Statement of Laura H. Parsky
Deputy Assistant Attorney General
Criminal Division
Department of Justice

before the

Subcommittee on oversight of Government Management, the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

Presented on

June 14, 2005

I. Introduction

Chairman Voinovich, Ranking Member Akaka, and Members of the Subcommittee, thank you for the opportunity to discuss the Department of Justice's efforts to protect intellectual property rights through criminal enforcement, as well as the Department's role in the Administration's Strategy Targeting Organized Piracy ("STOP!") Initiative.

One of the most important contributions the Department makes to the protection of intellectual property rights is the prosecution of organized criminal networks that steal the creative works of U.S. businesses, both large and small. This is also one of the Department's core missions in support of the STOP! Initiative. To fulfill this mission, the Department has developed an aggressive and creative prosecution strategy -- one that is grounded in lessons learned from actual investigations and prosecutions of intellectual property crimes, and one that we are constantly re-assessing and evaluating for opportunities for improvement and growth.

In addition to its prosecution mission, the Department's principal contribution to the STOP! Initiative is the work of the Department of Justice's Intellectual Property Task Force ("IP Task Force"). Last fall, the IP Task Force completed a wide-ranging and exhaustive review of the Department's intellectual property enforcement efforts. Its collective recommendations were issued in a 70-page report last October. The Department is now engaged in the considerable and important work of implementing those recommendations.

The Department also participates in the interagency collaboration and international outreach that is fundamental to the STOP! Initiative's mission. Department officials have participated in the recent STOP! tours to Asia and Europe, and we are working with other agencies to increase public awareness of the harms of intellectual property theft and to help U.S. businesses work with foreign law enforcement to protect intellectual property rights.

My remarks today are intended to describe in more detail the Department's prosecution strategy and some of its recent successes, as well as to provide an overview of the Department's contributions to other aspects of the STOP! Initiative.

1. 1. Prosecuting Organized Crime Groups Engaged in Intellectual Property Theft

a. Training and Retaining Expert Intellectual Property Prosecutors

No prosecution strategy can be effective if it lacks the skilled personnel to carry it out. The Department therefore has implemented a three-part approach to ensure that there is a sufficient number of trained and experienced prosecutors to effectively combat the ever-increasing number and complexity of intellectual property offenses.

First, within the Criminal Division, the Computer Crime and Intellectual Property Section ("CCIPS") devotes 11 of its 32 attorneys to intellectual property criminal enforcement issues, including prosecution, legislative reform, and international training and technical assistance. CCIPS' prosecution strategy stresses the development of undercover investigations that, in turn, lead to multi-district and international investigations and prosecutions of organized criminal groups. As the complexity and frequency of online intellectual property crimes have increased, demand for CCIPS attorneys has also increased: in the past three years, CCIPS has experienced a six-fold increase in its prosecution caseload. CCIPS also provides training and on-call, 24/7 legal guidance to agents and prosecutors in the field; provides technical assistance on relevant legislative issues; and assists in the development of Department and Administration policy on intellectual property issues.

The second component of the Department's approach is the designation of Computer Hacking and Intellectual Property ("CHIP") coordinators in every U.S. Attorney's Office in the country. As with all federal crime, primary responsibility for prosecution of federal intellectual property offenses falls to the 94 U.S. Attorneys' Offices across the United States and its territories. CHIP Coordinators are Assistant U.S. Attorneys who are given specialized training in intellectual property and certain types of computer crime, and who serve as subject-matter experts within their districts. Identifying a CHIP Coordinator in each District ensures that a prosecutor with training and experience in intellectual property crimes is available wherever and whenever an offense occurs. The position of CHIP Coordinator is often a highly-sought designation, and many of the current CHIP Coordinators have been part of the program since the creation of its predecessor program - the Computer and Telecommunications Coordinator (CTC) program -- in 1995.

The third component of the Department's approach is the creation of CHIP Units in certain districts where the incidence of intellectual property and hi-tech crimes is higher and is more likely to significantly impact the national economy. Former Attorney General Ashcroft created 13 CHIP Units across the United States, and this past January, in response to the recommendations of the IP Task Force, five additional CHIP Units were created. The new Units are located in Washington, DC; Nashville, Tennessee; Pittsburgh, Pennsylvania; and Orlando, Florida. CHIP Units consist of a concentrated number of trained prosecutors in the same U.S. Attorney's Office, and they have been successful in increasing the enforcement of criminal intellectual property laws. The most recent data shows an increase of 46% in the number of defendants charged in districts with CHIP Units as compared to the year before these Units were activated.

CCIPS provides regular training and support to this network of CHIP Units and Coordinators. Last October, CCIPS provided two full days of training to all CHIP Coordinators on various aspects of criminal intellectual property prosecutions, and it is organizing a 3-day course on intellectual property crime at the National Advocacy Center in Columbia, South Carolina in November 2005. In addition, CHIP Units have been providing regional training for federal agents. For example, on February 1, 2005, the CHIP Unit in Los Angeles provided a full-day course for the Federal Bureau of Investigation ("FBI"), U.S. Secret Service, U.S. Immigration and Customs Enforcement ("ICE"), Internal Revenue Service - Criminal Investigation Division, and other law enforcement agencies on intellectual property investigations.

Through implementation of this three-part approach, the Department has developed a highly-motivated and effective network of more than 200 skilled federal prosecutors who are capable of handling the complex intellectual property investigations and prosecutions that are central to the Department's overall prosecution strategy.

b. Prosecuting Organized Crime Networks

Both the STOP! Initiative and the Department's IP Task Force have given the highest priority to the prosecution and dismantling of multi-district and international criminal organizations that commit intellectual property crimes. The Department's increased focus on-and allocation of resources to-the prosecution of these organizations has paid dividends in the number and quality intellectual property cases prosecuted. The Department has given special priority to those online groups and networks that are the original source or supply for pirated and counterfeit goods, as well as to novel prosecutions that are likely to have the greatest deterrent impact on intellectual property criminals and the general public.

Online Copyright Piracy

The Department has developed a number of successful undercover investigations and prosecutions targeting the Internet piracy groups that steal digital works, strip away or circumvent embedded copyright protections, and distribute those works worldwide on the Internet - often before the movie, game, music CD, or software is released for commercial sale to the public.

i. Operation D-Elite:

A recent example of the Department's success against Internet piracy is Operation D-Elite. On May 25, 2005, FBI and ICE agents executed search warrants at 10 locations across the United States as part of this ongoing investigation. Those targeted included the leading members of an international peer-to-peer ("P2P") network known as Elite Torrents. Elite Torrents used the new BitTorrent file sharing technology to allow its 133,794 members to distribute copyrighted software, movies, and music. As part of this comprehensive enforcement effort, federal agents also seized the Elite Torrents main computer server and replaced the publicly accessible web page with a strongly worded law enforcement message. A copy of that web page is attached as an exhibit to my written testimony. This ongoing investigation, being handled by the Computer Crime and Intellectual Property Section of the Criminal Division, is novel in that it is the first to target the misuse of BitTorrent P2P technology.

Although this investigation is still developing, Operation D-Elite has already had a significant deterrent impact as a result of the substitute web page. Any one of the approximately 133,000 members of the EliteTorrents network who attempted to log on to the main server on or after May 25th would have been greeted with the FBI / ICE announcement that the site was shut down. In the first week alone, the web page was viewed more than 500,000 times.

ii. Online Piracy and the Link to Hard Goods-Operation Fastlink:

Although many participate in underground Internet piracy networks to obtain copyrighted works for free, others seek financial gain by converting the digital copies of these works to optical disc form and selling them for profit. An example of this was uncovered after another highly significant online piracy takedown last April.

On April 21, 2004, the Department led the single largest international enforcement effort ever undertaken against online piracy - Operation FastLink. Operation FastLink resulted in 120 simultaneous searches worldwide (80 in the United States) by law enforcement entities from 10 foreign countries including Belgium, Denmark, France, Germany, Hungary, Israel, the Netherlands, Singapore, Sweden, and Great Britain and Northern Ireland. Law enforcement officials in Spain subsequently took action against related targets in that country.

In the months leading up to the enforcement action on April 21, 2004, CCIPS relied heavily on the network of CHIP Coordinators and CHIP Units to ensure that warrants were signed timely, and that simultaneous execution could proceed smoothly across the U.S. Additionally, in the months before takedown, CCIPS attorneys and FBI case agents traveled to Europe and met with each country involved to provide training on the operation of online piracy organizations and the law enforcement techniques used to identify, investigate, and prosecute them.

Operation FastLink has identified over 100 individuals believed to be engaged in online piracy, many of them high-level members or leaders of online piracy release groups (aka "warez" groups) that specialize in distributing high-quality pirated movies, music, games, and software over the Internet. Additionally, more than 200 computers have been seized worldwide, including over 30 computer servers that functioned as storage and distribution hubs for the online piracy groups targeted by this operation.

This is the largest global enforcement action ever undertaken against online piracy. To date, eight members of the organized piracy groups targeted by Operation FastLink have been convicted in the U.S., and many more prosecutions are ongoing.

Once one of these online piracy groups "cracks" a copyrighted work by disabling or removing the embedded copy protections, the transition of the "cracked" version from the online world to the profitable criminal enterprise of creating and selling pirated optical media is rapid. For instance, as a result of the searches they executed as part of Operation FastLink in Singapore, authorities arrested Ching Seen Ming in April 2004. Ching conspired with his brother to mass produce and sell optical discs containing the latest warez software, games, and movies throughout Asia and the Middle East. Ching obtained the "cracked" releases of various software, movies, and games by downloading them from a warez computer server managed by the warez group Fairlight. Ching would then pay members of Fairlight between $500 and $1,500 for the downloaded works, and would pay as much as $5,000 in order to obtain cracked versions of software, games, or movies that had yet to be released even to the warez underground. Ching was convicted in Singapore and sentenced to 15 months of imprisonment.

International Cooperation

i. Operation Buccaneer and Operation Spring

Operation FastLink shows that, in order to take effective action against organized criminal networks engaged in intellectual property theft, coordinated international enforcement is necessary. The Department's approach to international enforcement and cooperation cannot and does not end at the moment of arrest. We are committed to providing ongoing support to foreign prosecutions, thereby helping to ensure strong criminal intellectual property enforcement worldwide.

An example of this commitment is Operation Buccaneer. On March 6, 2005, the United Kingdom convicted two defendants of serious fraud charges after a four-month jury trial for which the Justice Department provided 8 witnesses and extensive prosecutorial assistance in the years of discovery and disclosure disputes leading up to the trial. These two defendants were part of Operation Buccaneer, a joint CCIPS / Customs (now ICE) undercover investigation targeting leading global Internet piracy organizations. The UK convictions brought the total number of Buccaneer convictions worldwide to 40 (30 in the U.S.). On May 6th of this year, the UK defendants were sentenced to terms of imprisonment of 2 and 2½ years, respectively, in what the Queens Counsel called "the first prosecution for software piracy on this scale conducted in this country." In public comments to both the court and the press, the Queens Counsel praised the "unprecedented" cooperation and assistance provided by the Department of Justice's Computer Crime and Intellectual Property Section throughout the investigation and prosecution.

Where foreign authorities are reluctant or unable to prosecute intellectual property criminals whom the Department considers a high priority, the Department is willing to seek the extradition of those offenders for prosecution in the U.S. In another case arising from the Buccaneer investigation, the Department is now seeking the extradition from Australia of a well-known international copyright pirate, Hew Griffiths. This is the first time the U.S. has ever sought the extradition of an individual based solely on online violations of U.S. copyright law. Over the past two years, Mr. Griffiths has fought extradition unsuccessfully in a succession of court cases in Australia. He now has appealed to the country's highest court. These efforts signal the United States' willingness to utilize all of the tools available to prosecute intellectual property criminals; geographic boundaries will no longer protect those who engage in these crimes.

Another recent example of international cooperation that produced a successful result is Operation

Spring, in which U.S. law enforcement worked with their counterparts in China to thwart the international shipment and sale of illegally manufactured DVDs. In this cross-border effort, ICE worked with Chinese law enforcement officials to investigate an international piracy ring involved in the illegal sale of thousands of infringing movie DVDs via the Internet. As a result, in April 2004, four co-conspirators -- including two U.S. nationals and two Chinese nationals -- were convicted in China for selling more than 133,000 pirated DVDs to customers in more than 20 countries around the world. Defendant Randolph Hobson Guthrie III, the leader of the organization, was sentenced to 30 months in Chinese prison, a fine of approximately $60,000, and deportation after serving his term. This case represents a breakthrough in law enforcement cooperation on intellectual property crime between the U.S. and China, and we are seeking ways to identify additional opportunities for similar collaboration with the Chinese.

Protecting Business Trade Secrets

The Department's prosecution strategy also prioritizes cases involving trade secret theft made illegal by the Economic Espionage Act of 1996, particularly those cases where U.S. businesses are threatened by unscrupulous foreign competition.

One recent example involves the FBI's arrest of two former employees of Metaldyne Corporation of Plymouth, Michigan, on charges that they stole Metaldyne's trade secrets to enable a Chinese business to produce exact replicas of products at a reduced price. Chinese-based Chongqing Huafu Industry Co. is alleged to have obtained the Metaldyne trade secrets from the defendants in an effort to undercut the price that Metaldyne charged for a sophisticated metal rod used in truck engines. One defendant, Fuping Liu, worked at Metaldyne as an engineer until quitting in April 2004 to work for a competitor, while his co-defendant, Anne Lockwood, was a former vice president of sales at Metaldyne.

The FBI arrested Liu and Lockwood after investigation allegedly revealed a well-developed plan to produce Metaldyne's products in China, which included multiple trips to meet with potential Chinese business partners and the theft of numerous documents detailing Metaldyne's proprietary production methods. The bulk of the documents allegedly stolen originated with Metaldyne, but Liu is also accused of stealing confidential information from Metaldyne competitor GKN Sinter Metals of Auburn Hills, Michigan, and passing this information to Lockwood. The prosecution, which is being handled by a CHIP Coordinator in the U.S. Attorney's Office in Detroit, Michigan, is ongoing.

Protecting Public Health and Safety

In addition to protecting businesses' trade secrets, the Department also is carefully monitoring the growing public health and safety threat posed by counterfeit products ranging from baby formula to batteries to pharmaceuticals. Counterfeit consumer products not only hurt the sales and reputation of trademark holders, but often pose serious risks to the health and safety of the general public.

One example of this occurred in April of last year when an Alabama man was sentenced to 41 months of imprisonment and ordered to pay $45,305 in restitution, after pleading guilty to twenty-eight counts of counterfeiting and pesticide misbranding charges. The defendant sold mislabeled and adulterated pesticides to municipalities and private businesses in a number of southern states. These pesticides were needed to control mosquitoes and the West Nile Virus.

2. The Department of Justice's Contributions to the STOP! Initiative

a. The Department of Justice's Task Force on Intellectual Property

In addition to the ongoing implementation of its overall prosecution strategy, a key component of the Department's other contributions to the STOP! Initiative has been the Department of Justice's Task Force on Intellectual Property and the implementation of the more than 25 separate recommendations in the IP Task Force's October 2004 report. Last year, the IP Task Force undertook an extensive, six-month review of the Department, examining all aspects of intellectual property protection including criminal, civil, and antitrust enforcement; legislation; international coordination; and prevention. After this comprehensive

review of Department practice and policy, then-Attorney General Ashcroft released the IP Task Force's report analyzing the Department's efforts and recommending numerous measures to improve and enhance the Department's protection of the nation's creativity and innovation. On March 9, 2005, approximately four weeks after being sworn in as the 80th Attorney General, Attorney General Alberto Gonzales renewed the Department of Justice's commitment to the IP Task Force and to continuing the implementation of the recommendations contained in the IP Task Force's report.

Although the recommendations of the IP Task Force are numerous and wide-ranging, the Department has already implemented many of them. For instance, the report called for the expansion of the Department's CHIP Program and the designation of CHIP Coordinators in every U.S. Attorney's Office nationwide. In January 2005, the Department of Justice created five (5) new CHIP Units, bringing the total number of CHIP Units nationwide to eighteen (18). Each Unit received funding to hire two additional prosecutors to address intellectual property offenses in their respective districts. In addition, the Department designated a CHIP Coordinator in every U.S. Attorney's Office in the country, bringing the total CHIP network to a total of more than 200 trained prosecutors.

Further, the Department has enhanced and improved its delivery of intellectual property training programs for foreign prosecutors and investigators by developing key relationships with foreign officials directly responsible for IP enforcement. For example, the Department worked with Mexican government officials to provide a three-day seminar in December 2004 for intellectual property prosecutors and customs officials from Mexico. Department attorneys met with Mexican authorities in Washington, DC, and provided a detailed overview of criminal IP enforcement in the United States. Following the December meetings, the Department and the U.S. Embassy in Mexico City have worked with Mexican officials to provide training on trademark identification, and are planning an additional training program in Mexico City on counterfeiting investigations. Similar efforts are underway in Panama and are planned in several Eastern European and Southeast Asian countries known for producing pirated and counterfeit goods.

Many of the other comprehensive recommendations in the IP Task Force report are part of an ongoing process of implementation and will require the long-term efforts of various components within the Department. For instance, the report called for continued prosecution of national and international criminal organizations that commit intellectual property crimes. I have already provided examples of the Department's considerable success in this area during the past year alone. However, we will not rest on this record; we are committed to doing more.

Moreover, national and international takedowns such as those in Operations FastLink and D-Elite are not one-hit events. These takedowns create hundreds of new potential prosecutions, both national and international, all of which require the ongoing commitment of Department prosecutors. For instance, as a result of investigations like Operation Buccaneer and Operation FastLink, the Computer Crime and Intellectual Property Section has seen a 600% increase in its pending intellectual property criminal workload, from 27 to more than 170 cases over the last three (3) years alone. These cases must and will be prosecuted, but it will be a longer-term process.

b. The Department Is Committed to Interagency Coordination on Intellectual Property Protection In addition to implementing the IP Task Force's recommendations, the Department has also worked closely with other STOP! agencies to ensure a unified, consistent approach to intellectual property protection from the Administration as a whole.

1. The Department is Engaged in Multi-Agency International Efforts to Protect Intellectual Property

One of the goals of STOP! has been the development of international interest in and commitment to the protection of intellectual property. The Department of Justice took part in both the Asia STOP! trip in April, which included meetings with officials in Singapore, Hong Kong, Japan and Korea, and the recently concluded European trip to the United Kingdom, France, Germany, and the headquarters of the European Union in Belgium.

During each trip, the Department met directly with law enforcement colleagues who share the

Department's goal of increased international enforcement of intellectual property rights. A proposal developed by the Department to identify an intellectual property law enforcement point of contact in each country generated substantial interest from foreign counterparts, and the Department of Justice, through CCIPS, has established itself as the United States' international contact for criminal intellectual property matters. By developing this law enforcement network and points of contact through the STOP! international trips, the Department anticipates that it will be easier and faster to enlist the cooperation of foreign law enforcement when future U.S. investigations, similar to Operation FastLink, identify foreign targets. Through the international outreach driven by STOP!, the Department will develop information that can assist investigations and prosecutions directly affecting American intellectual property business interests in foreign countries.

The Department has also taken an active role in seeking greater criminal enforcement of intellectual property violations in China. U.S. and Chinese law enforcement officials had extensive discussions on criminal enforcement of intellectual property rights and areas for potential cooperation during the U.S.-China Joint Liaison Group meeting held in February 2005. The Joint Liaison Group has provided a productive forum for U.S.-China law enforcement cooperation in a number of areas of criminal enforcement, and we are hopeful that we will be able to make progress on intellectual property protection in China through this specialized law enforcement forum. In particular, we will seek opportunities for joint enforcement actions building on the success of Operation Spring. In addition, the Department has joined with many of the STOP! agencies to work with China through the IPR working group of the U.S.-China Joint Committee on Commerce and Trade.

The Department is also working closely with the Department of Commerce and the U.S. Embassy in Mexico City to encourage the intellectual property section of the Mexican Department of Justice to provide guidance for trademark and copyright holders in the best methods to seek criminal enforcement of intellectual property rights. By helping intellectual property rights holders understand the procedural and practical means to work with Mexican authorities, the U.S. Government will provide a real benefit to businesses seeking to market their intellectual property abroad. The Department hopes that this program will be a model that can be used in other countries to develop effective prosecutions and protect the intellectual property of U.S. companies doing business throughout the world.

2. The Department Cooperates with Other Agencies on Joint Projects to Increase Intellectual Property Protection and Enforcement

The STOP! Initiative also has had the beneficial effect of greatly enhancing the cooperation and coordination of all the U.S. Government agencies responsible for intellectual property protection at the leadership and staff levels. There is daily contact between these agencies, and the level of cooperation among agencies on intellectual property issues is at an all-time high.

In this environment, the Department of Justice has taken part in interagency projects and working groups focusing on intellectual property protection and employing strategies outside the scope of the Department's traditional focus on criminal prosecution. These areas include the development of public education programs and presentations on the importance of intellectual property - programs in which a multi-agency approach is particularly beneficial. The Department of Justice, along with the Department of Commerce and the Patent and Trademark Office, is working through STOP! to develop effective public outreach campaigns to educate Americans about the harm caused by intellectual property theft and the health and safety risks associated with counterfeit consumer goods.

In particular, soon after the IP Task Force report was released in October 2004, the Department of Justice hosted the first installment of a national education and prevention program known as "Activate Your Mind: Protect Your Ideas." In partnership with Court TV, the Department of Justice worked extensively with victim industry groups and educational organizations, StreetLaw Inc. and iSafe, Inc., to educate high school students on the importance of creativity, the impact of stealing creativity, and the consequences of violating the laws that protect creativity. More than 100 high school students participated in the day-long event at the Department of Justice where they listened to songwriters, victim representatives, the Attorney General, the Deputy Attorney General, and a convicted intellectual property

offender about the harm caused by intellectual property piracy. The students then used their own creativity to develop anti-piracy slogans, songs, and public relations campaigns. The event was filmed by Court TV and produced into a 30-minute show that has aired on cable TV and been broadcast to thousands of high school students through Court TV's Courtroom in the Classroom program.

On April 28, 2005, Attorney General Gonzales traveled to Los Angeles, California to participate in the second presentation of the Activate Your Mind program at UCLA. This program focused on television and movie piracy and involved over 120 high school students who discussed intellectual property protection with the Attorney General and listened to presentations from actors, a stuntman, an FBI special agent, and a convicted intellectual property offender. The event, which was sponsored by the Motion Picture Association of America, received extensive coverage in the local media.

The Department of Justice is currently working with Court TV and other educational partners to continue the sustained prevention and educational efforts necessary to deter piracy among American students. In addition, the Department is working on developing regional public education programs for implementation by local CHIP Coordinators.

Conclusion:

In conclusion, I would just like to express the Department's appreciation and my personal gratitude to Chairman Voinovich and other Members of the Subcommittee for the opportunity to discuss the Department's efforts to aggressively fight intellectual property crime in the United States and abroad and its role in the Administration's STOP! Initiative. The Department of Justice is keenly aware of the grave harm to this nation inflicted by the theft of our creativity and innovation. We have a duty to protect not only the economic well being of our citizens but also their health and safety; therefore, the Department of Justice has made it a priority to do everything we can to strategically and effectively combat intellectual property crime.

At this time, I would be happy to answer any questions the Subcommittee may have.

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