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I wish to thank the Commission and the German Presidency for providing this excellent forum for responding to its trailblazing "Green Paper on Combatting Counterfeiting and Piracy in the Single Market." The Green Paper proceeds from a premise that many policymakers and law enforcement personnel have been too slow to realize: that IP crime is bigger, faster, nastier, costlier, and more dangerous than ever before.

We thank the Commission for its leadership in focusing the Community's attention on what unquestionably flows from that premise: that one of the most important challenges in fighting the increasing assaults on intellectual property here and around the world is to modernize the inadequate systems for cooperation among law enforcement authorities --both within the Community, and between Member States and other countries that may be way stations in the commission of crimes, harboring perpetrators of IP crime, or victimized by it.

Let me say at the outset that in any particular effort to build law enforcement bridges you may consider two different approaches. One is to create a discrete set of principles for information-sharing applicable only to IP offenses: separate law enforcement points of contact, separate MOUs, separate measures of accountability. The other is to look at existing bilateral and multilateral arrangements for attacking other forms of transnational organized crime -- be it computer crime, narcotics, terrorism, alien smuggling, cargo theft -- and, wherever possible, avail yourselves of existing arrangements for cooperation in IP crime cases as well. These approaches are not mutually exclusive. I mention the second approach -- which looks at how IP crime functions rather than the nature of the property stolen -- because it has several virtues to commend it:

First, this approach is congruent with the metastasis of IP crime into systematic organized criminal activity. What most in this room take for granted is a premise not widely shared by many law enforcement officials and political leaders. I worry that establishing new and redundant law enforcement mechanisms will perpetuate the isolation of IP crime.

Second, it may be easier to sell the second approach because the lines of communication are familiar and the initiatives already are in place.

Third, targeting the IP criminals may deliver to law enforcement leadership the very same criminals who are perpetrating other high priority crimes, including terrorism, narcotics trafficking, guns, or offenses implicating public health and safety, such as counterfeit pharmaceuticals, electrical appliances, or airplane parts. As IP criminals are now wise to the high profits and low risk of piracy and counterfeiting, pursuing these offenders through asset forfeiture, money laundering investigations, and other conventional law enforcement techniques used to attack organized crime may net the most serious law enforcement targets.

Fourth, adding to existing programs will invite critical information-sharing opportunities with industry in areas where law enforcement places the highest priority. Cooperationwith industry will retire the notion that IP offenses are an isolated set of effete economic crimes where the right holders are
fully capable of protecting their own interests.

In many respects, the fragmentation of IP crime mirrors illicit drug trafficking in its scope, pervasiveness, and nimbleness in resisting eradication. We believe you may wish to consider creating regional enforcement nets capable of isolating each link in the criminal chain and disabling that link. The notion that unless the pirated goods are released in your country, you have no interest in providing legal assistance or extradition is as antiquated as the gramophone; such attitudes will guarantee safe havens -- indeed, roving safe havens -- for the pirates.

The Green Paper usefully isolates each occasion when law enforcement cooperation within the Single Market will spell success or doom in taking down IP criminals. I will focus on three of what I shall call "moments of truth" in attacking IP crime:

1. The determination that merchandise is counterfeit.

If the retailer names his source, will the police be able to request information from the customs authorities? Does the customs authority track the origin of shipments and maintain the information on a continuing basis?

In the U.S., the FBI, as the federal domestic police force could approach the Customs Service for information about the importer and his commercial activities. Customs maintains this data and is not prevented by law or policy from disclosing it to the FBI in the context of an investigation. There are no MOUs or other formal mechanisms for sharing information. However, if there are domestic hurdles to this type of cooperation in EU Member States, you may wish to consider facilitating this type of information-sharing. I note in this regard concerns raised about the EU's 1995 data protection directive 95/46/EC.

If the suspect merchandise has been transhipped, each national authority has an interest in knowing where else in the EU the shipments are going, and if other national authorities are also investigating this exporter. In this regard, we believe it would be quite useful to consider a

centralized, Community-level intelligence data base. This would allow affected countries to approach the exporter's or transhipper's authorities with a united front.

2. Dealing with contraband entering the Single Market from non-EU countries.

The challenges that flow from this characteristic of modern IP crime are significant, particularly in countries whose law enforcement agencies operate completely independent from each other. What if the national authorities want to question the individual who transhipped the goods to the Member State? What if the authorities want the transhipment country's export records?

If there is a mutual legal assistance treaty between each country and the country of origin, or between the EU and the country of origin, is IP crime covered by the MLAT? MLATs can be very useful to identify, procure, and present evidence, and to identify and secure assets (to be used later in establishing money laundering offenses and to forfeit -- to compensate injured parties and punish criminals.)

The U.S. relies regularly on MLATs in criminal cases, and increasingly in serious IP cases. MLATs are particularly valuable in Internet piracy cases because the perpetrator can simultaneously be physically located in one country, store evidence in another country, and strike victims in yet a third country.

In the absence of a formal MLAT, the U.S. experience has been that somewhat informal bilateral arrangements between law enforcement authorities or administrative authorities are very helpful. Under similar circumstances, the U.S. Customs Service, which has executed over 100 bilateral agreements with its counterparts, may be able to obtain the sought-after information on movement of the goods. Or, the FBI may be able through is embassy attaches to obtain assistance from domestic police. Informal arrangements are beneficial because they are easier to initiate, often more comprehensive, and faster at producing the necessary information.

Whether the cooperation is through formal or informal mechanisms, or both, a key question is whether IP crime is considered a "serious crime" throughout the Community. Would Member States be able to obtain critical information in IP cases under the proposed Convention on Mutual Assistance in Criminal Matters Between the Member States of the European Union? You may wish to consider designating them as such. Cooperation either through mutual legal assistance or police channels is invaluable, and the two types of cooperation are complementary.

3. Obtaining information from non-Member States from non-EU nationals

Let us assume you want information from a transhipment country outside the EU, the person in question will not surrender the information, and the transhipment country does not have or will not expend the resources to investigate the crimes. You want to stop the export of contraband and punish the suspect for his crimes.

Here we face two questions: whether the EU has an extradition treaty with the transhipment country, and whether IP crime is covered by the treaty. I note here that the proposed Convention Relating to Extradition Between Member States of the European Union provides in Article 2 that extradition shall be granted "in respect of offenses which are punishable under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least 6 months."

The general reluctance of some countries to extradite their nationals is well-known. Traditionally, IP crime was not subject to sufficiently severe criminal penalties to qualify for certain extradition treaties. However, as the face of these crimes changes, it would be prudent to revisit our attitudes toward judicial assistance, and to undertake to modernize and streamline the operation of extradition treaties, and, where appropriate, establish new ones.

Judicial assistance in extradition-related matters can take several forms. In the U.S., assuming the existence of a bilateral extradition treaty, we extradite fugitives found in the U.S., including our own nationals, for all types of crime, including economic/IP crimes, provided such crimes fall within the terms of the treaty. (Many older extradition treaties apply to a list of offenses included as part of the treaty; newer, so-called dual nationality treaties, provide for extradition in any case involving conduct that would be punishable in both countries by in excess of a year in prison.)

The dual criminality requirement found in many extradition treaties should be interpreted as flexibly as possible, so as to ensure coverage of the maximum number of offenses, including IP crimes.

We encourage countries to extradite their nationals in all cases, including IP cases. Where extradition is denied solely on the basis of nationality, we encourage countries to consider allowing for the temporary surrender or transfer to the country in which the offense was committed for the purpose of trial and sentencing, with the defendant returning to the country of nationality to serve any sentence. If temporary surrender or transfer is not possible, you may wish to consider a regime committing Member States to use the resources necessary to provide for the effective domestic prosecution of nationals and give those cases the same priority as would be accorded purely domestic prosecutions.

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In conclusion, now that the TRIPS Agreement has promoted significant harmonization of intellectual property laws among WTO members, we encourage you to respond to the increasing fragmentation of IP crime with more unified and linked enforcement nets. If we are to stem the tide of IP crime, enjoy the fruits of our peoples' ingenuity, creativity, and labor, and promote and protect the capital investment in one of the great engines driving our economic prosperity, this challenge must be met. The isolated efforts of individual Member States, industries, or companies, and even the heralded promise of the Single Market, will be feeble against 21st century IP crime.