U.S. Immigration and Customs Enforcement

STATEMENT

OF

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REGARDING A HEARING ON

"PROTECTING U.S. INTELLECTUAL PROPERTY OVERSEAS: THE JOINT STRATEGIC PLAN AND BEYOND"

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COMMITTEE ON FOREIGN AFFAIRS

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INTRODUCTION

Chairman Berman, Ranking Member Ros-Lehtinen, and distinguished Members of the Committee: Thank you for the opportunity to highlight the important role U.S. Immigration and Customs Enforcement (ICE) plays in combating intellectual property (IP) theft in today's global economy.

Simply put, American business is under assault from those who pirate copyrighted material and produce counterfeit trademarked goods. Criminals are stealing American ideas and products and selling them over the Internet, in flea markets, in legitimate retail outlets and elsewhere. From counterfeit pharmaceuticals and electronics, to pirated movies, music, and software, these crooks are undermining the U.S. economy and jeopardizing public safety. American jobs are being lost, American innovation is being diluted and the public health and safety of Americans is at risk -- and organized criminal enterprises are profiting from their increasing involvement in IP theft.

The Administration is responding to this organized criminal activity through a first-of-its-kind aggressive, coordinated, and strategic offensive that targets counterfeiters and those who pirate copyrighted material. This offensive involves multiple departments and agencies within government coming together in an ICE-led task force, the National Intellectual Property Rights Coordination Center (IPR Center), and the effort is being coordinated by the first ever presidentially appointed Intellectual Property Enforcement Coordinator (IPEC), Victoria Espinel, with whom I have had the great privilege to work. ICE and the IPR Center contributed and consulted frequently with the IPEC on the creation of the first-ever Joint Strategic Plan on Intellectual Property Enforcement.

I am pleased to have the opportunity to highlight for this Committee the role ICE plays in combating IP theft.

BACKGROUND OF THE PROBLEM

America's entrepreneurial spirit and integrity are embodied by the creativity and resourcefulness of our workforce. Intellectual property rights and the ability to enforce those rights encourage American companies to continue the tradition of American innovation and develop products, ideas, and merchandise. This tradition of innovation and productivity has given America an advantage in the global economy.

Intellectual property rights are intended to discourage thieves from selling cheap imitations of products, which are often far less safe or reliable than the original products. More importantly, intellectual property rights protect our nation by preventing the proliferation of counterfeit pharmaceuticals, preserving national and economic security, and ensuring consumer safety. Violators depress investment in technologies needed to meet global challenges and also put consumers, families, and communities at risk. They unfairly devalue America's contributions, hinder our ability to grow our economy, and compromise American jobs.

Intellectual property rights protect consumer trust and safety, as counterfeit products pose significant risks to: our communities by threatening public health through the introduction of substandard or unapproved products meant for public use or consumption; our military members through untested and ineffective components; our transit systems through auto parts of unknown quality that play critical roles in security passengers; and our health care systems through suspect pharmaceuticals and semiconductors used in life-saving defibrillators. Intellectual property rights also protect the actor, director, writer, musician and artist from having a movie, manuscript, song or design illegally sold by someone who had no part in the artistry of creating it.

As the members of this Committee well know, globalization provides boundless opportunities for commerce. But it also brings a growing set of challenges, especially in combating the theft of intellectual property.

In a global economy, enforcement of intellectual property rights is crucial to ensuring that legitimate manufacturers and companies can expend capital developing overseas markets, exporting goods and creating jobs as opposed to fighting counterfeiters.

The following are several trends in IP theft and counterfeiting that ICE and the IPR Center recognize as a backdrop to ICE's current efforts to combat IP theft.

- The primary source country for the manufacture and distribution of counterfeit merchandise is China. In FY 2009, ICE and Customs and Border Protection (CBP) seized at U.S. ports of entry IPR violative goods from China with a domestic value (as opposed to manufacturer's suggested retail value) of more than $204.7 million. These seizures accounted for approximately 80 percent of the total domestic value of counterfeit merchandise seized by DHS.

- According to the World Health Organization, approximately "eight percent of the bulk drugs imported into the United States are counterfeit … and $21 billion" of global pharmaceutical commerce involves counterfeit drugs.

- Over the last 10 years, the Internet's growth as a global commerce medium has caused it to develop into a key means for facilitating IP theft. The 2010 Cisco Visual Networking Index forecasts that global IP traffic will quadruple by 2014 -- a four-fold increase. Moreover, Cisco notes in its annual Index report that download speeds of DVD quality movies have been reduced from three days 10 years ago to just around two hours this year; an MP3 audio download time has been reduced from three minutes to about five seconds. The report also predicts that global Internet video traffic will surpass global peer-to-peer traffic by the end of 2010.

- This increase in access to the Internet, while of great benefit for global communication and commerce, represents a very real threat to America's film and music industries. Their products are extremely susceptible to Internet piracy,

especially as bandwidth increases. As a result of this growing concern, ICE counterfeiting and piracy investigations are increasingly directed to web-based criminals.

- IP theft cases have grown in both magnitude and complexity. A crime previously viewed as limited to luxury goods — such as high-priced handbags, apparel and watches – has quickly grown to include all types of products and consumer goods at every price point. Criminal networks have expanded the playing field tremendously, leading to more multi-faceted and complex IP theft and by extension, more challenging and involved investigations. Multimillion-dollar seizures of counterfeit goods are now a common occurrence.

- There are more criminals engaged in IP theft than ever before. As international criminal organizations have yielded huge profits through trafficking in counterfeit goods, they have opened their existing criminal infrastructures and smuggling routes to the flow of counterfeit merchandise. Based upon intelligence gleaned from undercover interaction and suspect debriefs, ICE has learned that many individuals and criminal organizations engaged in IP theft believe the existing criminal penalties for commercial fraud violations are less severe than traditional drug or weapons trafficking offenses, and many view IP theft as a relatively "low risk" method for commanding huge gains. As a result, ICE is working closely with international law enforcement partners to facilitate global investigations and crack down on international criminal organizations.

- Finally, IP thieves have repeatedly demonstrated that they will counterfeit any product they can sell or market without regard for the welfare of consumers. While we take all IP theft seriously, the increase in counterfeit drugs, medical equipment, aircraft and automobile parts, computer hardware, military components, and electrical safety devices is particularly troubling. These illicit products represent a significant threat to public safety, as they do not adhere to any standards for testing, quality or operation.

ICE'S ROLE

ICE has a legacy of engagement in IP theft enforcement – stretching from our past years as U.S. Customs Service investigators to our present role as Homeland Security investigators. ICE is a leading agency in the investigation of criminal intellectual property violations involving the illegal production, smuggling, and distribution of counterfeit and pirated products, as well as associated money laundering violations. We target and investigate counterfeit goods entering the U.S. through our ports from various countries overseas and we seize for forfeiture goods associated with these investigations, such as those that infringe on trademarks, trade names, and copyrights. Because of the many challenges posed by the trends I outlined above, ICE has become increasingly innovative in how we combat counterfeiting and piracy. We have done this not because we are interested, frankly, in marginal increases in enforcement or small successes, but

rather in sustained achievements that produce tangible results for American consumers and businesses.

ICE recognizes that no single law enforcement agency can succeed against IP theft. Rather, it is essential that all relevant federal agencies work together and with industry to confront this challenge. ICE therefore initiated the IPR Center to leverage compatible government resources to combat IP theft.

IPR CENTER

U.S. Customs began the IPR Center in 2000, but following 9/11, priorities were reshuffled and the IPR Center was not adequately staffed. ICE re-started it in 2008, and the IPR Center has genuinely matured over the last two years.

The mission of the IPR Center is to address and combat predatory and unfair trade practices that threaten our economic stability and national security, restrict the competitiveness of U.S. industry in world markets, and place the public's health and safety at risk. The IPR Center brings together key domestic and foreign investigative agencies to increase the efficient and effective leverage of resources, skills and authorities to provide a comprehensive response to IP theft.

The IPR Center, housed in Arlington, Virginia, is a task force that involves 12 relevant federal partners, and the Department of Justice as a participant, prosecuting for all partners. The IPR Center includes embedded team members from, among others, CBP, the Food and Drug Administration, the Federal Bureau of Investigation (FBI), the Postal Inspection Service, the Department of Commerce, and the U.S. Patent and Trademark Office. Last year, the Government of Mexico joined the IPR Center as our first international partner. Recently, the IPR Center welcomed four new partners — the Defense Criminal Investigative Service, the Naval Criminal Investigative Service, the Army Criminal Investigations Command Major Procurement Fraud Unit and the Inspector General's Office from the General Services Administration — to strengthen investigations related to IP fraud in the federal procurement process, especially in the defense supply chain. The IPR Center also recently welcomed the International Criminal Police Organization (INTERPOL) as a partner. Together, the partners have created a one stop shop for industry and victims of IP theft, reducing duplication and allowing us to leverage and benefit from our different areas of expertise.

Last December, the IPR Center led a bilateral, multi-state, multi-agency enforcement effort entitled Operation Holiday Hoax. We worked with many different agencies - including CBP, DOJ's Computer Crime and Intellectual Property Section (CCIPS) and the Government of Mexico's Treasury and Customs – and industry, including the Recording Industry Association of American (RIAA), to target importers and distributors of counterfeit goods. This operation was specifically timed to coincide with U.S. and Mexican consumers' increased purchasing during the winter holiday season.

Operation Holiday Hoax was a tremendous success. Over the course of six days, 700,000 counterfeit items were seized in 37 U.S. cities in 23 states and Puerto Rico. Items seized included children's toys, DVDs, CDs, clothing, footwear, handbags, sports items, perfume, cosmetics, electronics, hygiene products, and pharmaceuticals. The aggregate manufacturer's suggested retail price (MSRP) of the seized products was more than $26 million. In Mexico, our customs partners seized more than 274 tons of counterfeit merchandise during focused operations at three seaports and 14 checkpoints across Mexico City.

When multiple governments focus their efforts and join forces, even more can be accomplished. ICE and the IPR Center have teamed with the World Customs Organization (WCO) and its member countries in several multilateral enforcement operations targeting counterfeit goods. Our partnerships with international customs organizations and industry create an essential international front in combating IP theft in the global economy.

Although I cannot yet announce the results, ICE and CBP have recently completed the U.S. portion of Operation Global Hoax, a three-month multilateral enforcement action proposed by the IPR Center and coordinated with the WCO. Global Hoax is the first-ever worldwide enforcement action targeting counterfeit DVDs and CDs as they are shipped around the world. Global Hoax involves customs and law enforcement agencies from 42 countries and INTERPOL working together in an unprecedented campaign against counterfeit goods that harm the entertainment industry. Representatives from the Motion Picture Association of America (MPAA) and RIAA assisted participating customs authorities with focused training, targeting and analyses of certain interdicted parcels. This operation was specifically timed by the IPR Center to coincide with the movie industry's summer releases, when the biggest blockbusters are illegally recorded, reproduced on DVDs, shipped around the world and sold on street corners and in other markets. By attacking the problem when the goods are being shipped, Global Hoax will combats IP theft at one of the critical stages of distribution. Upon conclusion of the operation, I look forward to providing you with details regarding its success.

During Operation Pangea II last November, the IPR Center coordinated U.S. efforts in a global operation targeting illegal pharmaceutical sales over the Internet. This led to the inspection of more than 21,200 packages at postal hubs, ports and airports around the world. In addition, it resulted in the suspension of at least 90 web sites and domain names associated with selling drugs and controlled substances to consumers without prescriptions. Internationally, nearly 1,000 packages were seized and more than 167,000 illicit counterfeit pills were confiscated.

ICE initiated Operation Apothecary in 2004 to address, measure, and attack potential vulnerabilities in the entry process at international mail and express courier/consignment facilities that might allow for the smuggling of commercial quantities of unapproved, counterfeit, and/or adulterated pharmaceuticals purchased via the Internet. In FY 2009, ICE and CBP inspected over 14,427 parcels and made approximately 1,824 seizures and

detentions while conducting Apothecary enforcement surges at facilities across the nation.

Beyond pharmaceuticals, there are a wide variety of counterfeit goods that pose a significant risk to the health and safety of the American public. ICE's Operation Guardian is an ICE-led multi-agency initiative that focused on targeting, interdicting, and investigating substandard, tainted or counterfeit goods imported into the United States. Since its inception in 2008, Operation Guardian has resulted in more than 350 investigations and 1,250 seizures of goods valued at more than $21 million. Through Operation Guardian, ICE and our law enforcement partners have protected the public from purchasing or consuming dangerous items such as substandard and counterfeit electrical devices, aircraft and car parts, toys, and human and pet food products.

ICE'S INTERNATIONAL EFFORTS

ICE Homeland Security Investigations International Affairs (HSI-IA) represents DHS's largest investigative law enforcement presence abroad and strongest protection beyond the border. HSI-IA has the broadest international footprint in DHS with 63 offices in 44 countries, including representatives at seven combatant commands, staffed by more than 300 personnel. The mission of HSI-IA is to protect the United States by enhancing its security through international investigations involving transnational criminal organizations responsible for the illegal movement of people, goods, and technology, and through strong and integral intelligence and removal programs. There are 11 countries on the U.S. Trade Representative's Priority Watch List as part of its annual review of the global state of intellectual property rights protection and enforcement, ICE maintains a presence in nine of these countries, with a total of 14 offices.

Cooperation with our international law enforcement partners is critical in addressing copyright infringement overseas and effectively protecting and enforcing American intellectual property rights holders. ICE Attachés work with international organizations and foreign law enforcement counterparts to build capacity, strengthen relationships, and conduct joint enforcement activities. ICE is recognized as a worldwide subject matter expert on criminal customs matters, and holds positions as Vice Chair for the Enforcement Committee and Chair of the Commercial Fraud Working Group with the World Customs Organization (WCO).

In July, 2009, ICE opened an office in Brussels to work directly with the WCO, and we have already spearheaded multilateral operations addressing bulk cash smuggling and explosives precursor chemicals. ICE also works with INTERPOL, the Asia-Pacific Economic Cooperation Forum, and the Departments of State, Commerce and Justice on a variety of initiatives, including providing training in IPR enforcement to our international law enforcement partners. We leverage Customs Mutual Assistance Agreements and other agreements with police to build capacity and conduct joint investigations.

ICE has a presence in central and southern coastal China with offices in Beijing and Guangzhou. These two offices deal largely with commercial fraud and IP. Moreover, the ICE office in Guangzhou is working with the consulate on a project to make Shenzhen the first IPR city in China. The project is still in its infancy, but the goal is to make Shenzhen a model city in which rights holders are able to obtain enforcement and control the IP problems there. If this project is a success, the Ambassador hopes the initiative will spread throughout China. ICE has made a commitment to work with the Consulate on this project and provide training to the Chinese Public Security Bureau on IP investigation and enforcement.

In September, I will travel to China for meetings with Chinese law enforcement counterparts, including the Ministry of Public Security (MPS), and will sign a cooperation agreement specifically dedicated to joint investigations of IP theft. Recently, the IPR Center added an MPS liaison from the Chinese Embassy in Washington, who has already worked to develop investigative strategies with IPR Center partners.

ICE previously worked with China in September 2003 when ICE initiated Operation Spring, a joint IPR investigation by ICE agents and Chinese authorities that resulted in the extradition and conviction of DVD pirate Randolph Guthrie, who was sentenced to 48 months incarceration and ordered to repay $878,793 in restitution to the MPAA.

In addition, Chinese authorities carried out enforcement actions in China that resulted in the arrest of six individuals, including two U.S. citizens, one being Guthrie. China seized more than 210,000 counterfeit motion picture DVDs and approximately $67,000 in U.S. currency as well as ¥222,000 in Chinese Renminibi (RNB) currency. Chinese authorities also located and, pursuant to Chinese law, destroyed three warehouses that were being used to store counterfeit motion picture DVDs for distribution around the globe, including to the United States.

Another joint ICE-Chinese investigation resulted in four arrests in the United States and the seizure of over $100 million in counterfeit computer software and approximately $4 million in counterfeit cigarettes.

More recently, ICE worked with Korean partners in Seoul to combat IP violations occurring in Asia. On April 6, 2010, the ICE Attaché office in Seoul assisted Korea Customs Service (KCS) and Korea National Police Agency officers with the execution of search warrants resulting in the arrest of five Korean nationals for manufacturing and distributing counterfeit goods. The search warrants, which were served at a manufacturing facility and two warehouses in Busan, Korea, led to the seizure of over ten tons of counterfeit Louis Vuitton, Chanel, Hermes, Bulgari, Prada and other luxury brand products valued at approximately $40 million. This enforcement action was based on ICE Attaché Seoul information regarding numerous Korea-based companies suspected of manufacturing and distributing counterfeit luxury name brand products in the United States.

ICE'S CONTRIBUTIONS TO FOREIGN TRAINING AND CAPACITY BUILDING

In May 2009, the IPR Center initiated the U.S. interagency "IPR in Africa" Working Group, with participation by the Departments of State, Justice, and Commerce, the U.S. Agency for International Development, the U.S. Patent and Trade Office and various U.S. Embassies, to improve coordination of the U.S. government's IP training and resource commitments in Africa. In coordination with these U.S. agencies, the WCO and INTERPOL, the IPR Center serves as a subject matter expert in IPR training specifically focused on strengthening enforcement and investigations. The IPR Center is also working to increase direct cooperation with the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) on Africa IPR issues and fully supports INL funding proposals submitted by DOJ CCIPS to support training for investigators, prosecutors and judges in Africa on the dangers of counterfeit goods.

ICE is an active member of the U.S. delegation negotiating the Anti-Counterfeiting Trade Agreement (ACTA). The goal of ACTA is to work with other countries interested in promoting strong enforcement of IPR. ACTA aims to strengthen legal frameworks to bridge existing gaps between laws and dedicated enforcement, and to foster ongoing cooperation among ACTA participants.

ICE helps to educate on IP theft enforcement and interact with foreign officials worldwide through our participation in the Department of State International Law Enforcement Academy (ILEA) program. The mission of the ILEAs — located in Budapest, Gaborone, San Salvador, Bangkok, and Lima — is to help protect U.S. interests through international cooperation and the promotion of stability by combating crime. In April 2009, a week-long, specialized course entitled "Intellectual Property Rights" was presented at the ILEA regional training center in Lima, Peru. A multidisciplinary team from ICE, CBP, and the U.S. Attorney's office in Houston, together with several rights holders, provided training to participants from Brazil, Paraguay, and Peru. During the training, participants were introduced to IPR protection systems, including techniques for conducting investigations and interdicting items in violation U.S. law.

STATE AND LOCAL TRAINING AND OUTREACH

ICE and the IPR Center submit that an aggressive enforcement strategy must include state and local law enforcement participation as force multipliers. On April 26, designated as World IP Day, I announced the creation of 22 local IP Theft Enforcement Teams, or as we call them, IPTETs. The IPTETs are essentially localized IPR Centers with ICE-trained federal, state and local law enforcement partners, including sworn personnel from police and sheriffs departments and local prosecutors. The IPR Center has been conducting training for the IPTETs around the country.

RECENT ENFORCEMENT SUCCESSES

Last month, the IPR Center launched Operation In Our Sites, a new initiative aimed at Internet counterfeiting and piracy. During the first enforcement action as part of this initiative, ICE agents, working with the U.S. Attorney's Office for the Southern District of New York, seized domain names of seven websites offering first-run movies, often within hours of their theatrical release. These sites allowed visitors to stream or illegally download current and highly popular television shows and movies. Over the course of one of the investigations, agents observed links to more than 200 movies and more than 300 television programs. On June 30, more than 75 ICE agents participated in this enforcement action, which resulted in the seizure of assets from 15 bank, PayPal, investment, and advertising accounts.

ICE's efforts through Operation In Our Sites successfully disrupted the ability of criminals to purvey pirated films over the internet. Industry experts in Internet piracy have concluded that it takes nine to fifteen months for a pirating website to develop enough traffic to yield ad revenue that produces a profit. The domain names discovered during this operation are now controlled by the U.S. government. We have substituted on those web sites a banner announcing the seizure of the site by the government and an explanation of the federal crime and punishment for copyright theft and distribution.

Interestingly, as the new owners of the domain name, ICE has been able to determine the number of visitors these sites have received since the seizures. Within two days of ICE's enforcement action against these pirating web sites, over 1.7 million visitors saw the banner. This number is more than the daily total of "hits" the sites were receiving when they offered pirated movies and music. In other words, the government's warning banners have "gone viral," and Internet users are actually seeking the web site out to view the banners themselves. The resulting public education about pirating is a significant result of this enforcement operation.

Operation In Our Sites not only targets websites offering pirated films and music, but other infringing items distributed over the Internet such as software, electronics, games and products that threaten public health and safety, especially counterfeit pharmaceuticals.

As the Operation continues to confront these web sites, we are working directly with Victoria Espinel and the IPEC to assess current efforts to combat such sites and develop a coordinated and comprehensive plan to address them.

In March and April 2010, ICE Homeland Security Investigations agents in Baltimore seized more than one million counterfeit items from a criminal organization smuggling counterfeit shoes and luxury goods through the Port of Baltimore, with an estimated MSRP of more than $219 million. Eight conspirators were arrested by ICE in the United States and one remains a fugitive. ICE was able to develop evidence on a parallel operation in the United Kingdom, and our ICE Attaché in London passed on the information to relevant UK law enforcement. This resulted in six arrests, seizures of

50,000 counterfeit luxury items and approximately $617,000 in U.S. currency equivalent, making it one of the largest IP theft enforcement cases in UK history.

In April 2010, the IPR Center coordinated Operation Spring Cleaning, a national IP theft enforcement operation in 22 domestic ICE offices targeting the manufacture, distribution and retail sale of counterfeit goods. The efforts of Spring Cleaning partners, including ICE, CBP, DEA, FBI, and 38 state and local law enforcement agencies in the IP Theft Enforcement Teams, resulted in 45 arrests and the seizure of 700,000 counterfeit items with an estimated MSRP of more than $44 million.

In June, the IPR Center coordinated Operation Mercury II, an ICE-proposed and WCO-approved five-day surge operation to combat the importation and distribution of substandard and counterfeit pharmaceuticals being shipped internationally. This operation enabled WCO members to exchange nominal information, postal markings and other data contained within or on the parcel, to allow for possible enforcement action. Participating customs administrations are still finalizing data and enforcement statistics for final submission to the WCO.

Earlier this year, the IPR Center partnered with the NFL, NBA, NHL, NCAA, industry and local law enforcement to conduct operations targeting counterfeit sports merchandise sold during the Super Bowl, NBA All-Star Game, Stanley Cup championship, and NCAA Final Four and Frozen Four tournaments. These operations resulted in seizures of over 14,000 counterfeit items valued at more than $760,000.

ICE remains steadfast in ensuring that IP theft is not used to support those who would harm the United States or our interests abroad. Last November, ICE and the FBI, worked with New Jersey State Police and elements of the Philadelphia FBI Joint Terrorism Task Force (JTTF) on a case that identified a three-cell criminal organization; a U.S.-based stolen property and counterfeit goods group; an overseas procurement group; and an international group tied to Hezbollah procuring weapons, counterfeit money, stolen property, and counterfeit goods. Ultimately, the investigation resulted in 25 indictments, with 15 criminal arrests, 10 red notices in INTERPOL and 15 administrative arrests.

ICE's IP theft enforcement efforts have continued to escalate in the past 18 months under this Administration. ICE initiated 643 IP theft cases during the entire FY 2008. In FY 2009, 806 IP theft cases were initiated and thus far in the first two quarters of FY 2010, ICE has initiated 560 IP theft cases. ICE is on pace to increase IP theft enforcement by 40 percent over FY 2008 and 20 percent over FY 2009.

PARTNERSHIP WITH THE PRIVATE SECTOR

The IPR Center recognizes that law enforcement cannot fight IP theft alone and we look to partner with private industry in our efforts. In a market economy, no one has a greater incentive for protecting intellectual property rights than private industry. Companies

want to protect their investments in research, development, manufacturing, sales, marketing and product distribution.

To help enhance and facilitate productive partnerships within both the public and private sectors, the IPR Center launched Operation Joint Venture in 2008. Operation Joint Venture (OJV) provides industry with valuable information about ICE's efforts to combat the importation of hazardous and counterfeit products, and it provides points of contact in ICE HSI field offices that industry can use to provide ICE with leads and tips. Since July 2008, the IPR Center and Joint Venture-trained ICE agents have conducted approximately 453 outreach efforts, to include formal presentations and meetings, speaking with approximately 26,046 people.

Through Joint Venture, the IPR Center is improving and expanding its relationships with rights holders, who are the victims of IP theft. As part of this initiative, in March 2010, ICE hosted a meeting with industry representatives in Hong Kong, where we discussed developing opportunities to address enforcement in China. A similar meeting was held jointly with DOJ's Criminal Division at the IPR Center in December 2009 and with the film industry in January 2010.

In May, ICE hosted the first meeting of the IPR Center's Informal Advisory Working Group where IPR Center management and industry representatives discussed issues and identified opportunities to jointly tackle IP theft.

PUBLIC AWARENESS

ICE believes the only way for us to be truly successful in our efforts against IP theft is to change public perception of IP crimes. Too many individuals believe buying knock-off goods or downloading films or songs from piratical sites is not wrong – that it is not harming Americans. One contributing factor to this public misperception, I believe, is that those of us in government responsible for enforcement and policy do not accurately convey what IP protection and IP theft enforcement is in simple terms. Counterfeiting, piracy, and diversion are theft. Theft of innovation, jobs, and revenue that sustains jobs, advances American business, funds health insurance, and supports industrial growth and economic stability. It is a form of theft that affects every sector – from pharmaceuticals, aircraft parts and toothpaste to electronic components, cosmetics and medical devices.

The IPR Center is leading an effort to educate the public and other audiences about IP theft and international organized crime connections. Last month, the IPR Center hosted a Symposium titled "IP Theft and International Organized Crime and Terrorism: The Emerging Threat." Panels of academics, industry leaders and domestic and international government officials discussed links between international organized crime, terrorism and IP theft. Attendees included congressional staff, domestic law enforcement, media, and others. The IPR Center, along with INTERPOL, also hosted the 2010 Certification Industry Against Counterfeiting North America conference at the IPR Center, and led a detailed discussion on the threat posed to this vital sector by IP theft.

CHALLENGES AHEAD

I am regularly asked what challenges lie ahead in IP theft enforcement -- what tools or new laws are needed. As ICE conducts multiple enforcement operations, some of which I described above, we observe trends in IP theft and we have made a number of critical observations.

First, most of our investigations are leading to criminal operatives and organizations overseas. The challenges of overseas investigations include having "boots on the ground" to work with foreign law enforcement. Existing and productive relationships with the foreign host government are often critical to success. Building these relationships takes time, and ICE continually revisits its presence in foreign countries to support investigations that will have the greatest impact.

Second, the use of the Internet and, increasingly, the use of multiple servers have created a challenge for criminal investigators because of the complexity of collecting electronic evidence. Approximately 250 of ICE's nearly 7,000 agents are classified as Computer Forensic Agents (CFAs). These agents are highly-trained by ICE's Cyber Crimes Center in Fairfax, Virginia in an eight-week, hands-on classroom curriculum that costs approximately $40,000. The recent Operation In Our Sites enforcement action saw the deployment of five percent of ICE's CFAs on one day to secure the electronic evidence from nine websites, and they will be heavily involved in sorting through the evidence for potential prosecutions.

U.S. Customs used to control smuggling by use of large cutter ships patrolling the coast for pirating ships and others. Now, the tools we need to use are highly-trained individual computer forensic agents piercing computer security of internet pirates. We are adapting to the challenge. However, ICE has competing priorities for the services of the CFAs including ongoing national security, child exploitation, financial crime, and other investigations.

Third, while ocean-crossing shipping containers are necessary to move bulk quantities of counterfeit items such as handbags, shoes, batteries or holiday lights, other high value items including counterfeit pharmaceuticals, mobile phones, computer network components, micro-chips, MP3/4 Players, pirated DVDs/CDs and others are being smuggled in smaller quantities through mail and/or express courier parcels. IP thieves are taking advantage of the lack of advance information or formal entry process at mail and courier facilities to smuggle products into the United States. ICE and CBP, using our Customs authorities, will need to increase surge operations at foreign mail and courier facilities to generate seizures, controlled deliveries, intelligence and investigative leads.

Another challenge we face is that criminals are now willing to counterfeit and market any product if it will sell, regardless of whether it could result in serious and significant injury to consumers or the public. ICE has investigated cases involving counterfeit toothpaste

that contained a component found in antifreeze. In 2007, ICE and the FDA arrested Kevin Xu, one of the world's most prolific counterfeiters of pharmaceuticals, after luring him to meet an undercover ICE agent in Thailand. Xu has been linked to distribution of counterfeit narcotics such as Plavix, Zyprexa, and Casodex that are used, respectively, to treat blood clots, schizophrenia, and prostate cancer, respectively. ICE and the FBI, along with DOJ, investigated the potential sale of counterfeit Cisco Gigabit Interface Converters (GBICs) to the U.S. Department of Defense for use by U.S. Marine Corps personnel operating in Iraq. The computer network for which the bogus GBICs were intended is used by the U.S. Marine Corps to transmit troop movements, relay intelligence and maintain security for a military base west of Fallujah. Failure of these counterfeit devices on the battlefield would have endangered the lives of American service members. The defendant's profit would have been only approximately $120,000, showing the callousness with which many counterfeiters treat human life. I am pleased to report the defendant was recently sentenced to more than four years in prison.

These cases are troubling and demanding of attention from criminal investigators and regulatory agencies. They also mean that investigative resources must be prioritized. At a recent industry open house hosted by the IPR Center, more than 15 disparate industries were represented that collectively employ hundreds of thousands of Americans and produce substantial revenue in sales and taxes. This included pharmaceutical companies, electronics manufacturers, luxury goods corporations, software and electronic game developers, footwear and apparel producers, and entertainment conglomerates. Each of these industries believes that they have the most compelling case for government assistance in IP theft enforcement and would like to be first in line for their criminal case referral to be investigated. ICE's priorities in IP theft enforcement are protecting health and safety, the warfighter, and the American economy.

CONCLUSION

Thank you once again for the opportunity to appear before you today to discuss the work of U.S. Immigration and Customs Enforcement in protecting U.S. intellectual property rights. This is an issue of critical importance as the IP theft jeopardizes health and safety and harms the American economy. I would be pleased to answer any questions that you may have at this time.