STATEMENT BY THE ATTORNEY GENERAL

SYMPOSIUM OF THE AMERICAS:
PROTECTING INTELLECTUAL PROPERTY IN THE DIGITAL AGE
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U.S. Department of Justice
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It is a great privilege for me to be here today because I want to commend you, Under Secretary Dickinson, for your foresight and for your energies in bringing together so many of the critical officials and the private sector representatives who are engaged in the effort to promote strong intellectual property protection.

It has been so exciting in these eight years to see the promise of the Digital Age -- to see it materialize in ways that I never dreamed of in terms of communication and opportunities in science and education.

But in my nearly eight years as Attorney General, I've seen the challenges posed by the darker side of our Information Age: how computers can be used as a tool for far more serious crimes, how someone half a world away can bring to a halt the vast computer operations of a government, a business, or a school, or can steal from a bank, making the gun an obsolete weapon.

Surreptitious and anonymous predators can disguise their identities and prey on young people or others who they simply trust when they meet them online. Those who would profit from the research and development efforts of our best and brightest find havens to manufacture and ship infringing products halfway around the world because the profits are sure and the threat of getting caught is low or non-existent.

This audience is well aware of the role of IP protection in the Information Age, and the critical role of intellectual property laws in promoting innovation in all spheres of modern life. Our copyright, trademark, and patent laws provide core protections for the engine driving the economic prosperity enjoyed in this hemisphere and around the world by promoting innovation, investment, and high-paying jobs.

I'd like to set the stage with the very serious concerns we have in law enforcement about the increasing volume and sophistication of intellectual property crime, then talk about what I believe are the steps we need to take to meet this challenge.

One of our real concerns is that law enforcement sources around the world are reporting the involvement of organized criminal activity in the manufacture and distribution of counterfeit and pirated merchandise. The involvement of organized crime endangers citizens and legitimate businesses, funds other illicit activities, and can be associated with official corruption.

The European Commission, under whose auspices these trends have been seriously studied in the last two years, recently adopted a resolution calling for greater enforcement efforts in this area. The resolution was accompanied by the observation that, "the market in counterfeit goods is flourishing quantitatively and organizationally. It has now become a global 'industry' managed by sprawling organizations in much the same way as drug-trafficking, gun-running and money-laundering."

I know many of you have been educating your law enforcement colleagues about the growing threat of piracy and counterfeiting. Many of you have been working hard to bring your legal regimes into line with the requirements of the TRIPS Agreement. I commend you for all of these efforts.

Many countries in this hemisphere are shifting focus from enacting substantive IP legislation to implementing effective enforcement mechanisms. I want to focus on the need for cooperation among law enforcement agencies, in this hemisphere and beyond.

The transnational character of the crimes and the perpetrators poses special challenges and makes international cooperation critical to reducing the threat.

Domestic responsibility for enforcing intellectual property laws is often fragmented, with a mixture of civil, administrative, and criminal penalties enforced by as many as eight or 10 government departments. Expertise within the law enforcement community in recognizing counterfeit and pirated goods and learning about the latest traffic patterns, trends, and networks used by criminals, is diffuse and can be quickly outdated.

Counterfeiting and piracy crimes have historically been a low enforcement priority for several reasons. Law enforcement officials too often perceive intellectual property enforcement as advancing purely private, commercial interests, or interests that can be adequately vindicated by administrative or civil courts. Because of its high profit potential -- and the low risk of getting caught or going to prison -- pirates and counterfeiters have sometimes formed transnational organized networks that are difficult to identify and require significant resources to investigate and prosecute.

Civil and administrative remedies will continue to be the primary tool for enforcement of IP rights. That makes sense. But there are some cases where the seriousness of the violation and the egregiousness of the conduct require imposition of a criminal penalty.

How do we address this growing problem?

In arming ourselves to effectively prosecute crimes with an international nexus, one of our biggest challenges has been to implement an effective matrix of bilateral mutual legal assistance

and extradition treaties. By doing so, we can enhance cooperation by providing one another with evidence admissible at trial and returning fugitives to justice.

Even with modern legal assistance treaties, securing evidence from abroad is not always easy. The procedures can be slow and cumbersome. Novel jurisdiction questions are often raised, and some countries refuse to provide cooperation unless they have criminal offenses precisely matching our own.

In order to maximize cooperation, countries committed to robust enforcement of IP laws need to develop efficient and effective mutual legal assistance and extradition arrangements. This means making sure that IP crimes are extraditable offenses. Countries should be willing to extradite their nationals for IP offenses, as well as other crimes. Where countries are constitutionally precluded from doing so, they should be prepared to conduct effective domestic prosecutions in lieu of extradition.

When vigorous enforcement of anti-counterfeiting and piracy laws is integrated into other law enforcement priorities, we will begin to stem the tide of IP crime. When multinational enforcement efforts form a network to disable each link in the chain of these crimes, IP criminals will learn that no country is a safe haven. When serious IP criminals go to jail for significant prison terms, they will get the message, and the message must be clear: There is no safe place to hide.

Whether it is IP issues or other issues, crime has become international in its consequences and its origins. The world as law enforcement knew it before does not exist. If you can sit in a kitchen in St. Petersburg, Russia, and steal from a bank in New York, you understand the nature of the problem.

If we are going to build a hemisphere and a world based on trust, we're going to have to trust each other enough to extradite nationals. We can still recognize sovereignty and honor the sovereignty of other nations while trusting them enough to try our nationals, as the United States does on a regular basis.

But we have got to develop the processes and procedures that are commonly understood for circumstances where constitutions of other countries prohibit the extradition of nationals for the domestic prosecutions - processes and procedures that will enable us to bring these cases to trial quickly, that will address the issue of victim-witness coordination and support, and that will make a criminal justice system effective around the world.

One of the major problems is the criminal who says: "Aha, they're not going to extradite for small cases." We've got to make sure that we develop radar lines that are adjustable, in case they think, "Oh, this is the declination level, if we come in under it we'll be okay." We've got to make sure that we meet that challenge as well.

That's going to require bold new efforts on the part of law enforcement, consistent with our Constitution, that permits closed circuit TV testimony for cases that may be too small to justify

the cost of sending witnesses around the world. But it is going to require our colleagues to work together throughout this hemisphere and indeed around the world.

Aggressive domestic enforcement of criminal IP laws is the cornerstone for IP protection. We're starting to turn the corner. On July 23, 1999, the Department of Justice, the FBI, and the U.S. Customs Service, as Mr. Dickinson indicated, launched a joint intellectual property rights enforcement initiative. The key objectives are to: increase priority of criminal IP investigations and prosecutions nationwide, beginning with seven major port cities where IP crime is a serious concern; increase the specialized training courses for investigators and prosecutors in the U.S. and at the international law enforcement academies in Budapest, Hungary, and Bangkok, Thailand; develop training programs for state and local officials in conjunction with the National Cybercrime Training Partnership; seek referrals from industry through a streamlined direct referral system; and utilize procedures for enforcement of infringing merchandise as an additional tool to get illegal products off the streets.

But questions come up: Who do I call? How long does it take? How much bother is involved? How much will my employees be inconvenienced by the investigation? We had an interesting experience in which we had to address the issues of law enforcement's role in cybercrime. We held a conference at Stanford Law School and one here in the D.C. area at Herndon, inviting the private sector to join with law enforcement, asking one question: What could law enforcement do to improve its efforts?

Frankly, the response sounded like victims of a bank robbery or a house burglary: "I don't know who to call. Nobody gives me an update on what's happened. I don't know what to expect. I was in a deposition all day. It's a big pain in the neck. I don't want to be bothered. Thank you, good-bye."

Fortunately, it wasn't "thank you, good-bye." It's, "how can we work together to address your concerns?" I would ask that if there is anything the Department of Justice can do, I would appreciate your letting me know or Roslyn Mazer know so that we can truly work together in the IP area to improve our coordination with victims here and around the world.

We have had some success. We have successfully prosecuted a number of significant intellectual property rights cases in the past few years. We have more cases now being investigated or awaiting prosecution than at any previous time. Among the recent cases are two prosecutions under the No Electronic Theft (NET) Act. These cases represent the first prosecutions of large-scale, electronic distributions of copyrighted works, even where there was no profit motive or financial gain.

We expect our activities in all categories (copyright/ trademarks/trade secrets) to increase for Fiscal Year 2000. The FBI now has 527 intellectual property cases open for investigation, compared to 179 cases under investigation in October 1997. Between July 23, 1999 (the start of our initiative) and today, 394 new IP-related investigative matters have been opened by the Bureau. These figures reflect nationwide efforts, and are not confined to progress made by the seven key jurisdictions. Earlier this year, the Customs Service and the FBI opened a unique

intelligence center that will improve information sharing and coordination in criminal intellectual property rights investigations.

In response to a congressional directive, the Sentencing Commission amended our Federal Sentencing Guidelines for criminal copyright and trademark violations. Effective May 1, 2000, the applicable guideline (§2B5.3) has been overhauled to substantially increase penalties for criminal copyright infringement and trademark counterfeiting. In most cases, the sentencing court can now use the retail value of the infringed-upon, legitimate item to calculate loss. The new guideline also includes enhancements for offenses involving the manufacture, importation, or uploading of infringing items, and permits upward departure for offenses committed in connection with national or international organized criminal enterprises.

Fortunately, this amendment removes one of the disincentives for our prosecutors to bring charges against serious violators.

It is important to mention that our law enforcement agencies and our agencies with substantive expertise in intellectual property are working more closely together than ever before.
I think back to some of the early days when Commerce and Justice looked at each other like, "hmmph." Commerce and Justice are now looking at each other recognizing that we've both got an oar in this ocean, and we've got to work together to get across it.

In 1999, President Clinton signed a new law creating the "National Intellectual Property Law Enforcement Coordination Council." The Council brings together senior representatives from law enforcement agencies - the Department of Justice and the Customs Service - as well as our other key Executive Branch agencies charged with promoting effective intellectual property laws - the Patent and Trademark Office, the U.S. Trade Representative, the Department of State, and the Department of Commerce.

The Council's mandate is to "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities." The Council is co-chaired by Criminal Division Assistant Attorney General James Robinson and Under Secretary Dickinson.

We hope the Council will facilitate better communication between law enforcement and our specialized agencies to identify common priorities and further our collective missions.

While we have turned up the lights and turned up the heat, we need to do much more, by educating law enforcement about the serious developments I've mentioned today and working with industry to ensure that our investigators, prosecutors, and judges are familiar with the technologies for detection that will enable us to catch and convict the perpetrators.

I want to conclude with a final thought for boosting our IP enforcement efforts. I present this as a challenge to the private sector, which I know is well-represented at this symposium.

It is so important that we have a close working relationship with rights holders in this effort. I know as part of our domestic initiative, we have worked very hard to get referrals of serious incidents of piracy and counterfeiting. The victims of IP offenses should be able to bring

important information to the attention of law enforcement in a timely fashion, and law enforcement should react appropriately.

But there is another area where we need to work together with industry. I have been quite concerned reading accounts of individuals who have been charged with committing computer-related crimes -- especially statements by young people in the U.S. and other countries -- who brag about their technological accomplishments. Some young people talk about these activities as if they were harmless hobbies or, at best, intriguing challenges.

We need to change the cultural acceptance of theft of intellectual property, whether the theft is committed by stealing from a retail store or stealing using a computer. Either way, we are talking about theft, pure and simple.

The private sector has the resources and the expertise to reach young people with positive messages, not messages that simply scold or scare - that doesn't really sit well with young people -- but messages that celebrate the achievements of our Information Age and communicate to young audiences that these protections are valuable and important to safeguard their favorite products and their own accomplishments. We need to work together to convey this message in an effective, positive way.

Estimates are that 128 million people in this hemisphere are now using the Internet, about double that world-wide. But the promise of Internet technologies will be realized only if policymakers, law enforcement, and the private sector join together to protect the fruits of our endeavors.

There is much that we need to do. A man once told me, a man well-versed and experienced in this area of computer crime: "You know, my 13-year-old daughter knows that she can't open other people's physical mail and read it. She doesn't go into her sister's bedroom when the door is closed. She doesn't rumble through her drawers without permission. But she doesn't know how to act on line. She doesn't know what to do with other people's e-mail."

We have a whole new culture out there that we have got to educate to use this wonderful resource in the wisest way, in the most constructive way, in the most respectful way possible. We have got to work together around the world to create, rather than something that divides nations, something that brings nations together.

One of our first experiences with the G-8 ministers of justice was to convene a conference here in Washington on computer crime. But then the next G-8 ministers meeting was held by videoconferencing around the world. I had to get there by 6:30 a.m. and the Japanese had to stay until 11:30 p.m. But in four hours we accomplished far more than we ever could with jet lag and the like.

This world is together, and the ministers were together. But we've got to think of whole new ways that we respond together to utilize this medium wisely, carefully, in everyone's best interest, while at the same time recognizing that we're going to have to form new bonds around

the world, 24 hours a day, seven days a week response time for those who intrude and hack -- careful coordination to bring people to justice.

But there are two other challenges for us all. In this window that we have, where suddenly we have seen an explosion of technology that we do not believe sometimes, where do we find the expertise to staff the law enforcement agencies that have to deal with this issue, that teach our young people in our public schools how to use this technology in the best way possible? How do we make sure that we have the expertise necessary?

I've talked in terms of a Cyber-ROTC: We would fund four years of college in return for say, three years of public service; six years of service and we'll fund a master's degree; 10 years and a Ph.D. But somehow or another, the private sector and the public sector are going to have to address this problem, because it is in this remarkable window that we have, where we're going to set the tone for the next 100 years in terms of adherence to the law in the world of cyber technology.

The other area is that we're going to have to match wits with some of the most sophisticated criminals in the history of the world. We're going to have to know the technology and we're going to have to know the law that goes with the technology. Let us make sure that we form partnerships between the public and private sector as they have never existed before, that will enable us to solve these sophisticated criminal problems that we will see again and again.

Law enforcement will not be able to do it by itself. We will require a partnership as we have never had before. But I think that partnership will redound to the benefit of us all.

Thank you so much for participating in what I think is such an important undertaking. Remember, call me if you think you're not being heard correctly in the criminal justice system from the Department of Justice's point of view.

Thank you.