus of Economic and Business Affairs and International and Law Enforcement Affairs have in the last year:

- Expanded the membership and database of the public-private U.S. Training Coordination Group (TCG – see below);

- Identified and launched, in FY 2005, 15 new technical Global Intellectual Property Academy assistance projects, worth $2.5 million, to build foreign law enforcement capacity in the IP arena;

- Identified in FY 2006 several additional technical assistance projects, worth $3 million, to build foreign law enforcement capacity in the IP arena; and

- Realigned project distribution to reflect evolving U.S. enforcement priorities.

IV. ADDITIONAL INITIATIVES

IPR Training Coordination Group (TCG)

The EB and 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 (USTR), the FBI, the DHS/Bureau of Customs and Border Protection (formerly U.S. Customs Service), the U.S. Patent and Trademark Office, the U.S. Agency for International Development, and the Copyright Office all participate in the IPR TCG. The International Intellectual Property Alliance, the U.S. Chambers of Commerce, the International Anti-Counterfeiting Coalition, and umbrella trade organizations like the Business Software Alliance and the Pharmaceutical Researchers and Manufacturers' Association, are some of the private sector participants.

The IPR TCG is an excellent forum for key training providers to exchange information on training and technical assistance activities in the context of priorities identified in the Special 301 and WTO TRIPS processes, for the State Department to share information from overseas posts, and for TCG members to contribute expertise in discussions of issues that all assistance providers confront. Although the IPR TCG has no funding of its own, members are free to consider information gathered during these informal TCG discussions when deciding where to target their own programs and activities to combat IPR crime. The IPR TCG process reflects a shared commitment by each of its members to maintaining a common knowledge base as we each leverage our own limited training resources, ensuring the least possible redundancy.

International IPR Training Database (available at *www.training.ipr.gov*)

The State Department, after extensive consultation with NIPLECC members and other members of the IPR TCG, sponsored the design of a website to host a database of IPR training provided by the U.S. Government, private industry, and NGO partners to other countries. The State Department administers this database, which makes IPR training information immediately available to anybody with access to the Internet. U.S. Government and other registered U.S. IPR training providers may add and update information about their own programs. The database continues to expand, enabling NIPLECC and TCG members to plan better, share resources, and effectively respond to priority needs. This valuable tool fosters coordination among NIPLECC members, other U.S. Government providers of IPR training, and U.S. industry regarding their efforts to improve intellectual property protection worldwide. It also demonstrates that the U.S. is committed to providing significant resources to help other countries develop the capacity to protect both foreign and domestic IPR.

International Training and Technical Assistance to Law Enforcement

The State Department administers Congressionally-earmarked International Narcotics and Law Enforcement funds (INLE) targeted for training and technical assistance programs in non-OECD countries for investigators, law enforcement officers, prosecutors, judges, customs and border officials, and other foreign officials and policymakers, who investigate, prosecute, punish, and prevent violations of IPR. The amount of this "soft earmark" was $3 million in FY2005 and increased to $5 million in FY2006. Three million dollars in training projects for FY 2006 have been finalized. The State Department also conducts a number of outreach activities, such as meeting with members of industry groups and other U.S. Government agencies, to informally share information so as to ensure that government programs are effective.

In making funding decisions, State considers U.S. IP enforcement priorities as identified through the USTR's Special 301 Report, U.S. industry, U.S. Missions, and in light of any information from TCG meetings. The State Department selects the training and technical assistance programs through criteria

designed to identify countries/regions with weak IPR laws or inadequate enforcement, as well as considering whether training and technical assistance programs will lead to actual reductions in intellectual property violations. Finally, State reports to Congress on the use of the appropriated funds and details the results achieved through these expenditures.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

I. SUMMARY OF AGENCY MISSION

The Office of the United States Trade Representative (USTR) uses a wide range of bilateral and multilateral trade tools to promote strong intellectual property laws and effective enforcement worldwide. Key tools include bilateral engagement with U.S. trading partners, the annual "Special 301" review, negotiation of intellectual property chapters of bilateral and regional trade agreements, and multilateral engagement through the World Trade Organization (WTO). USTR leads the Administration's efforts in these areas, working in close coordination with other agencies.

II. ENGAGEMENT WITH U.S. TRADING PARNTERS AND SPECIAL 301 REVIEW

USTR intercedes directly with trading partners around the world to raise and address intellectual property concerns. Among the most effective tools in this effort is the annual "Special 301" review. On April 28, 2006, U.S. Trade Representative Robert Portman released the 2006 "Special 301" annual review which examined in detail the adequacy and effectiveness of intellectual property rights (IPR) protection countries. This year, the IPR regimes of 87 countries were examined, and based on a lengthy process of information gathering and analysis, the United States Trade Representative (USTR) identified 48 countries to designate in the categories of Priority Watch List, Watch List, and Section 306 Monitoring. The designations and corresponding requisite actions were a result of close consultations with affected industry groups, other private sector representatives, Congressional leaders, foreign governments, and numerous agencies within the United States Government. The Special 301 Report reflects the Administration's resolve to take consistently strong actions under the Special 301 provisions of the Trade Act of 1974 (Trade Act).

Addressing weak IPR protection and enforcement, particularly in China and Russia, continues to be one of the Administration's top priorities. With respect to China, this year's Special 301 Report described the United States' plan to continue heightened scrutiny of China by maintaining China on the Priority Watch List and continuing Section 306 monitoring, as well as stepping up consideration of World Trade Organization (WTO) dispute settlement options. In addition, the United States announced that it will scrutinize IPR protection and enforcement at China's provincial level through an unprecedented special provincial review to be conducted in the coming year. With respect to Russia, the Special 301 Report outlined the United States' efforts to bring Russia's IPR regime in line with international standards, noted some progress in Russia's recent efforts to combat IPR piracy and counterfeiting, and announced continued heightened scrutiny of Russia by maintaining Russia on the Priority Watch List. The United States will be monitoring closely China's and Russia's IPR activities throughout the coming year.

In addition to China and Russia, the Special 301 Report set out significant concerns with respect to such trading partners as Argentina, Belize, Brazil, Egypt, India, Indonesia, Israel, Lebanon, Paraguay, Turkey, Ukraine, and Venezuela. In addition, the report noted that the United States will consider all options, including, but not limited to, initiation of dispute settlement consultations in cases where countries do not appear to have implemented fully their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In this year's review, USTR devoted special attention to the need for significantly improved enforcement against counterfeiting and piracy. The United States placed particular emphasis on the ongoing campaign to reduce production of unauthorized copies of optical media products such as compact discs (CDs), video compact discs (VCDs), digital versatile discs (DVDs), and compact disc read-only memory (CD-ROMs), as well as reducing the counterfeiting of trademarked goods. There are high rates of piracy and counterfeiting in many countries, including in China, India, and Russia. In addition, USTR continued to focus on other critically important issues, including Internet piracy, counterfeit pharmaceuticals, transshipment of pirated and counterfeit goods, requiring authorized use of legal software by government ministries, proper implementation of the TRIPS Agreement by developed and developing country WTO members, and full implementation of TRIPS Agreement standards by new WTO members at the time of their accession.

The report lauded the positive progress on IPR protection and enforcement in several countries over the past year. For example, Ukraine passed and implemented legislation to combat pirate production in optical media factories. Brazil made significant progress during the past year on copyright enforcement, specifically by adopting a National Action Plan to enforce copyrights and reduce piracy, drafting IPR legislation, increasing seizures and prosecutions, and developing strong public awareness campaigns to fight piracy. Pakistan also made significant progress by closing down numerous pirate optical disc production plants, establishing a Pakistan Intellectual Property Organization to centralize enforcement, and increasing border enforcement efforts, as well as increasing the number of raids, seizures, and arrests of IPR infringers. Several other countries in Asia also had made significant progress on IPR issues in the past year: Taiwan, Indonesia, Malaysia, the Philippines and the Republic of Korea. In addition, Azerbaijan, Kazakhstan, the Slovak Republic, and Uruguay were removed from the Watch List as a result of their progress. USTR is currently in the process of conducting special out-of-cycle reviews for Canada, Chile, Indonesia, Latvia and Saudi Arabia.

Another unprecedented addition to the review was the public naming of a list of "notorious markets." Global piracy and counterfeiting thrive in part due to large marketplaces that deal in infringing goods. Information reviewed in this year's Special 301 process pointed to a number of virtual and physical markets as examples of marketplaces that have been the subject of enforcement action, or merited further investigation for possible IPR infringements, or both. USTR will monitor closely these markets over this next year.

III. FREE TRADE AGREEMENTS AND IMPLEMENTATION

The United States is committed to a policy of promoting stronger protection of intellectual property rights. In this regard, the United States is advancing the protection of these rights through a variety of mechanisms, including the negotiation of free trade agreements (FTAs). The intellectual property chapters of U.S. FTAs establish high standards for intellectual property protection for copyright works, trademarks, and patents, and additionally provide strong rules for enforcement. USTR leads and coordinates the efforts.

The United States recently concluded FTAs, including the Bahrain FTA, Oman FTA, the Peru Trade Promotion Agreement, the Colombia Trade Promotion Agreement, and the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) (with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic), which will strengthen the protection of IPR in those countries. The United States also is seeking high levels of IPR protection and enforcement in the FTAs that are currently under negotiation with Panama, Thailand, Ecuador, the United Arab Emirates, the Republic of Korea and Malaysia. Another opportunity the United States uses to strengthen the protection and enforcement of intellectual property is the increasing number of trade and investment framework agreement (TIFA) negotiations with several countries in regions such as the Middle East and Asia.

USTR works closely with trading partners to ensure that legislation is amended to comply with FTA obligations and IP protections are enforced. USTR has established a robust implementation process with input and support from other agencies and U.S. industry. In FY 2005, USTR worked with Singapore, Australia, Morocco and others to ensure compliance with their FTA obligations.

IV. STOP! Initiative

USTR is actively engaged in implementing the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. Announced in October 2004, STOP! brings together all the major players – the federal government, private sector and trading partners – to take concerted action in cracking down on piracy and counterfeiting. The initiative is part of an effort to enhance coordination among all relevant U.S. Government agencies and U.S. trading partners to tackle this global problem. As part of STOP!, USTR is advocating adoption of best practices guidelines for enforcement. In 2005, USTR led interagency teams to meet with a number of key trading partners, including Japan, Korea, Hong Kong, Singapore, UK, France, Germany, and the European Union, to establish greater cooperation on IPR enforcement. USTR will continue these efforts to strengthen IPR laws and enforcement and create an international alliance against counterfeiting and piracy.

As part of this effort, USTR, in coordination with other agencies, is introducing new initiatives in multilateral fora to improve the global intellectual property environment that will aid in disrupting the operations of pirates and counterfeiters. Key initiatives have gained endorsement and are undergoing implementation in the G8, the U.S.-EU Summit, the Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC) forum.

At the November APEC Ministerial, APEC Leaders adopted best practices guidelines to improve border enforcement, protect digital copies and combat internet piracy. USTR is spearheading an effort to have APEC leaders endorse additional IPR guidelines that would keep supply chains free of pirated and counterfeit goods and improve IPR public awareness campaigns throughout the Asia-Pacific region.

V. GENERALIZED SYSTEM OF PREFERENCES (GSP) REVIEWS

USTR will continue to use all statutory tools, as appropriate, to improve intellectual property protection in countries where it is inadequate. For example, USTR examines IPR practices in connection with its implementation of trade preference programs, such as the ongoing Generalized System of Preferences (GSP) reviews of countries. This year, because of significant progress in improving enforcement, USTR was pleased to announce the conclusion of the GSP reviews of Brazil, Kazakhstan and Pakistan. In addition, in January 2006, USTR restored GSP benefits to Ukraine because of progress in combating illegal optical disc production, including the passage of new legislation. USTR will continue to review the IPR practices of Russia, Lebanon and Uzbekistan under the ongoing GSP reviews of those countries.

VI. WTO DISPUTE SETTLEMENT AND OTHER TOOLS

In addition to the formal WTO dispute settlement process, other tools are available to resolve disputes with our trading partners. These include informal consultations that result in a settlement, which can be a more efficient way to – and therefore the preferred manner of – resolving disputes. However, where such

tools prove unsuccessful, USTR has and will continue to utilize the WTO dispute settlement process as appropriate.

The United States, in cooperation with other WTO members, has also made innovative use of WTO tools other than the dispute settlement process. For instance, in October 2005, the United States, Japan, and Switzerland made simultaneous transparency requests to China under Article 63.3 of the TRIPS Agreement for purposes of obtaining detailed information regarding China's IPR enforcement record.

UNITED STATES COPYRIGHT OFFICE

I. 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.

General Responsibilities

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 discussion 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 and other U.S. Government agencies on compliance with multilateral agreements, such as the Berne Convention for the Protection of Literary and Artistic works, and on the copyright and related rights obligations of bilateral free trade agreements.

Internationally, the Copyright Office works with the State Department, the U.S. Trade Representative's Office (USTR), and the U.S. Patent and Trademark Office (USPTO) 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, as one of its primary and historical functions is to register claims to copyright, as well as documents relating to copyright such as assignments or transfers of rights. In addition, the Copyright Office provides information to the general public about copyright law, including the Office's procedures for making registration. Administratively, the Copyright Office sets copyright policy through rule making and the administration of compulsory licenses contained in the copyright statute.

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 title 17, United States Code, 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 title 17, and related matters;

3. Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under title 17, 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 title 17, 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 title 17.

II. DOMESTIC ENFORCEMENT ACTIVITIES

Advice to Congress

One of the Copyright Office's primary domestic functions is to advise Congress on matters of copyright policy and related issues. As such, the Copyright Office provides expert counsel to Congress on legislation that would affect copyright enforcement. In the past year, the Copyright Office has worked closely with committee staffs and the staffs of individual members on a range of measures related to copyright enforcement as follows:

- Advised House and Senate committee members and staff on the "Family Entertainment and Copyright Act of 2005," Pub. L. No. 109-9, enacted April 27, 2005, which authorized the Register of Copyrights to establish a new system for "preregistration" of works in order to facilitate enforcement against piracy of works being prepared for commercial exploitation, and amended title 17 to add an exemption from infringement for devices that allow the skipping of audio or video content in motion pictures;

- Advised House and Senate committee members and staff on the "Intellectual Property Protection and Courts Amendments Act of 2004," Pub. L. No. 108-482, enacted Dec. 23, 2004, which amended title 17 to add a new presumption of willful infringement for providing materially false contact information to a domain name registrar;

- Testified before the Senate Committee on the Judiciary on "Piracy of Intellectual Property," May 25, 2005; and

- Testified before the Senate Committee on the Judiciary on "Protecting Copyright in a Post-*Grokster* World," September 28, 2005.

Liaison to Various Enforcement Agencies

The Copyright Office is not a law enforcement agency and has no direct role in law enforcement. However, many of the Office's obligations and responsibilities intersect with activities in the law enforcement arena, and the Office frequently provides counsel to the agencies charged directly with the enforcement of copyright law.

For instance, the Office works closely with the Federal Bureau of Investigation, the Department of Justice, 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. The Copyright Office also advises and assists the Bureau of Customs and Border Protection in resolving issues and in developing new procedures related to border enforcement.

In the past year the Office worked very closely with the Department of Justice and the Office of the Solicitor General to develop the United States Government's position in the *MGM v. Grokster* before the Supreme Court. The United States filed a brief *amicus curiae* urging the Court to reverse the Court of Appeals for the Ninth Circuit, which had held that Grokster was not liable for contributory copyright infringement. The Court did reverse, and held that any person that induces another to commit copyright infringement may be held liable as an infringer. This decision will likely facilitate more effective private enforcement in the online environment.

III. INTERNATIONAL ENFORCEMENT ACTIVITIES

Assistance to USTR

Internationally, the Copyright Office actively participates in a number of activities related to the enforcement of copyright laws. The Office frequently provides USTR with assistance related to bilateral and multilateral trade agreements. In this role, during the past year the Office assisted and advised USTR in dozens of negotiations and discussions, including the following:

- Assisted and advised USTR on negotiation and implementation of the copyright and enforcement texts of bilateral Free Trade Agreements between the United States and Australia, Bahrain, Morocco, Oman, Panama, Singapore, Thailand, and United Arab Emirates, and several multilateral Free Trade Agreements, including the Central America Free Trade Agreement (DR-CAFTA), with a group of Andean nations, with the South African Customs Union;

- Engaged in bilateral discussions specifically regarding enforcement concerns and legislation with Canada, China, Egypt, India, Japan, Korea, Paraguay, Russia, and Saudi Arabia, among others; and

- Participated in discussions with a number of countries on Trade Investment Framework Agreements, including Khazakhstan and New Zealand.

The Copyright Office also assists USTR with various aspects of the United States' role in the World Trade Organization (WTO). In the last year the Office assisted USTR with the WTO Trade Policy Review process, developing question to be posed to other WTO members with respect to their copyright and enforcement regimes, and also answering questions posed by other WTO members to the U.S. about copyright law. The Office has also assisted USTR on WTO accessions by several countries, including Algeria, Cape Verde, Kazakhstan, Russia, and Serbia and Montenegro, among others.

Further, the Copyright Office participated in the interagency Special 301 process led by USTR which considers whether countries throughout the world are providing adequate protection to intellectual property, including copyright.

Assistance to Other Agencies

The Copyright Office also provides assistance to other U.S. Government agencies involved in enforcement efforts around the globe. During the last year, the Copyright Office worked with the State Department and the Department of Justice to provide assistance to the Government of Sweden in their efforts to address "The Pirate Bay," a website notorious for facilitating Internet piracy.

Intergovernmental Organization Activities

During the past year, the Copyright Office participated in activities of the World Intellectual Property Organization (WIPO) related to enforcement, in particular as a member of the WIPO advisory committee on enforcement. The Copyright Office also participates in the enforcement related activities of the WTO's TRIPS Council.

Further, during the past year the Copyright Office also met informally with numerous visitors from numerous foreign governments regarding intellectual property enforcement issues.

Other activities related to intergovernmental organizations included the following:

- Participation in meetings of the second phase of the World Summit on the Information Society in Geneva;

- Participation in the WIPO Intergovernmental Committee on Protection for Traditional Knowledge and Folkore;

- Participation in meetings of the UNESCO Intergovernmental Committee in Paris, France considering a Convention on Cultural Diversity in May 2005, and in Intergovernmental meetings on the Universal Copyright Convention and the Rome Convention in June 2005;

- Participation in WIPO Intersessional Intergovernmental Meetings on the Development Agenda in April 2005; and

- Participation in the U.S. delegation to the WIPO Standing Committee on Copyright and Related Rights in November 2005, and May 2006, which continued discussion of the proposed treaty on the protection of broadcasters.

IV. PROGRAMMATIC ACTIVITIES

Domestic Training and Education

Copyright Office staff routinely participates in domestic training and education programs about copyright law. Frequently, Copyright Office staff members attend and give presentations at seminars or other events organized by law enforcement agencies such as the Federal Bureau of Investigation, the Department of Justice, and the U.S. Customs Service. The Copyright Office also provides education on enforcement through seminars and events it organizes itself, and through participation in numerous events held by industry groups, educational institutions, and various bar associations. In the last year, these activities included the following:

- A presentation at the Big Ten Copyright and Printing Conference;

- Several presentations and seminars for "The Copyright Office Comes to New York," New York, New York, and "The Copyright Office Comes to California," Los Angeles and San Francisco, California;

- An event for IP law students from George Washington University to visit and discuss the history and current activities of the Copyright Office;

- A presentation to the New York City Bar Association on recent Copyright Office activities;

- Panel discussions at the Annual Meeting of the Copyright Society of the U.S.A.;

- A presentation on recent copyright issues at a seminar during the meeting of the Association of Corporate Counsel in Chicago;

- A guest lecture in an Advanced Copyright Seminar at Duke University Law School;

- A guest lecture on copyright at the Columbia University School of Law;

- A guest lecture on copyright at the California Western School of Law;

- A panel at the George Washington University School of Law in Washington, D.C. on careers in copyright law;

- A panel discussion entitled "Technology of the Rescue? Whether DRM and Free Markets Can Tame Illicit File-Sharing, Without Compulsory Licensing or Other Legislation" sponsored by the New York Chapter of the Copyright Society of the U.S.A.;

- Two presentations at the Mid-Winter Meeting of the American Intellectual Property Law Association;

- A panel discussion on orphan works at the Future of Music Policy Summit;

- A panel discussion at the annual meeting of the American Bar Association IP Law Section;

- A panel discussion entitled "What You Need to Know About the Digital Millennium Copyright Act and Its Application" sponsored by the District of Columbia Bar Association;

- A guest lecture entitled "Copyright in Crisis" at the Hamline University School of Law;

- A guest lecture on "Current Copyright Activities in Congress, the Courts, and the Copyright Office" sponsored by the Minnesota Intellectual Property Law Association;

- A panel discussion entitled "'Congress Shall Have the Power': Recent Constitutional Challenges to Copyrights" sponsored by the New York Chapter of the Copyright Society of the U.S.A.;

- An event entitled "Litigation Year in Review," sponsored by the New York State Bar Association Intellectual Property Section and the Cardozo Arts and Entertainment Law Journal;

- A presentation at National Geographic on copyright basics and digital issues;

- A panel discussion entitled "The Supreme Court Wrestles with *Grokster* and the Continuing Viability of the Sony Betamax Decision," at the spring meeting of the American Intellectual Property Law Association;

- A panel discussion on the *MGM v. Grokster* case hosted by the DVD Association at the National Institute of Standards & Technology;

- A panel discussion on orphan works at the Annual Meeting of the Copyright Society of the U.S.A.;

- Participation in the Library of Congress's *National Book Festival*;

- A presentation on intersection of oral history and copyright law for the Oral History Mid-Atlantic Region Association;

- A presentation on orphan works to a group of scholarly publishers;
- A lecture on orphan works at Columbia University Law School;
- A panel discussion on orphan works sponsored by the Copyright Society of the U.S.A.;
- Guest lectures at George Washington University Law School and George Mason University Law School on copyright, developing countries and Internet;
- Participation in and co-sponsorship of Section 108 Study Group Roundtable Discussions in Los Angeles, California, and Washington, D.C.;
- A presentation on the "State of the Copyright Office" at the *2006 Spring Copyright Conference* in Carlsbad, California, organized by the Los Angeles Copyright Society; and
- A presentation on orphan works at the Annual Meeting of the Association of American Museums in Boston, Massachusetts.

International Training and Education

Copyright Office staff also participates extensively in international training organized by other U.S. agencies, such as USPTO and the State Department, and international organizations, such as WIPO, on intellectual property enforcement issues. In addition, the Copyright Office staff has developed and conducted 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 activities. 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 (1) awareness of international standards and the U.S. legal and regulatory environment; (2) substantive legal training on both basic and complex areas of U.S. copyright law; and (3) legal reform and statutory drafting assistance.

The Copyright Office also hosts a well-regarded workshop semi-annually 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.

Other international training and educational activities in the past year include the following:

- Participation in WIPO programs in New Delhi, India, a symposium on the protection of broadcasting organizations and an Asia-Pacific Regional Symposium on digital copyright issues and implementation of the WIPO Internet Treaties;

- A presentation in Ottawa, Canada for Canadian officials and professors on legislative efforts in the United States to address copyright infringement on peer-to-peer services;

- A presentation to State Department economic officers in the Asia-Pacific region in Hong Kong, China;

- Participation in a Congressional-staff delegation to China to discuss intellectual property enforcement;

- Participation in an African regional consultation on the proposed broadcasting organizations treaty in Nairobi, Kenya;

- A presentation at a WIPO seminar on Intermediary Liability Under Copyright Law in Geneva, Switzerland;

- Participation in the Creative Economy Conference in London;

- A presentation at the 78th Annual Intellectual Property Institute of Canada Annual Meeting in Banff Springs, Alberta, Canada entitled "Developments before National Copyright Offices";

- A presentation at a conference on "Copyright Law-Current Developments in U.K., European U.S., and International" in London;

- Participation in the development of a new WIPO publication on copyright for small and medium-sized enterprises;

- Presentations at the International Intellectual Property Conference and Seminar on Asia-Pacific Intellectual Property Issues at Fordham University Law School; and

- A presentation on Librarians and Copyright Law for librarians and library science students in Costa Rica.

V. 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, http://www.copyright.gov, that includes news-alert services, copies of intellectual property laws and regulations, and public information circulars.

VI. LOOKING FORWARD

As noted earlier, the Copyright Office hosts a well-regarded workshop semi-annually in conjunction with WIPO, the International Copyright Institute (ICI). 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. This Fall the Office anticipates holding another of these semi-annual workshops in order to continue to provide useful education and training on copyright internationally.

B. Pursue Criminal Enterprises Involved in Piracy and Counterfeiting



UNITED STATES DEPARTMENT OF JUSTICE

I. ENFORCING AND PROTECTING INTELLECTUAL PROPERTY RIGHTS

The Department of Justice comprehensively enforces and protects intellectual property rights through a number of divisions, sections, and agencies. Each of these important components has highly-trained attorneys, law enforcement agents, and staff who specifically address intellectual property issues, ranging from criminal prosecutions to antitrust concerns. In addition, the Bush Administration has developed a comprehensive, interagency initiative to combat intellectual property theft and address international enforcement issues. The Bush Administration's interagency campaigns and the Department of Justice's specific efforts are explained below.

A. Interagency Efforts – STOP! Initiative and NIPLECC

The Department of Justice has the lead criminal enforcement role in the United States Government's protection of intellectual property rights here and abroad. The Department of Justice also coordinates with other government agencies on numerous domestic and international policy matters relating to intellectual property protection. It does so through a variety of means, including daily contact with other government agencies responsible for the many facets of intellectual property protection in the United States, as well as formal mechanisms such as the Bush Administration's Strategy Targeting Organized Piracy ("STOP!") initiative and the National Intellectual Property Law Enforcement Coordination Council ("NIPLECC").

The Department of Justice has participated in the STOP! initiative since its inception in 2004. The Department of Justice has made important contributions to this broad mission through the work of the

Task Force and, more specifically, through implementation of the Task Force's detailed recommendations set forth in 2004 Report. The Department of Justice also has coordinated closely with other STOP! agencies on numerous international and domestic policy issues; joined STOP! agencies in visits to the European Commission, France, Germany, Hong Kong, Korea, and the United Kingdom in April and June of 2005; participated in a series of round table discussions, seminars, and other business outreach efforts; and helped develop greater public awareness of how federal criminal laws protect the owners of intellectual property.

The Department of Justice has also co-chaired NIPLECC since its creation by Congress in 1999. NIPLECC details the Department of Justice's enforcement strategy and priorities and highlights many of its most significant intellectual property prosecutions for that year. In addition, the Department of Justice works through NIPLECC to coordinate its international training and outreach efforts with other federal agencies.

B. Criminal Enforcement Efforts

1. Computer Crime and Intellectual Property Section

The Department of Justice has developed an effective nationwide anti-piracy and anti-counterfeiting effort anchored by the Criminal Division's Computer Crime and Intellectual Property Section ("CCIPS"). CCIPS is a highly specialized team of 35 attorneys focused on computer crime and intellectual property offenses. With the support of Congress, CCIPS has nearly doubled in size over the past six years, and it now has 14 attorneys devoted exclusively to prosecuting intellectual property crimes and implementing the Department of Justice's intellectual property enforcement program. These attorneys prosecute intellectual property cases, assist prosecutors in the field, and help develop and implement the Department of Justice's overall anti-piracy strategy and legislative priorities. In addition to prosecuting their own cases, which have increased more than eight-fold in the last four years, CCIPS attorneys are available to agents and Assistant United States Attorneys ("AUSAs") on a 24-hour-a-day basis to provide advice and guidance.

CCIPS also places a high priority on fostering international cooperation and coordination in its intellectual property enforcement efforts. Building relationships between American law enforcement and our counterparts overseas is the most effective method of ensuring success in multi-national cases. These relationships are built through international casework as well as through training and outreach. Last year, CCIPS attorneys met with more than 2,000 prosecutors, investigators, judges, and intellectual property experts from 94 countries to provide training and technical assistance on intellectual property enforcement.

2. Computer Hacking and Intellectual Property Program

As with all federal crime, primary responsibility for the prosecution of federal intellectual property offenses falls to the 94 United States Attorneys' Offices across America. Under the CHIP Program, created by then-Attorney General Ashcroft in 2001, experienced and highly-trained federal prosecutors in the field aggressively address computer crime and intellectual property matters.

a. CHIP Coordinators

Prior to the creation of the CHIP Program, the Department of Justice created the Computer & Telecommunications Coordinator ("CTC") program in 1995 to address concerns about the rising tide of computer crime. The United States Attorneys' Offices designated at least one AUSA in each district as a CTC; depending on the needs of the particular region, some districts designated more than one prosecutor. In addition, a number of components and divisions within the Department of Justice, such as the Tax Division, also designated CTCs for their respective organizations.

In October 2004, the Task Force recommended that the Department of Justice change the CTC designation to "CHIP Coordinator" to clarify that intellectual property offenses were included within the responsibilities of these AUSAs and to align all 94 United States Attorneys' Offices with the Attorney General's CHIP Program. Identifying a CHIP Coordinator in each United States Attorney's Office ensures that a prosecutor with training and experience in intellectual property crimes is available wherever and whenever an offense occurs.

Under the CHIP Program, prosecutors are assigned four areas of responsibility: (1) prosecuting computer crime and intellectual property offenses; (2) serving as a technical advisor for other prosecutors and law enforcement agents; (3) assisting other CHIP Coordinators in multi-district investigations; and (4) providing training and community outreach regarding computer-related issues.

b. CHIP Units

In July 2001, the Department of Justice created ten CHIP Units to address the increasing threat of cyber crime and intellectual property offenses in specific regions of the country. CHIP Units are teams of specially-trained AUSAs concentrated in a particular region. The CHIP Program was created to augment the number of prosecutors designated as CHIP Coordinators. The Department of Justice provided districts with additional funding to hire prosecutors and support personnel to form CHIP Units and to focus on fighting intellectual property and cyber offenses. The program was expanded in 2002 and 2004, including the effort in 2004 to align the CTC program with the CHIP Program described above. There are currently more than 230 CHIP Coordinators and CHIP Unit AUSAs within the Department of Justice.

CHIP Unit AUSAs focus on prosecuting intellectual property offenses such as trademark violations, copyright infringement, and thefts of trade secrets. In addition, they prosecute high-technology offenses, including computer hacking, virus and worm proliferation, Internet fraud, and other attacks on computer systems.

In addition to prosecuting cases, CHIP Unit AUSAs are also involved actively in training other prosecutors and federal agents on high-tech investigations, and they work closely with potential victims of intellectual property theft and cyber crime on prevention efforts.

The first CHIP Unit was created in February 2000, in the United States Attorney's Office in San Jose, California, to address cyber crime and intellectual property cases in the Silicon Valley area. Based on

the success of the CHIP Unit in San Jose, in 2001 and 2002, then-Attorney General Ashcroft expanded the program to include the following 11 additional cities:

Alexandria, Virginia

Atlanta, Georgia

Boston, Massachusetts

Chicago, Illinois

Dallas, Texas

Kansas City, Missouri

Los Angeles, California

Miami, Florida

New York, New York (Brooklyn and Manhattan)

San Diego, California

Seattle, Washington

In October 2004, the Task Force recommended that the Department of Justice create five more CHIP Units in:

Nashville, Tennessee

Orlando, Florida

Pittsburgh, Pennsylvania

Sacramento, California

Washington, D.C.

In response to the recommendation, the Department of Justice provided additional funding to the United States Attorneys' Offices in these cities to hire additional prosecutors to create the CHIP Units.

In January 2005, the Department of Justice provided additional, full-time funding for three AUSAs to serve as CHIP Unit AUSAs in San Jose and Los Angeles, California. The creation of these three additional CHIP positions, as well as the creation of five additional CHIP Units in October 2004, implemented two of the recommendations of the 2004 Report.

c. Creation of Seven New CHIP Units in 2006

The Task Force has recognized the success of the CHIP Program and determined that the Department of Justice should increase the number of CHIP Units and place them in additional regions. Accordingly, the Task Force recommended to the Attorney General that the Department of Justice create seven new CHIP Units in the following cities where cyber crime and intellectual property offenses are significant problems:

Austin, Texas

Baltimore, Maryland

Denver, Colorado

Detroit, Michigan

Newark, New Jersey

New Haven, Connecticut

Philadelphia, Pennsylvania

The Attorney General has adopted this recommendation and initiated the creation of these seven new units. With the addition of these new CHIP Units the total number of CHIP Units will soon be 25.

3. Office of Consumer Litigation

The Civil Division's Office of Consumer Litigation ("OCL") is a team of specialized attorneys who handle criminal and civil cases involving intellectual property laws that protect public health and safety. For example, OCL attorneys enforce and defend the consumer protection programs of the Food and Drug Administration ("FDA"), the Federal Trade Commission, the Consumer Product Safety Commission, and the Department of Transportation's National Highway Traffic Safety Administration.

One particular area of concern to the protection of intellectual property rights and consumer safety is the regulation of drugs by the FDA. FDA officials have testified before Congress that the quality of drugs in this country is high and that the public can continue to have confidence that the drugs sold in the United States are authentic. To maintain this level of confidence, however, any allegations or information regarding the

counterfeiting or adulteration of drug products must be taken very seriously. The use of counterfeit drugs can pose a direct threat to human health. Counterfeit drugs frequently contain less active material ingredient than claimed, wrong ingredients, or no active ingredient at all, making the counterfeits less effective and possibly toxic. Even when the product in question contains the represented amount of the drug's active ingredient, the situation can be dangerous because of factors such as quality control, distribution, and inventory control, all of which endanger the effectiveness of the drug. When the counterfeit product is relied upon to sustain life, a lack of effectiveness may result in deaths. In addition, increased drug resistance also can arise when counterfeit antibiotics lead doctors to increase dosages or otherwise misunderstand the nature of the drug they are administering. The potential dangers posed by counterfeit drugs may multiply in a health emergency; for example, in a flu pandemic, the opportunity for criminal counterfeiting may be significant. The demand for flu vaccine could vastly exceed legitimate supply and counterfeit flu vaccine could be sold over the Internet to unwary consumers in the United States.

For more than 30 years, OCL attorneys have been involved in prosecuting purveyors of counterfeit drugs and medical devices. The Department of Justice's recent efforts are reflected in prosecutions involving unlawful diversion of prescription drugs and the importation of counterfeit pharmaceuticals and drugs that are not manufactured according to approved standards. United States Attorneys' Offices that receive these counterfeit cases often contact OCL to obtain advice and assistance, and OCL serves valuable functions in such matters. First, OCL helps ensure that federal prosecutors do not overlook important policy or factual concerns that frequently affect litigation under federal statutes. Second, OCL ensures that those prosecutors do not have to "reinvent the wheel" in conducting litigation, because OCL has jury instructions, briefs, and other pleadings to share.

4. Federal Law Enforcement Agencies

A number of federal law enforcement agencies work to safeguard intellectual property rights in the United States. The Federal Bureau of Investigation's ("FBI") intellectual property enforcement program is implemented and overseen by the Cyber Crime Fraud Unit ("FBI-CCFU") in its Cyber Division in Washington, D.C. The FBI-CCFU focuses on intellectual property crimes having the most impact on

national and economic security–including theft of trade secrets, Internet piracy, and trafficking in counterfeit goods. The FBI-CCFU's goals include:

- Increasing the number of intellectual property undercover operations and use of other sophisticated investigative techniques;
- Developing new investigations through relationships with industry contacts and foreign law enforcement agencies;
- Encouraging FBI field offices to utilize task forces with state and local law enforcement agencies to enhance cyber crime and intellectual property investigations; and
- Continuing to educate and train domestic and foreign law enforcement agencies on intellectual property enforcement.

In addition to overseeing implementation of the intellectual property program in the 56 FBI field offices nationwide, the FBI-CCFU also plays a central and coordinating role in intellectual property undercover operations that have multi-district and international targets. In these operations, FBI-CCFU provides administrative oversight and additional resources to ensure the coordination of international and domestic enforcement actions. Examples of such enforcement initiatives were Operations Fast Link and Site Down, referenced below. The FBI-CCFU also provides guidance and assistance to field agents and foreign legal attachés' offices on intellectual property investigations generally, especially those targeting organized groups engaged in the large-scale manufacture and distribution of pirated software and other copyrighted materials over the Internet.

Finally, in addition to the FBI, ICE, and CBP, a number of other federal agencies investigate intellectual property offenses, whether on their own or as part of task forces, including the United States Postal Service and the United States Secret Service. The FDA's Office of Criminal Investigations has primary responsibility for all criminal investigations conducted by the FDA, which include investigations of

suspected tampering incidents and suspected counterfeit products. For instance, its agents investigate cases involving counterfeit, misbranded, and adulterated pharmaceuticals in violation of federal drug laws.

5. Victim-Industry Partnerships

The Department of Justice recognizes that a successful and comprehensive plan of attack against intellectual property theft requires the formation of partnerships with the victims and potential victims of intellectual property theft. Without the assistance of victims, it is difficult, if not impossible, for the Department of Justice to enforce the law and apprehend offenders. Consequently, the Department of Justice has formed important partnerships with various organizations that have joined the fight against intellectual property theft. The Chamber of Commerce has formed a broad-based "Coalition Against Counterfeiting and Piracy" ("CACP"), which works with Congress and the Bush Administration to raise awareness about the negative impact of counterfeiting. The Department of Justice has formed a constructive partnership with the CACP to address intellectual property concerns and sponsor awareness events.

The Department of Justice has also formed important partnerships with other groups that represent victims and potential victims of intellectual property theft, including the Motion Picture Association, the Recording Industry Association of America, the Business Software Alliance, the Entertainment Software Association, pharmaceutical industry associations, and many other organizations. In addition, the Department of Justice has formed a close partnership with Court TV, which has filmed and broadcast several Department of Justice events regarding intellectual property. These organizations provide important insight into the problems of intellectual property theft and have joined the Department of Justice in sponsoring prevention and awareness events throughout the nation.

To assist these victims and others in reporting intellectual property crimes, the Department of Justice developed "A Guide for Victims of Counterfeiting, Copyright Infringement, and Theft of Trade Secrets."

6. Statistical Accomplishments

The impact of the increased efforts by the Department of Justice to protect intellectual property rights can be seen not only by the breadth of its programs and by the aggressive focus on this issue, but also by the impressive results in Department of Justice prosecutions. The Department of Justice has prosecuted significantly more defendants for intellectual property offenses since the issuance of the Task Force's Report in October 2004. During Fiscal Year 2005, 350 defendants were charged with intellectual property offenses, nearly double the 177 defendants charged in Fiscal Year 2004–representing a 98 percent increase. A similar increase occurred in districts with CHIP Units, where the number of charged defendants climbed from 109 in Fiscal Year 2004 to 180 in Fiscal Year 2005–a 65 percent increase. In addition, the number of cases filed and defendants charged in all districts between Fiscal Years 2001 and 2005 has steadily risen over time. These results reflect, in a meaningful way, that the Department of Justice is committed to protecting intellectual property rights.

7. Intellectual Property Prosecution Highlights

The Department of Justice has brought many significant prosecutions against intellectual property thieves since the Task Force issued its report in October 2004. The cases include prosecutions of defendants for trafficking in counterfeit pharmaceuticals, distributing copyrighted material without authorization, and for violating the federal trademark laws. Some of the more notable cases include:

Counterfeit Pharmaceuticals

Cholesterol Medication – The Department of Justice obtained convictions against eight people for selling counterfeit Lipitor tablets, a drug widely used to reduce cholesterol, and 13 people are awaiting trial in Kansas City, Missouri, for their alleged participation in a $42 million conspiracy to sell counterfeit, illegally imported, and misbranded Lipitor and other drugs. More than $2.2 million has been forfeited.

Antibiotics – In May 2005, the Department of Justice obtained the conviction of a former president of an Italian drug firm for violating the Federal Food, Drug, and Cosmetic Act by introducing an unapproved copy of the antibiotic Cefaclor. The defendant was sentenced to a year in confinement, fined $16,481,000, and required to forfeit $300,000. The corporate defendant pleaded guilty and paid criminal and civil penalties of more than $33 million.

Viagra and Cialis – In February 2006, the Department of Justice obtained a conviction in Houston against a United States citizen for importing from China counterfeit pharmaceuticals bearing the Viagra and Cialis trademarks. ICE Special Agents conducted an undercover operation in Beijing, China, involving the Internet site *bestonlineviagra.com*. The Internet site was owned and used by the defendant to distribute bulk quantities of counterfeit Viagra and Cialis manufactured in China. Chinese officials cooperated in the investigation, and 11 additional individuals in China were arrested by Chinese authorities for manufacturing and distributing counterfeit drugs. Chinese officials seized 600,000 counterfeit Viagra labels and packaging, 440,000 counterfeit Viagra and Cialis tablets, and 260 kilograms of raw materials used to manufacture counterfeit pharmaceuticals.

Viagra – Based on an investigation by ICE, in January 2005, the Department of Justice obtained the conviction of a Los Angeles man for manufacturing, importing, and distributing over 700,000 counterfeit Viagra tablets, valued at more than $5.5 million, over a four-year period.

Terrorism and Organized Crime

Terrorist Financing – In March 2006, a federal indictment was unsealed in Detroit charging 19 individuals with operating a racketeering enterprise that supported the terrorist organization Hezbollah. The defendants are alleged to have financed their criminal enterprise by trafficking in counterfeit Viagra, by trafficking in counterfeit Zig-Zag papers and contraband cigarettes, and by producing counterfeit cigarette tax stamps.

Organized Crime – Yi Ging Organization – In April 2006, the Department of Justice obtained convictions against two Chinese nationals as part of a crackdown against a violent criminal group in New York known as the Yi Ging Organization. These defendants had been included, along with 39 others, in a September 2005 indictment charging racketeering offenses, including extortion, witness tampering, trafficking in counterfeit DVDs and CDs, money laundering, operating a large-scale illegal gambling business, and drug trafficking. The Yi Ging Organization allegedly generated millions of dollars in profits from their counterfeit DVD and CD business. Gang members traveled to China to obtain illegal copies of American and Chinese DVDs, which they then smuggled into the United States, copied, and sold along with pirated music CDs at stores the gang controlled in Manhattan and other parts of New York City.

Organized Crime – Operation Smoking Dragon – In Los Angeles, based on an investigation by ICE, the Department of Justice obtained indictments against 30 defendants in August 2005 for allegedly, among other things, trafficking in counterfeit cigarettes and pharmaceuticals as part of Operation Smoking Dragon.

Software, Movie, and Music Piracy

International Enforcement Operations – The Department of Justice led the largest ever international enforcement efforts against organized online piracy in Operation FastLink and Operation Site Down. Each of these undercover operations by the FBI involved coordinated law enforcement action among 12 countries and targeted elite, criminal organizations, known as "warez release groups," which are the first to provide pirated works on the Internet. Law enforcement agents conducted more than 200 searches and arrested numerous people worldwide, seized hundreds of thousands of pirated works conservatively valued at more than $100 million, and eliminated more than 20 major online distribution centers. To date, the Department of Justice has obtained convictions against 60 people in the United States on criminal copyright infringement charges.

Illegal Manufacturing of DVDs in China – In the first joint criminal intellectual property investigation by ICE and China, known as Operation Spring, the Department of Justice obtained a conviction against the ringleader in a conspiracy to import 2,000 counterfeit DVDs of motion pictures. The defendant was convicted in China, along with three other co-conspirators, for selling more than 133,000 pirated DVDs to customers in more than 20 countries. After returning to the United States, the defendant was convicted again in Mississippi, sentenced to 45 months in prison, and ordered to forfeit more than $800,000.

Optical Disc Piracy – ***Operation Remaster*** – On April 3, 2006, the Department of Justice obtained convictions against two California men who pleaded guilty to conspiracy to mass-produce pirated music and software CDs. The two men were among five arrested as part of an undercover investigation targeting large-scale suppliers of pirated music and software. Agents seized nearly half a million pirated CDs and 5,500 high-speed, high-quality stampers used to make bootleg products. The recording industry called Operation Remaster the largest music manufacturing piracy seizure in United States history.

Online Music Piracy – On May 19, 2006, the Department of Justice obtained sentences of up to 15 months for three members of pre-release music piracy groups. Two of the defendants belonged to the Internet piracy group Apocalypse Crew, also known as "APC," and the third to the group Chromance, also known as "CHR." Both groups sought to acquire digital copies of songs and albums before their commercial release in the United States, which they would then prepare for distribution to secure computer servers throughout the world. The stolen songs were then distributed globally and, within hours, filtered down to peer-to-peer and other public file-sharing networks.

Peer-to-Peer Piracy – ***Operation Digital Gridlock*** – In January 2005, the Department of Justice obtained the first-ever criminal convictions for piracy through peer-to-peer networks when two operators of Direct Connect distribution centers pleaded guilty in Washington, D.C., to charges of conspiracy to commit criminal copyright infringement. Four defendants were convicted as a result of this FBI undercover investigation, code-named Operation Digital Gridlock.

Counterfeit Software – In December 2005, the Department of Justice obtained convictions against a California man in Alexandria, Virginia, for selling copies of copyrighted soft-ware through his website, *www.ibackups.net*, and through the United States mail. The man sold, at prices substantially below the suggested retail price, more than $25 million in software products that were manufactured by Adobe Systems Inc., Macro-media, Inc., Microsoft Corporation, Sonic Solutions, and Symantec Corporation. He is believed to be the most prolific online commercial distributor of pirated software ever convicted in the United States.

First Federal Camcording Conviction – In June 2005, a jury convicted a former Hollywood, California, resident of eight federal criminal charges, including three counts of copyright infringement, related to his use of a video camcorder to covertly film the motion pictures "The Core," "8 Mile," and "Anger Management" at private screenings for the purpose of making money. The defendant fled from the custody of his attorney on the evening of his last scheduled trial in 2003 and remained a fugitive for 16 months until the United States Marshals Service apprehended him in Florida.

Movie Piracy – Operation Copycat – On April 6, 2006, the Department of Justice obtained charges against five individuals who were "first-providers" of stolen movies on the Internet. Operation Copycat, a San Jose-based FBI undercover investigation, was one of three investigations contributing to Operation Site Down. The Department of Justice has obtained charges against 37 individuals and convicted 32, including the first convictions under the newly enacted Family Entertainment and Copyright Act for camcording movies and distributing pre-release works on the Internet.

Satellite Signal Theft

DMCA Prosecution – In June 2005, the Department of Justice obtained the conviction of a New York man who violated the Digital Millennium Copyright Act ("DMCA") and mail fraud statutes by reprogramming Smart Cards to steal satellite programming from DISH Network. DISH Network electronically "scrambles" its satellite transmissions to prevent unauthorized viewing of its programming and, in order to receive services, its customers must purchase or lease satellite equipment

that include Smart Cards inserted into the satellite receiver. The defendant sold approximately $308,000 of reprogrammed Smart Cards to others across the United States.

Luxury Goods

Trafficking in Counterfeit Hard Goods – In November 2005, based on an investigation by ICE, the Department of Justice obtained indictments against four Massachusetts residents for laundering money and trafficking in more than 30,000 counterfeit luxury handbags and wallets, as well as the materials needed to make the counterfeits, worth more than $1.4 million. The defendants were alleged to have used 13 self-storage units in Massachusetts as the home base for one of New England's largest counterfeit goods operations, and they allegedly sold the counterfeit wallets and handbags at flea markets and to smaller gatherings at approximately 230 "purse parties" throughout the state.

Trade Secrets

Ohio Theft of Trade Secrets: The Department of Justice obtained convictions against an executive of an Ohio hydraulic pump manufacturer and a subsidiary of a South African competitor who stole the Ohio company's trade secrets. While still an employee of the Ohio company, the executive secretly assisted the South African subsidiary company by sharing financial and other confidential information in order to assist the competitor in establishing United States operations. The executive held clandestine meetings with representatives of the competitor in South Africa and elsewhere, and gave them surreptitious and unauthorized tours of the victim company's manufacturing facility.

Kentucky Theft of Trade Secrets: In April 2006, the Department of Justice obtained a 48-month prison sentence against a Kentucky man for conspiring to steal and sell trade secrets belonging to Corning, Inc. The defendant, while a Corning employee, stole drawings of Corning's Thin Filter Translator Liquid Crystal Display ("LCD") glass and sold the drawings to a corporation based in Taiwan that intended to compete with Corning in the production of LCD glass.

C. Legislative Efforts

Since the Task Force issued its report in October 2004, the Department of Justice has worked diligently with the Congress to enact legislation to further protect intellectual property rights. The 2004 Report listed several principles regarding legislation and, in several instances, Congress adopted those principles in drafting legislation. In addition, the Department of Justice developed a legislative package that was sent by the Administration to the Congress to further enhance intellectual property enforcement and protection. Set forth below are the three new laws passed since October 2004, and details of the legislative package proposed by the Administration.

Intellectual Property Protection and Courts Amendments Act of 2004 (H.R. 3632)

The Department of Justice supported the passage of the Intellectual Property Protection and Courts Amendment Act (H.R. 3632), which advanced the goal, set forth in the 2004 Report, of thwarting the distribution of counterfeit products and authorizing the seizure of the materials and equipment used to make them. The legislation expanded a previous law, which prohibited trafficking in counterfeit labels for copyrighted works, to also prohibit the trafficking in genuine but unauthorized labels. In addition, the legislation allowed the government to seize the equipment used in producing the counterfeit and illicit labels. The Bush Administration supported the legislation and offered suggestions for its improvement. The President signed the legislation on December 23, 2004.

Family Entertainment and Copyright Act of 2005 (S. 167)

In 2005, Congress enacted the Family Entertainment and Copyright Act of 2005 (S. 167). This legislation amended the federal criminal code to prohibit the knowing or attempted use of a video camera, or other audio-visual recording device, to make or transmit a copy of a motion picture or other copyrighted audio-visual work from a performance of such work in a movie theater or similar venue without authorization. The law established a maximum sentence of three years in prison for a first offense. The legislation also required the court to order the forfeiture and destruction of all unauthorized copies of the motion picture

and any equipment used to carry out the violation. With reasonable cause, the owner, lessee, or employee of a theater is authorized to detain, in a reasonable manner for a reasonable time, suspected violators for questioning or to contact law enforcement.

In addition, this legislation established criminal penalties for the act of willful copyright infringement through distribution of certain copyrighted works being prepared for commercial distribution–including movies, software, games, and music–by making them available on a computer network accessible to members of the public, if the person knew, or should have known, that the work was intended for commercial distribution. Finally, the legislation directed the United States Sentencing Commission to review and potentially amend its guidelines for intellectual property crimes.

This legislation, and the related amendments to the United States Sentencing Guidelines, furthered two key principles identified in the 2004 Report: (1) the passive sharing of copyrighted works for unlawful distribution should be treated as the distribution of those works and should, where appropriate, be subject to prosecution; and (2) copyright law should recognize the premium value of a copyrighted work before the work is released for sale to the general public. A copy of a copyrighted work is more valuable before it can be legitimately obtained by anyone else. In such situations, not only is the "pre-release" copy more valuable, but it can also permit the holder to distribute copies as early as–or before–the copyrighted work's legitimate owner. As a result, although pre-release copies of a copyrighted work may not have a quantifiable retail value, they can be the most valuable copies of all, and their distribution can severely damage the rightsholder.

The President signed the Family Entertainment and Copyright Act into law in April 2005. As a result, the United States Sentencing Commission amended the United States Sentencing Guidelines to provide for an added penalty in cases involving a pre-release copyrighted work. The Bush Administration supported the passage of this legislation and the Department of Justice provided technical assistance to the Congress and the United States Sentencing Commission.

Stop Counterfeiting in Manufactured Goods Act (H.R. 32)

Based on the principles set forth in the 2004 Report, the Stop Counterfeiting in Manufactured Goods Act (H.R. 32) modified the federal criminal law relating to the trafficking in counterfeit goods and services by prohibiting trafficking in labels, documents, or packaging that bear counterfeit marks intended for goods or services. The legislation also expanded the definition of "trafficking" to include distribution of counterfeits for a wider variety of commercial purposes than was covered previously. Moreover, the legislation criminalized the possession of counterfeits with intent to distribute, as well as the importation and exportation of counterfeit goods. Finally, the statute subjected to forfeiture any article that bears or consists of a counterfeit mark, and any property derived from proceeds or used in the commission of the violation. The legislation was signed into law by President Bush on March 16, 2006.

Intellectual Property Protection Act

In addition to the three already-enacted legislative packages relating to intellectual property, the Department of Justice has developed draft legislation, known as the Intellectual Property Protection Act of 2005, to further the goals established in the 2004 Report. This proposed legislation is designed to advance three general objectives. First, it would toughen penalties for intellectual property crimes by:

- Strengthening the repeat-offender penalties against copyright criminals;
- Implementing broad forfeiture reforms that, among other things, ensure the ability to seize and obtain forfeiture of property derived from or used in the commission of intellectual property offenses; and
- Strengthening a victim's ability to recover losses for certain intellectual property crimes (*e.g.*, criminal copyright and Digital Millennium Copyright Act offenses).

Second, the bill would expand the criminal laws to increase intellectual property protection by:

- Clarifying that registration of a copyright is not a prerequisite to criminal prosecution;
- Criminalizing the attempt to commit copyright infringement; and
- Clarifying that both the exportation and importation of infringing items is illegal, even if the export or import is not to a third party (*e.g.*, when the shipment is from one party to itself).

Third, the bill would add needed investigative tools for criminal and civil enforcement by:

- Amending civil copyright law to parallel civil trademark law by permitting civil litigants to obtain *ex parte* seizure orders for records or evidence in civil cases; and
- Amending 18 U.S.C. § 2516 to include, as predicate offenses necessary to obtain wire or oral intercepts, the crimes of economic espionage to benefit a foreign government, criminal copyright infringement, and trafficking in counterfeit goods or services.

The Intellectual Property Protection Act is an important legislative effort because it encourages the adoption of vital principles set forth in the 2004 Report, including the following:

- As with other laws involving intellectual property, an attempt to violate the criminal copyright statute should be a violation without regard to whether it is successful.
- Unlike the federal criminal trademark statute, the criminal copyright statute presently does not criminalize attempted violations. It is a general tenet of criminal law, however, that those who attempt to commit a crime are as morally culpable as those who succeed in doing so.
- Law enforcement officers should have access to the full range of accepted law enforcement tools when they investigate intellectual property crimes that pose a serious threat to public health or safety.

- A federal court may issue an order authorizing the use of a wire or voice intercept, otherwise known as a "wiretap," in the investigation of many federal crimes, including the theft of interstate shipments, but not for intellectual property crimes. Although there are good reasons to restrict the use of wiretaps in deference to individual privacy rights, some intellectual property crimes present a serious danger to public health or safety. Trademark violations, for instance, may involve the distribution of counterfeit goods that are defective and prone to causing widespread consumer injuries.

The Department of Justice's Task Force recommended that the Congress enact the Intellectual Property Protection Act at its earliest opportunity.

International Treaties

With the globalization of the economy and the rise of digital commerce, intellectual property crimes have crossed international borders with increasing frequency. The United States has recently ratified two multilateral treaties that will help address this trend: The United Nations Convention Against Transnational Organized Crime, and the Council of Europe Convention on Cybercrime. These treaties will facilitate international cooperation in halting some of the most egregious crimes involving intellectual property, and further United States enforcement efforts.

D. Civil Enforcement Efforts – Civil Division

The Department of Justice combats intellectual property theft most visibly through enforcement of the Nation's criminal laws. The successful defense of intellectual property rights, however, also requires vigorous enforcement by the owners of intellectual property through the civil justice system.

The Department of Justice has filed numerous briefs, known as *"amicus"* or "friend-of-the-court" briefs, in the Supreme Court and lower courts supporting the maintenance and implementation of robust intellectual property rights. The Department of Justice also intervenes in appropriate cases to become a party in the litigation, thus promoting legal precedents that enforce intellectual property rights fairly and

consistently. In these ways, the Department of Justice plays a vital role in promoting a legal environment that protects creativity and innovation. The Civil Division employs 14 lawyers devoted solely to intellectual property, as well as numerous appellate attorneys who assist with *amicus* filings as needed.

Through these components, the Department of Justice also monitors civil enforcement developments that may hamper the ability of victims of intellectual property theft to use the civil courts effectively to defend themselves. For example, the Department of Justice actively consults with the USPTO and the United States Copyright Office about intellectual property cases. The Department of Justice also regularly reviews intellectual property trade publications, such as the Bureau of National Affairs' *Patent, Trademark, and Copyright Journal*, and the *United States Patents Quarterly*'s advance sheets, to determine if any private lawsuits merit involvement by the Department of Justice.

Since October 2004, the Department of Justice has filed 13 *amicus* briefs in the Supreme Court in cases involving intellectual property rights, and more than a dozen *amicus* briefs and Statements of Interest in lower courts. These filings occurred in cases that affect numerous high-tech industries, including pharmaceuticals, biotechnology, and online commerce. In many of these cases, courts have adopted the arguments made by the Department of Justice and consequently expanded protections for owners of intellectual property rights. Detailed explanations of these cases are set forth below in the Civil Recommendation section of this Progress Report.

E. Antitrust Enforcement Efforts – Antitrust Division

The Antitrust Division of the Department of Justice, the component charged with enforcing the federal antitrust laws, does not directly enforce intellectual property rights. But intellectual property plays an increasingly important role in the Department of Justice's antitrust merger and non-merger civil investigations. Intellectual property is an asset that can be bought, sold, and leased or licensed in much the same fashion as any other property. The Department of Justice therefore applies antitrust principles that give the same respect to intellectual property as to other forms of tangible or intangible property, taking into account special characteristics of intellectual property, such as the ease with which it can be

misappropriated. Using this approach, the Department of Justice avoids creating intellectual property-specific rules that could conflict with normal business expectations, lead to marketplace uncertainty, or erode the value of intellectual property rights over time.

The Department of Justice promotes respect for intellectual property rights in the administration of antitrust law through international competition advocacy, as explained later in this Progress Report. Domestically, the Department of Justice engages in competition advocacy through public hearings, workshops, speeches, research, and academic publishing by its attorneys and economists (in the Antitrust Division's Economic Analysis Group), and through participation in court cases as *amicus curiae*. Since the issuance of the 2004 Report, the United States has appeared as amicus in numerous antitrust cases involving intellectual property. The Supreme Court followed the recommendation of the United States in two such cases: *Illinois Tool Works, Inc. v. Independent Ink, Inc.*, 126 S. Ct. 1281 (2006), and *Monsanto Co. v. McFarling*, 125 S. Ct. 2956 (2005).

The Department of Justice continues to participate as amicus in cases where the interplay of intellectual property and antitrust law presents an opportunity to strengthen or clarify intellectual property rights. In addition, the Department of Justice routinely reviews and comments on proposed legislation that involves issues at the intersection of antitrust and intellectual property, or that may influence incentives to engage in competition or innovation.

The Antitrust Division also provides trade associations and other business organizations a business review procedure to receive guidance from the Department of Justice regarding the scope, interpretation, and application of the antitrust laws to proposed conduct, including activities involving intellectual property rights. Under that procedure, persons concerned, for example, about whether a particular proposed standard-setting activity is legal under the antitrust laws may ask the Department of Justice for a statement of its current enforcement intentions with respect to that conduct. When sufficient information and documents are submitted to the Department of Justice, it will make its best effort to resolve the business review request within 60 to 90 days. In this way, the Department of Justice can protect competition while at the same time facilitating efficient business arrangements that enable intellectual property owners to protect their rights.

F. International Efforts — Free Trade Agreements

Since the 2004 Report was issued, the Department of Justice has worked closely with the United States Trade Representative (USTR) on interagency development of trade policy issues affecting competition and intellectual property rights and on participation in negotiations of Free Trade Agreements (FTAs) with foreign trading partners. To enhance the Department of Justice's involvement in the process, Department of Justice attorneys in the Antitrust, Civil, and Criminal Divisions have undertaken a comprehensive review of existing FTAs and proposed a series of recommendations to USTR to strengthen support for intellectual property rights enforcement in the intellectual property rights chapters of FTAs and other trade pacts. These recommendations have contributed to enhancing U.S. FTA proposals in several areas. The Department of Justice recognizes the importance of strengthening intellectual property rights through international agreements and it will continue to work closely with USTR on an ongoing basis.

II. IMPLEMENTING THE DOJ IP TASK FORCE'S RECOMMENDATIONS

Immediately after the Department of Justice's IP Task Force issued its initial Report in October 2004, the Department began implementing the 2004 Report's recommendations. In February 2005, Attorney General Alberto R. Gonzales renewed the Department of Justice's commitment to the Task Force by appointing new members. Importantly, he announced that the Department would implement all of the 2004 Report's recommendations and would continue to enforce aggressively federal intellectual property laws. As of this publication, the Department of Justice has implemented all 31 of the recommendations contained in the 2004 Report.

The Task Force formed an Executive Staff of experts from throughout the Department of Justice to implement the recommendations and draft the Progress Report. For a complete accounting on all the recommendations, please see the Progress Report of the Department of Justice's Task Force on Intellectual Property (June 2006).

A. CRIMINAL ENFORCEMENT RECOMMENDATIONS

Enforcement of the criminal intellectual property laws is one of the Department of Justice's highest priorities. The Department prosecutes criminal cases involving the theft of copyrighted works, trademark counterfeiting, and thefts of trade secrets. Many divisions and offices of the Department of Justice participate in the enforcement of intellectual property laws, including federal prosecutors located throughout the Nation. These prosecutors work closely with local, State, and federal law enforcement agents to identify criminals and prosecute them in accordance with the law. While the Department of Justice has successfully prosecuted numerous intellectual property cases over the past several years, the Task Force concluded that additional success was possible. Accordingly, the Task Force made recommendations to further expand and strengthen the fight against intellectual property crime. The recommendations, each of which is now implemented or implemented and ongoing, are set forth below.

(1) Create five additional Computer Hacking and Intellectual Property ("CHIP") Units in regions of the country where intellectual property producers significantly contribute to the national economy. These areas are the District of Columbia; Sacramento, California; Pittsburgh, Pennsylvania; Nashville, Tennessee; and Orlando, Florida;

(2) Reinforce and expand existing CHIP Units located in key regions where intellectual property offenses have increased, and where the CHIP Units have effectively developed programs to prosecute CHIP-related cases, coordinate law enforcement activity, and promote public awareness programs;

(3) Designate CHIP Coordinators in every federal prosecutors' office and make the coordinators responsible for intellectual property enforcement in that region;

(4) Examine the need to increase resources for the Computer Crime and Intellectual Property Section of the Criminal Division in Washington, D.C., to address additional intellectual property concerns;

(5) Recommend that the FBI increase the number of Special Agents assigned to intellectual property investigations, as the Department of Justice itself increases the number of prosecutors assigned to intellectual property enforcement concerns;

(6) Recommend that the FBI increase the number of personnel assigned to search for digital evidence in intellectual property cases;

(7) Dismantle and prosecute more nationwide and international criminal organizations that commit intellectual property crimes;

(8) Enhance programs to train prosecutors and law enforcement agents investigating intellectual property offenses;

(9) Prosecute aggressively intellectual property offenses that endanger the public's health or safety;

(10) Emphasize the importance of charging intellectual property offenses in every type of investigation where such charges are applicable, including organized crime, fraud, and illegal international smuggling;

(11) Enhance its program of educating and encouraging victims of intellectual property offenses and industry representatives to cooperate in criminal investigations. Recommended enhancements include:

(A) Encouraging victims to report intellectual property crime to law enforcement agencies;

(B) Distributing the new "Department of Justice Guide to Reporting Intellectual Property Crime" to victims and industry representatives regarding federal intellectual property offenses; and

(C) Hosting a conference with victims and industry representatives to educate participants on how they can assist in law enforcement investigations; and

(12) Issue internal guidance to federal prosecutors regarding how victims can assist prosecutors in intellectual property cases.

B. INTERNATIONAL COOPERATION RECOMMENDATIONS

International cooperation is critical to stemming the tide of global intellectual property crime. Foreign governments must themselves prosecute intellectual property criminals and assist the United States in gathering evidence and prosecuting those who violate American intellectual property laws. Accordingly, in 2004, the Task Force recommended that the Department adopt the following recommendations regarding international cooperation.

(1) Deploy federal prosecutors to Hong Kong and Budapest, Hungary, and designate them as "Intellectual Property Law Enforcement Coordinators" ("IPLECs") to coordinate intellectual property enforcement efforts in those regions;

(2) Recommend that the FBI co-locate Legal Attachés with intellectual property expertise to Hong Kong and Budapest, Hungary, to assist the newly assigned IPLECs in investigative efforts;

(3) Direct prosecutors and agents to increase the use of alternative channels of communication, such as "law enforcement-to-law enforcement" contacts, to collect information and evidence quickly in foreign investigations;

(4) Enhance its intellectual property training programs for foreign prosecutors and law enforcement investigators in coordination with the Department of State;

(5) Prioritize treaty negotiations for legal assistance agreements with foreign governments where intellectual property enforcement is a significant problem;

(6) Ensure that intellectual property crimes are included in all extradition treaties and prioritize negotiations with foreign countries according to intellectual property enforcement concerns; and

(7) Emphasize intellectual property enforcement issues during discussions with foreign governments.

C. CIVIL ENFORCEMENT

The Department of Justice fights against the theft of intellectual property most visibly through its enforcement of the Nation's criminal laws. The successful defense of intellectual property rights, however, also requires vigorous enforcement by the owners of intellectual property through the civil justice system. In 2004, the Task Force made the following recommendation regarding the Department of Justice's efforts to protect intellectual property rights in the civil courts.

(1) Support Civil Enforcement of Intellectual Property Laws by Owners of Intellectual Property Rights.

D. ANTITRUST RECOMMENDATIONS

The Antitrust Division's mission is to enforce federal antitrust laws. However, intellectual property plays an increasingly important role in the Antitrust Division's merger and civil non-merger investigations, and the Department of Justice bears in mind that the antitrust and intellectual property laws share the common purpose of promoting innovation and enhancing consumer welfare. The Department of Justice recognizes that enforcing antitrust laws in a way that condemns beneficial uses of intellectual property rights could undermine pro-competitive incentives. Accordingly, the Task Force made the recommendations listed below.

(1) Support the rights of intellectual property owners to decide independently whether to license their technology to others.

(2) Encourage trade associations and other business organizations seeking to establish industry

standards for the prevention of intellectual property theft to use the Department of Justice's business review procedure for guidance regarding antitrust enforcement concerns.

(3) Continue to promote international cooperation and principled agreement between nations on the proper application of antitrust laws to intellectual property rights.

E. PREVENTION RECOMMENDATIONS

Education is a key tool in Department of Justice's mission to promote intellectual property protection. The Department is constantly exploring opportunities to educate the public about intellectual property laws and the role that the Department of Justice plays in enforcement of those laws. In addition, the Department of Justice continues to form partnerships with victims of intellectual property theft in common educational initiatives. Accordingly, the recommendations set forth below were designed to increase the Department of Justice's effectiveness in preventing intellectual property crimes from occurring and raising public awareness.

(1) Develop a national education program to prevent intellectual property crime.

(A) Developing materials for student educational programs;

(B) Creating partnerships with non-profit educational organizations to promote public awareness regarding intellectual property crimes;

(C) Developing a video to teach students about the negative consequences of intellectual property theft; and

(2) Educate the public regarding the Department of Justice's policy on peer-to-peer networks.

(3) Promote authorized use and awareness of the FBI's new anti-piracy seal and warning.

C. Increase Efforts to Seize Counterfeit Goods at Our Borders



UNITED STATES DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

I. SUMMARY OF AGENCY MISSION

CBP and ICE are the component agencies within the U.S. Department of Homeland Security (DHS) that are charged with executing intellectual property rights laws.

U.S. Customs and Border Protection (CBP)

CBP's primary 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 travel at and through our Nation's borders. In addition, CBP is charged with carrying out all of the traditional missions of the unified border agencies, including interdicting illegal drugs and other contraband at and beyond the border (where possible); 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.

U.S. Immigration and Customs Enforcement (ICE)

ICE is an investigative agency, charged with the protection of the American people and the U.S. economy by combating those who seek to exploit U.S. borders for criminal or terrorist purposes. ICE special agents and officers use ICE's unified immigration and customs authorities to identify, investigate, apprehend and

remove transnational criminal groups and others who seek violate our laws. ICE has a wide-ranging law enforcement mission, including money laundering and other financial crimes, customs fraud and IPR violations, alien smuggling and human trafficking, drug smuggling, weapons smuggling, export crimes, cyber crimes, immigration document and benefit fraud and criminal gang enforcement. Through these efforts, ICE makes a strong contribution to American economic, border, homeland and national security.

The roles of CBP and ICE in intellectual property rights enforcement are interrelated. When CBP interdicts and seizes counterfeit goods, the matter is referred to ICE for investigation. Conversely, information from ICE investigations and operations that is useful for targeting and interdicting shipments of counterfeit goods will be provided to CBP.

ROLES OF THE AGENCIES

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 (IPR Module), 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, enforcement of recorded trademarks and copyrights takes precedence over those that are not recorded with CBP.

ICE is a law enforcement agency with the authority to investigate violations of U.S. law that have a nexus to the borders. For example, ICE investigates the importation and subsequent distribution of counterfeit goods, using a variety of investigative techniques, such as undercover operations, wiretaps, surveillances and controlled deliveries. ICE investigations are furthered through the execution of federal search, seizure and arrest warrants, and the evidence obtained is submitted to the U.S. Attorney's Office for federal prosecution. In addition to responding to investigative referrals and seizures by CBP, ICE also initiates IPR investigations through informants, undercover operations and outreach to industry partners.

II. CBP MAJOR PROGRAM ACTIVITIES

Strategy Targeting Organized Piracy (STOP!)

As the primary U.S. border enforcement agency, CBP is a key player in STOP!, working to stop trade in counterfeit and pirated goods at U.S. borders. Under STOP!, CBP diversified its approaches to IPR enforcement to include new techniques that complement traditional enforcement methods. CBP's STOP! initiatives focus on fighting the trade in fakes through improved risk analysis, identifying business practices linked to IPR theft, depriving counterfeiters and pirates of illicit profits, and making it easier for rightsholders to work with CBP to enforce their rights. To fulfill the goals of the STOP! Initiative CBP has developed and initiated the following programs:

- ***Risk Modeling.*** CBP's IPR risk model is designed to enhance current efforts by CBP officers to identify counterfeit and pirated goods at our borders. Through the use of innovative statistical analysis, CBP is using technology to improve its ability to detect and intercept fakes at our borders. Unlike traditional approaches to risk assessment and targeting of imports for inspection, the model

applies statistical analysis techniques and external information to assess IPR risk. The risk model gives significant emphasis to CBP's IPR enforcement and import data while infusing other agency assessments on IPR risk, including information from the Office of the United States Trade Representative's (USTR) Special 301 Report on the adequacy of IPR protection in various countries throughout the world. Based on successful testing in 2005, CBP is now implementing the model.

- ***Post-entry Verification ("IPR audits").*** With post-entry verification or "IPR audits," CBP added a new IPR enforcement tool to complement traditional physical examination of goods at the border. In fiscal year 2005, CBP included IPR audits in its national audit plan for the first time, and trained a new group of employees, its regulatory auditors, on IPR to enable them to apply their auditing skills to the enforcement of intellectual property rights. In addition to receiving training from CBP's own staff, the auditors also attend training provided by trademark and copyright owners. IPR audits have been performed or in progress on more than 30 companies. CBP has issued penalties totaling over $4 million on imports of counterfeit goods uncovered during IPR audits and is working with companies to develop internal control systems to prevent imports of counterfeit and pirated goods. In IPR audits, CBP has found that most companies lack procedures to prevent imports of IPR infringing goods.

- ***Streamlining the CBP IPR recordation process.*** In December 2005, CBP announced the launch of an on-line recordation system for trademarks and copyrights and, in collaboration with the U.S. Patent and Trademark Office (USPTO), established a link between USPTO's website and CBP's website to help businesses protect their rights at the border. This new system allows businesses to electronically file IPR recordation applications with CBP, significantly reducing the amount of time required to process the applications. Some additional benefits of the new system include elimination of paper applications and supporting documents; ability to upload images of the protected work or trademark, thus making pictures of the protected right available to CBP Officers throughout the nation; and reduced time from filing of the application to enforcement action at our borders.

  - CBP is currently working with the U.S. Copyright Office to create a similar link from their website to the CBP Intellectual Property Rights e-Recordation webpage.

- ***Copyright Regulations.*** CBP has issued proposed rules changing its copyright regulations to enhance protection of sound recordings, motion pictures, and other audio-visual works by allowing them to be recorded with CBP while pending copyright registration. The early recording will provide CBP with the information it needs to prevent importation of pirated works into the U.S.

- ***Outreach to Foreign Governments.*** CBP participated in the interagency STOP! World Tour in 2005, where its focus was promotion of risk modeling and post-entry verification. Asian and European partners were visited (Singapore, Hong Kong, Japan, Korea, United Kingdom, France, Germany, and the European Commission) to build international support for STOP! goals.

Additional CBP activities related to STOP! objectives include:

- ***International IPR Training.*** In collaboration with the U.S. Patent and Trademark Office, the U.S. Department of Commerce, and U.S. Immigration and Customs Enforcement, CBP participated in international IPR border enforcement training programs in Russia, Thailand, Mexico, and Peru.

- ***Industry Outreach.*** CBP works with Industry on an ongoing basis to combat IPR infringement. CBP participates in various IPR events and coordinates with Industry on IPR training.

  - Program Participation: CBP regularly participates in industry and bar association functions as well as meeting with rightsholders individually to educate rightsholders and their representatives on working with CBP to enforce their rights, to provide information on IPR enforcement efforts and to discuss new CBP initiatives. Following is a list of some industry outreach activities in which CBP participated this year: International Anti-Counterfeiting Coalition Conferences, Designer Goods and Sporting Goods IPR Industry Roundtables, Motor Equipment Manufacturers Association Conference, and U.S. Chamber of Commerce meetings.

  - Product Identification Training: CBP continued to coordinate with Industry to provide product identification training to CBP field officers. In this training, rightsholders educate CBP's officers and provide materials to help CBP detect and interdict counterfeit and pirated goods.

- ***Raising Public Awareness.*** To help raise public awareness of counterfeiting and piracy, and inform the public of its IPR enforcement efforts, CBP gave numerous interviews, including several to a national television syndicate with more than 70 stations nationwide, to local television stations, to national print media such as the Wall Street Journal and PC World, and to local newspapers.

CBP National IPR Trade Strategy

CBP's National Trade Strategy directs actions and resources around priority trade issues. Intellectual property rights enforcement is a CBP Priority Trade Issue. As such, IPR enforcement is integrated into the work of offices throughout CBP, and CBP provides diverse training to its officers to enable them to respond to security, narcotics and trade issues, including IPR. CBP's National IPR Trade Strategy incorporates the STOP! initiative.

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 DHS's annual IPR seizure statistics. In fiscal year 2005, DHS seized 8,022 shipments with a domestic value of approximately $93.2 million, a 10.5 % increase in seizures over fiscal year 2004. In the last five fiscal years (Fiscal Years 2001-2005), the number of IPR seizures increased 125% and the domestic value increased 62%. During this period, DHS made 31,156 seizures with an estimated domestic value of over $482 million. At the midpoint of FY 2006, DHS has already seized almost 6,000 shipments, up 72% over the same period in FY 2005. More detailed enforcement statistics are available on the CBP website at ***www.cbp.gov***.

Additionally, CBP is actively enforcing a number of exclusion orders issued by the International Trade Commission (ITC) to exclude from entry into the commerce of the United States goods that the ITC determined to infringe valid and enforceable patents. Of note are exclusion orders against certain lens-fitted film packages also known as one-time use cameras or disposable cameras that infringe on one or more of fifteen patents owned by Fuji Photo Film Company, Ltd.; and against certain sildenafil, which is an active ingredient in Viagra®, or other pharmaceutically acceptable salts such as sildenafil citrate that infringe on one or more claims of a patent owned by Pfizer, Inc.

Other CBP International Activities

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 WCO Member Administrations improve the efficiency and effectiveness of their organizations in combating IPR violations. On behalf of the WCO Secretary General, the Group is exploring ideas for combating piracy and counterfeiting in four areas: free zones and transshipping, information exchange, destruction and recycling, and Internet piracy. CBP co-chairs the Customs IPR Expert Group, a subgroup of the WCO IPR Strategic Group consisting of the customs administration members only that provides a forum for customs-to-customs discussions on law enforcement topics inappropriate for business participation.

U.S.-E.U. IPR Working Group. At the 2005 U.S.-E.U. Summit, the U.S. and E.U. agreed to work together to fight global piracy and counterfeiting. Subsequently, the U.S. and E.U. agreed to develop an IPR Cooperation Strategy, and to establish an interagency U.S.-E.U. IPR Working Group to develop the strategy. As part of this strategy, CBP and its EU counterparts have developed and begun implementing an action plan to promote strong and effective border enforcement for IPR through customs cooperation.

Bilateral Trade Negotiations/Discussions and Monitoring. CBP supports USTR in the negotiation of free trade agreements and other bilateral discussions such as those with China and Japan by providing technical expertise on IPR border enforcement. CBP also actively participates in USTR's annual Special 301 review.

Group of 8 (G8) IPR Experts Discussions. As a member of two State Department led U.S. delegations to the G8 IPR Experts Meetings, CBP participated in successfully promoting U.S. objectives for improving IPR enforcement.

III. ICE IPR Enforcement Efforts and Significant Investigations

ICE, through the National Intellectual Property Rights Coordination Center (IPR Center), works with rights owners and IP trade associations on an ongoing basis to identify, investigate and prosecute IPR violators, with an emphasis on large scale, complex transnational conspiracies. The IPR Center educates industry and the international law enforcement community through outreach and training initiatives on growing counterfeiting trends and investigative techniques critical to successful IPR enforcement. During FY 2005, the IPR Center initiated more than 27 outreach sessions. During that same period, the IPR Center initiated field referrals that led to the generation of more than 51 ICE IPR investigations. From FY 2001 - 2005, ICE recorded 786 arrests, 483 federal criminal indictments and 529 convictions for trafficking in counterfeit goods and related crimes.

ICE has observed the following trends in its IPR investigations:

- The growing use of the Internet to advertise, market, facilitate and distribute counterfeit merchandise, and to complete transactions via secure electronic payment.

- The increasing presence of Organized Crime groups involved in the production, illegal importation and distribution of counterfeit goods.

- The existence of sophisticated trade-based money laundering activities, including *hawala* money transfer systems, to foster and facilitate the sale of the counterfeit goods destined for U.S. commerce; and that,

- The proceeds of counterfeiting are being used to further other criminal activity, such as narcotics distribution, extortion, gambling and alien smuggling.

ICE has conducted a number of successful IPR investigations. These investigations demonstrate the variety and complexity of counterfeiting scenarios that ICE encounters, as well as the domestic and international cooperation often required to bring these matters to successful resolution.

- In August 2003, ICE initiated "Operation Panda," an ongoing ICE-led task force investigation conducted jointly with the Federal Bureau of Investigation and the New York City Police Department. The operation targeted five Asian organized crime groups operating in New York City. Through a loose confederation, these groups and related criminal associates allegedly acted in concert to support criminal activities that included numerous acts of violence in New York's Chinatown areas. In November 2004, a federal grand jury returned indictments for racketeering offenses (RICO), attempted murder, extortion, alien smuggling, money laundering, trafficking in counterfeit goods and the operation of large-scale illegal gambling businesses. ICE collected approximately $200,000 in illegal proceeds from these groups and shut down an illegal money remitting operation that was sending upwards of $3,000,000 annually between China and the U.S. This case is currently active as the prosecution is continuing.

- In June 2004, the SAC New York initiated enforcement actions as part of "Operation Executive." The investigation resulted in the execution of five federal search warrants, the arrest of thirteen individuals, the seizure of the contents of eleven bank accounts totaling more than $650,000, as well as the contents of six containers valued in excess of $24 million. The investigation's undercover operation identified individuals and organizations responsible for the large-scale manufacturing and smuggling of counterfeit trademarked merchandise into the U.S. from the People's Republic of China (PRC). The U.S. distributors were of Middle-Eastern descent and were considered to be among the largest distributors of counterfeit merchandise in the New York area.

- In July 2004, a Chinese national and owner of XYZ Trading of Houston, Texas was convicted of trafficking in counterfeit goods and sentenced to 63 months incarceration. His conviction was associated with counterfeit goods that posed significant public health and safety concerns. In November 2003, ICE agents initiated federal search warrants that were based on an ICE and CBP examination of a container imported from the PRC by XYZ Trading. Numerous unmanifested counterfeit trademark items were discovered which included counterfeit Underwriters Laboratories certified electrical cords and batteries. These items were consistently found to contain substandard materials, to include mercury, that would short out and cause fires or damage connected equipment.

The investigation, which included federal search warrants in Texas and New York, resulted in the seizure of counterfeit electrical cords, batteries and other counterfeit trademark merchandise, valued in excess of $6 million and the arrest and conviction of two subjects.

- In July 2004, "Operation Spring," the first transnational joint investigation by ICE and the PRC, resulted in the arrest of Randolph Guthrie and ten PRC nationals in Mainland China. The investigation was generated from information provided by the Motion Picture Association of America, who considered Guthrie to be the largest worldwide distributor of pirated DVD movies. PRC officials seized approximately 160,000 counterfeit DVDs valued at approximately $3.5 million and approximately $200,000 in U.S. and Chinese currency. Guthrie was convicted in a Shanghai court on criminal charges and sentenced to a jail term of 30 months in the PRC. In late September 2005, Chinese authorities expelled Guthrie and ICE agents arrested him upon his return to the U.S to face charges here. He pled guilty in January 2006 and forfeited more than $800,000. Guthrie was sentenced to 60 months in prison; 3 years supervised release, and was fined an additional $15,000.

- In December 2004, ICE and the FBI conducted a joint investigation into an organization of illegal Israeli nationals involved in the distribution at shopping mall kiosks in various cities in the United States of video consoles containing counterfeit Nintendo software and games. The investigation resulted in the seizure of approximately 4,000 pieces of counterfeit merchandise and the arrest of Yonathan Cohen, the owner of the company. Cohen was subsequently convicted of criminal copyright infringement and sentenced to 60 months in prison.

- In January 2005, ICE Jacksonville, FL, initiated Super Bowl IPR Operation "End Zone" in anticipation of Super Bowl XXXIX. ICE, in coordination with the NFL Fraud Division, and federal, state, and local law enforcement agencies, executed an IPR operation targeting fraudulent NFL properties, such as clothing, tickets and publications. ICE Jacksonville and the IPR Center produced literature to solicit the assistance of Super Bowl sponsors, licensees, manufacturers, importers and retailers of authorized Super Bowl XXXIX merchandise, as well as the general public.

ICE also conducted an extensive distribution of the literature together with industry and law enforcement outreach in support of this initiative. Operation "End Zone" resulted in the seizure of counterfeit merchandise valued at approximately $650,000.

- In February 2005, ICE, the FBI and the San Diego County Computer and Technology Crime High-Tech Response Team conducted joint undercover operation, "Operation Elite Torrents." The operation resulted in the service of ten federal search warrants in three states. The Internet peer-to-peer (P2P) network, ELITE TORRENTS, provided its members with original material for the online trading of pirated media. BitTorrent software allowed for P2P file sharing among its approximately 134,000 members throughout the United States and the world. P2P networking enables individual users, utilizing a software client, to establish a direct connection between their computers, allowing users to transfer data files.

- In February 2005, ICE Detroit initiated Super Bowl IPR "Operation Grid Iron" in anticipation of the city of Detroit, Michigan, hosting Super Bowl XL. "Operation Grid Iron" was devised to identify and investigate individuals, businesses, and criminal organizations attempting to profit from the illegitimate sales of counterfeit Super Bowl merchandise. ICE Detroit, in consultation with the IPR Center, the National Football League, the ICE Headquarters Commercial Fraud & IPR Unit, and federal, state, and local law enforcement agencies, prepared an IPR program targeting counterfeit products. The operation resulted in seizures of counterfeit merchandise valued in excess of $530,000.

- In 2001, the former U.S. Customs Service, in conjunction with the Department of Justice, conducted an operation that involved more than 65 searches in the U.S. and five foreign countries related to the international copyright piracy investigation "Operation Buccaneer". As of October 2002, 16 defendants had been convicted in the U.S. of felony criminal copyright offenses, including conspiracy to commit those offenses, and 13 defendants were sentenced to federal prison terms of up to 46 months. In May 2005, three individuals in the United Kingdom who were part of the network of cyber-pirates and were responsible for cracking software protection codes received jail

terms of between 18 and 30 months. These three were among eight Britons arrested by the U.K.'s National Hi-Tech Crime Unit following the U.S. led international copyright piracy investigation.

- In August 2005, "Operation Ocean Crossing," the second transnational joint investigation with the PRC, resulted in the arrests of Richard Cowley in the U.S., and eleven Chinese nationals in the PRC. Cowley subsequently pled guilty to importing counterfeit drugs. The investigation was developed after the ICE Attaché/Beijing office received separate information from Eli Lilly and Pfizer representatives, identifying Cowley, of Shelton, Washington, and a PRC based counterfeit pharmaceutical distribution group, as being involved in the sale of counterfeit pharmaceuticals in the U.S., the United Kingdom, and other locations throughout Europe. Three illicit pharmaceuticals facilities were shut down and authorities made the largest seizure of counterfeit pharmaceuticals in the PRC to date. PRC agents seized approximately 222,300 tablets, 55,500 blister packs and 75 kilograms of loose pills of counterfeit Viagra and Cialis, 260 kilograms of raw materials, 580,000 counterfeit Viagra trademark labels and packages and 13 pieces of equipment used to manufacture counterfeit pharmaceuticals.

UNITED STATES COORDINATOR FOR
INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT

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