



## Testimony

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

For Release on Delivery  
Expected at 10:00 a.m. EDT  
Tuesday, June 14, 2005

# INTELLECTUAL PROPERTY

## U.S. Efforts have Contributed to Strengthened Laws Overseas, but Significant Enforcement Challenges Remain

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# Highlights

Highlights of [GAO-05-788T](#), testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Government Affairs, United States Senate

## Why GAO Did This Study

Although the U.S. government provides broad protection for intellectual property domestically, intellectual property protection in parts of the world is inadequate. As a result, U.S. goods are subject to piracy and counterfeiting in many countries. A number of U.S. agencies are engaged in efforts to improve protection of U.S. intellectual property abroad. This testimony, based on a prior GAO report as well as recent work, describes U.S. agencies' efforts, the mechanisms used to coordinate these efforts, and the impact of these efforts and the challenges they face.

## What GAO Recommends

GAO is not recommending executive action.

# INTELLECTUAL PROPERTY

## U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Significant Enforcement Challenges Remain

### What GAO Found

U.S. agencies undertake policy initiatives, training and assistance activities, and law enforcement actions in an effort to improve protection of U.S. intellectual property abroad. Policy initiatives include identifying countries with the most significant problems—an annual interagency process known as the “Special 301” review. In addition, many agencies engage in assistance activities, such as providing training for foreign officials. Finally, a small number of agencies carry out law enforcement actions, such as criminal investigations and seizures of counterfeit merchandise.

Agencies use several mechanisms to coordinate their efforts, although the mechanisms' usefulness varies. The National Intellectual Property Law Enforcement Coordination Council, established in 1999 to coordinate domestic and international intellectual property law enforcement, has struggled to find a clear mission, has undertaken few activities, and is generally viewed as having little impact despite recent congressional action to strengthen the council. The Congress's action included establishing the role of Coordinator, but the position has not yet been filled (although the selection process is underway). The Administration's October 2004 Strategy Targeting Organized Piracy (STOP!) is intended to strengthen U.S. efforts to combat piracy and counterfeiting. Thus far, the initiative has resulted in some new actions and emphasized other ongoing efforts.

U.S. efforts have contributed to strengthened intellectual property legislation overseas, but enforcement in many countries remains weak, and further U.S. efforts face significant challenges. For example, competing U.S. policy objectives such as national security interests take precedence over protecting intellectual property in certain regions. Further, other countries' domestic policy objectives can affect their “political will” to address U.S. concerns. Finally, many economic factors, as well as the involvement of organized crime, hinder U.S. and foreign governments' efforts to protect U.S. intellectual property abroad.

### Pirated DVDs from Brazil, China, and Ukraine



Source: GAO.

[www.gao.gov/cgi-bin/getrpt?GAO-05-788T](http://www.gao.gov/cgi-bin/getrpt?GAO-05-788T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4128 or [yagerl@gao.gov](mailto:yagerl@gao.gov).

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Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on U.S. efforts to protect U.S. intellectual property rights (IPR) overseas. As you know, the United States dominates the creation and export of intellectual property—creations of the mind. The U.S. government provides broad protection for intellectual property through means such as copyrights, patents, and trademarks. However, protection of intellectual property in many parts of the world is inadequate. As a result, U.S. goods are subject to substantial counterfeiting and piracy in many countries.

The U.S. government, through numerous agencies, is seeking better intellectual property protection overseas. To understand more fully how U.S. agencies have performed in this regard, we have examined several issues. This testimony addresses (1) the specific efforts of U.S. agencies to improve intellectual property protection in other nations, (2) the means used to coordinate these efforts, and (3) challenges facing enforcement efforts abroad. In addition, this testimony, based on our September 2004 report addressing these topics,<sup>1</sup> provides an update on key IPR-related events since that time—an administration initiative referred to as the Strategy Targeting Organized Piracy, or STOP!; a report prepared by a Department of Justice intellectual property task force,<sup>2</sup> and congressional action concerning an interagency intellectual property law enforcement council.

To address these issues, we analyzed key U.S. government reports and documents from eight federal agencies and two offices. In addition to meeting with federal officials, we met with officials from key intellectual property industry groups and reviewed reports they had prepared. We also conducted field work in four countries where serious problems regarding the protection of intellectual property have been reported (Brazil, China, Russia, and Ukraine) and met with U.S. embassy and foreign government officials as well as representatives of U.S. companies and industry groups operating in those countries. We conducted this work from June 2003 through July 2004. We subsequently updated our work in May and June of 2005 by meeting with key government officials and industry groups

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<sup>1</sup>GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, [GAO-04-912](#) (Washington, D.C.: Sept. 8, 2004).

<sup>2</sup>*Report of the Department of Justice's Task Force on Intellectual Property*, Office of the Attorney General, U.S. Department of Justice, October 2004.

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involved in recent U.S. government efforts. All work was conducted in accordance with generally accepted government auditing standards.

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## Summary

U.S. agencies' efforts to improve protection of U.S. intellectual property in foreign nations fall into three categories—policy initiatives, training and assistance activities, and law enforcement actions. The Office of the U.S. Trade Representative (USTR) leads U.S. policy initiatives with an annual assessment known as the “Special 301” review, which results in an annual report detailing global intellectual property challenges and identifying countries with the most significant problems. This report involves input from many U.S. agencies and industry. In addition to conducting policy initiatives, most agencies involved in intellectual property issues overseas also engage in training and assistance activities. Further, although counterterrorism is the overriding U.S. law enforcement concern, U.S. agencies such as the Departments of Justice and Homeland Security conduct law enforcement activities regarding IPR. These activities have included Justice's creation of an intellectual property task force in March 2004, which in October 2004 published a report containing recommendations for, among other things, improving the department's criminal enforcement, fostering international cooperation, and preventing intellectual property crime.

Several mechanisms exist to coordinate U.S. agencies' efforts to protect U.S. intellectual property overseas, although the level of activity and usefulness of these mechanisms vary. First, the Special 301 process requires formal interagency meetings as part of the U.S. government's annual review to identify countries with inadequate IPR protection; government and industry sources view this effort as effective and thorough. Second, the National Intellectual Property Law Enforcement Coordination Council (NIPLECC)<sup>3</sup> was established in 1999 to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities. However, NIPLECC has struggled to find a clear mission, has undertaken few activities, and is perceived by officials from the private sector and some U.S. agencies as having little impact. In fiscal year 2005 appropriations legislation, Congress established a Coordinator for International Intellectual Property Enforcement to head NIPLECC, but the position remains unfilled (although a selection process

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<sup>3</sup>NIPLECC was mandated under Section 653 of the Treasury and General Government Appropriations Act, 2000, Public Law 106-58 (15 U.S.C. 1128).

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is underway). Third, the most recent interagency coordination effort—the Strategy Targeting Organized Piracy, or STOP!, announced in October 2004—represents the administration’s increased focus on IPR enforcement and is intended to strengthen U.S. government and industry efforts to combat piracy and counterfeiting. The initiative includes some new actions, such as the establishment of a hotline that businesses can use to report IPR problems to the U.S. government, and also emphasizes numerous preexisting efforts. U.S. government officials told us that the STOP! has strengthened interagency coordination in addressing IPR issues.

U.S. efforts have contributed to strengthened foreign IPR laws, but enforcement overseas remains weak and U.S. efforts face numerous challenges. Competing U.S. policy objectives may take priority over protecting intellectual property in certain countries. In addition, the impact of U.S. activities overseas is affected by countries’ domestic policy objectives, which may complement or conflict with U.S. objectives. Further, economic factors, as well as the involvement of organized crime, pose additional challenges to U.S. and foreign governments’ enforcement efforts, even in countries where the political will for protecting intellectual property exists. These economic factors include low barriers to producing counterfeit or pirated goods, potential high profits for producers of such goods, and large price differentials between legitimate and counterfeit products for consumers.

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## Background

Intellectual property is an important component of the U.S. economy, and the United States is an acknowledged global leader in the creation of intellectual property. However, industries estimate that annual losses stemming from violations of intellectual property rights overseas are substantial. Further, counterfeiting of products such as pharmaceuticals and food items fuels public health and safety concerns. USTR’s Special 301 reports on the adequacy and effectiveness of intellectual property protection around the world demonstrate that, from a U.S. perspective, intellectual property protection is weak in developed as well as developing countries and that the willingness of countries to address intellectual property issues varies greatly.

Eight federal agencies, as well as the Federal Bureau of Investigation (FBI) and the U.S. Patent and Trademark Office (USPTO), undertake the primary U.S. government activities to protect and enforce U.S. intellectual property rights overseas. The agencies are the Departments of Commerce, State, Justice, and Homeland Security; USTR; the Copyright Office; the

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U.S. Agency for International Development (USAID); and the U.S. International Trade Commission.<sup>4</sup>

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## U.S. Agencies Undertake Three Types of IPR Efforts

The efforts of U.S. agencies to protect U.S. intellectual property overseas fall into three general categories—policy initiatives, training and technical assistance, and U.S. law enforcement actions.

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### Policy Initiatives

U.S. policy initiatives to increase intellectual property protection around the world are primarily led by USTR, in coordination with the Departments of State and Commerce, USPTO, and the Copyright Office, among other agencies. A centerpiece of policy activities is the annual Special 301 process.<sup>5</sup> “Special 301” refers to certain provisions of the Trade Act of 1974, as amended, that require USTR to annually identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons who rely on intellectual property protection. USTR identifies these countries with substantial assistance from industry and U.S. agencies and publishes the results of its reviews in an annual report. Once a pool of such countries has been determined, the USTR, in coordination with other agencies, is required to decide which, if any, of these countries should be designated as a Priority Foreign Country (PFC).<sup>6</sup> If a trading partner is identified as a PFC, USTR must decide within 30 days whether to initiate an investigation of those acts, policies, and practices that were the basis for identifying the country as a PFC. Such an investigation can lead to actions such as negotiating separate intellectual property understandings or agreements between the United States and the PFC or implementing trade sanctions against the PFC if no satisfactory outcome is reached.

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<sup>4</sup>Although the FBI is part of the Department of Justice and the USPTO is part of the Department of Commerce, their roles will be discussed separately because of their distinct responsibilities.

<sup>5</sup>Other policy actions include: use of trade preference programs for developing countries that require IPR protection, such as the Generalized System of Preferences; negotiation of agreements that address intellectual property; participation in international organizations that address IPR issues; and, diplomatic efforts with foreign governments.

<sup>6</sup>PFCs are those countries that (1) have the most onerous and egregious acts, policies, and practices with the greatest adverse impact (actual or potential) on the relevant U.S. products and (2) are not engaged in good-faith negotiations or making significant progress in negotiations to address these problems.

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Between 1994 and 2005, the U.S. government designated three countries as PFCs—China, Paraguay, and Ukraine—as a result of intellectual property reviews. The U.S. government negotiated separate bilateral intellectual property agreements with China and Paraguay to address IPR problems. These agreements are subject to annual monitoring, with progress cited in each year’s Special 301 report. Ukraine, where optical media piracy was prevalent, was designated a PFC in 2001. The United States and Ukraine found no mutual solution to the IPR problems, and in January 2002, the U.S. government imposed trade sanctions in the form of prohibitive tariffs (100 percent) aimed at stopping \$75 million worth of certain imports from Ukraine over time.

In conjunction with the release of its 2005 Special 301 report, USTR announced the results of a detailed review examining China’s intellectual property regime. This review concluded that infringement levels remain unacceptably high throughout China, despite the country’s efforts to reduce them. The U.S. government identified several actions it intends to take, including working with U.S. industry with an eye toward utilizing World Trade Organization (WTO) procedures to bring China into compliance with its WTO intellectual property obligations (particularly those relating to transparency and criminal enforcement) and securing new, specific commitments concerning actions China will take to improve IPR protection and enforcement.

By virtue of membership in the WTO, the United States and other countries commit themselves not to take WTO-inconsistent unilateral action against possible trade violations involving IPR protections covered by the WTO but to instead seek recourse under the WTO’s dispute settlement system and its rules and procedures. This may impact any U.S. government decision regarding whether to retaliate against WTO members unilaterally with sanctions under the Special 301 process when those countries’ IPR problems are viewed as serious. The United States has brought a total of 12 IPR cases to the WTO for resolution, but has not brought any since 2000 (although the United States initiated a WTO

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dispute panel for one of these cases in 2003).<sup>7</sup> A senior USTR official emphasized that this is due to the effectiveness of tools such as the Special 301 process in encouraging WTO members to bring their laws into compliance with WTO intellectual property rules.

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## Training and Technical Assistance

In addition, most of the agencies involved in efforts to promote or protect IPR overseas engage in some training or technical assistance activities. Key activities to develop and promote enhanced IPR protection in foreign countries are undertaken by the Departments of Commerce, Homeland Security, Justice, and State; the FBI; USPTO; the Copyright Office; and USAID. Training events sponsored by U.S. agencies to promote the enforcement of intellectual property rights have included enforcement programs for foreign police and customs officials, workshops on legal reform, and joint government-industry events. According to a State Department official, U.S. government agencies have conducted intellectual property training for a number of countries concerning bilateral and multilateral intellectual property commitments, including enforcement, during the past few years. For example, intellectual property training has been conducted by numerous agencies in Poland, China, Morocco, Italy, Jordan, Turkey, and Mexico.

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## U.S. Law Enforcement Efforts

A small number of agencies are involved in enforcing U.S. intellectual property laws, and the nature of these activities differs from other U.S. government actions related to intellectual property protection. Working in an environment where counterterrorism is the central priority, the FBI and the Departments of Justice and Homeland Security take a variety of actions that include engaging in multicountry investigations involving intellectual property violations and seizing goods that violate intellectual property rights at U.S. ports of entry.

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<sup>7</sup>Of these 12 cases, 8 were fully resolved, and one was substantially resolved before going through the entire dispute settlement process by mutually agreed solutions between the parties—the preferred outcome, according to a USTR official. Another 3 cases resulted in the issuance of a final WTO decision, or panel report, and all of these cases concluded with favorable rulings for the United States, according to USTR. (One of these 3 cases—involving a dispute with the European Community regarding geographical indications—began with a request for consultations in 1999, for which a new expanded request was filed in 2003 and the case was brought before a WTO panel the same year.) In the substantially resolved dispute, involving Argentina, consultations continue with respect to certain issues.



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- The Department of Justice has an office that directly addresses international IPR problems.<sup>8</sup> Further, Justice has been involved with international investigation and prosecution efforts and, according to a Justice official, has become more aggressive in recent years. For instance, Justice and the FBI coordinated an undercover IPR investigation, with the involvement of several foreign law enforcement agencies. The investigation focused on individuals and organizations, known as “warez” release groups, which specialize in the Internet distribution of pirated materials. In April 2004, these investigations resulted in 120 simultaneous searches worldwide (80 in the United States) by law enforcement entities from 10 foreign countries<sup>9</sup> and the United States in an effort known as “Operation Fastlink.”
  - In addition, in March 2004, the Department of Justice created an intellectual property task force to examine all of Justice’s intellectual property enforcement efforts and explore methods for the department to strengthen its protection of IPR. A report issued by the task force in October 2004 provided recommendations for improvements in criminal enforcement, international cooperation, civil and antitrust enforcement, legislation, and prevention of intellectual property crime. Some of these recommendations have been implemented, while others have not. For example, Justice has implemented a recommendation to create five additional Computer Hacking and Intellectual Property (CHIP) units to prosecute IPR crimes.<sup>10</sup> Additionally, Justice has designated a CHIP coordinator in every U.S. Attorney’s office in the country, thereby implementing a report recommendation that such action be taken. However, an FBI official told us the FBI has not been able to implement recommendations such as posting additional personnel to the U.S. consulate in Hong Kong and the U.S. embassy in Budapest, Hungary for budgetary reasons; Justice has not yet implemented a similar recommendation to deploy federal prosecutors to these same regions and designate them as Intellectual Property Law Enforcement Coordinators.

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<sup>8</sup>The Computer Crime and Intellectual Property Section (CCIPS) addresses intellectual property issues (copyright, trademark, and trade secrets) within the Department of Justice’s Criminal Division. In April 2004, CCIPS appointed an International Coordinator for Intellectual Property.

<sup>9</sup>These foreign countries were Belgium, Denmark, France, Germany, Hungary, Israel, the Netherlands, Singapore, Sweden, and Great Britain and Northern Ireland. According to a Justice official, law enforcement officials in Spain subsequently took action against related targets in that country.

<sup>10</sup>These CHIP units have been added in the District of Columbia; Sacramento, CA; Pittsburgh, PA; Nashville, TN; and Orlando, FL.

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Fully implementing some of the report's recommendations will require a sustained, long-term effort by Justice. For example, to address a recommendation to develop a national education program to prevent intellectual property crime, Justice held two day-long events in Washington, D.C. and Los Angeles with high school students listening to creative artists, victim representatives, the Attorney General, and a convicted intellectual property offender, among others, about the harm caused by intellectual property piracy. The events were filmed by Court TV and produced into a 30 minute show aired on cable television. Further, to enhance intellectual property training programs for foreign prosecutors and law enforcement officials, as recommended in the report, Justice worked with the Mexican government to provide a three-day seminar for intellectual property prosecutors and customs officials in December 2004. Such actions are initial efforts to address recommendations that can be further implemented over time.

- The Department of Homeland Security (DHS) tracks seizures of goods that violate IPR and reports seizures that totaled almost \$140 million resulting from over 7,200 seizures in fiscal year 2004. In fiscal year 2004, goods from China (including Hong Kong) accounted for almost 70 percent of the value of all IPR seizures, many of which were shipments of cigarettes and apparel.<sup>11</sup> Other seized goods were shipped from, among other places, Russia and South Africa.<sup>12</sup> A DHS official pointed out that providing protection against IPR-infringing imported goods for some U.S. companies—particularly entertainment companies—can be difficult, because companies often fail to record their trademarks and copyrights with DHS. DHS and Commerce officials told us that they believe this situation could be ameliorated if, contrary to current practice, companies could simultaneously have their trademarks and copyrights recorded with DHS when they are provided their intellectual property right by USPTO or the Copyright Office.

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<sup>11</sup>For information on cigarette smuggling, see GAO, *Cigarette Smuggling: Federal Law Enforcement Efforts and Seizures Increasing*, [GAO-04-641](#) (Washington, D.C.: May 28, 2004).

<sup>12</sup>One additional area of note regarding counterfeit seizures involves pharmaceutical products. DHS, in cooperation with the Department of Health and Human Services' Food and Drug Administration, conducts "blitz" exams in an effort to target, identify, and stop counterfeit and potentially unsafe prescription drugs from entering the United States from foreign countries via mail and common carriers. Such efforts have been undertaken in the past in locations such as Florida, New York, and California and have identified, in some instances, drugs that appeared to be counterfeit. For more information on federal efforts regarding prescription drugs imports, see GAO, *Prescription Drugs: Preliminary Observations on Efforts to Enforce the Prohibitions on Personal Importation*, [GAO-04-839T](#) (Washington, D.C.: July 22, 2004).

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- To identify shipments of IPR-infringing merchandise and prevent their entry into the United States, DHS is developing an IPR risk-assessment computer model. The model uses weighted criteria to assign risk scores to individual imports. The methodology is based on both historical risk-based trade data and qualitative rankings. The historical data are comprised of seizure information and cargo examination results, while qualitative rankings are based on information such as whether a shipment is arriving from a high-risk country identified by USTR's annual Special 301 report. According to DHS officials, the model has been piloted, and several issues have been identified which must be addressed before it is fully implemented.
  - DHS officials also told us that problems in identifying and seizing IPR-infringing goods frequently arise where the department's in-bond system is involved. The in-bond system allows cargo to be transported from the original U.S. port of arrival (such as Los Angeles) to another U.S. port (such as Cleveland) for formal entry into U.S. commerce or for export to a foreign country. We previously reported that weak internal controls in this system enable cargo to be illegally diverted from the supposed destination.<sup>13</sup> The tracking of in-bond cargo is hindered by a lack of automation for tracking in-bond cargo, inconsistencies in targeting and examining cargo, in-bond practices that allow shipments' destinations to be changed without notifying DHS and extensive time intervals to reach their final destination, and inadequate verification of exports to Mexico. DHS inspectors we spoke with during the course of our previous work cited in-bond cargo as a high-risk category of shipment because it is the least inspected and in-bond shipments have been increasing. We made recommendations to DHS regarding ways to improve monitoring of in-bond cargo. USTR's 2005 Special 301 report identifies customs operations as a growing problem in combating IPR problems in foreign countries such as Ukraine, Canada, Belize, and Thailand.

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## Several Mechanisms Coordinate IPR Efforts, but Their Usefulness Varies

Several interagency mechanisms exist to coordinate overseas law enforcement efforts, intellectual property policy initiatives, and development and assistance activities, although these mechanisms' level of activity and usefulness vary.

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<sup>13</sup> GAO, *International Trade: U.S. Customs and Border Protection Faces Challenges in Addressing Illegal Textile Transshipment*, [GAO-04-345](#) (Washington, D.C.: Jan. 23, 2004).

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## Formal Interagency Coordination on Trade Policy

According to government and industry officials, an interagency trade policy mechanism established by the Congress in 1962 to assist USTR has operated effectively in reviewing IPR issues. The mechanism, which consists of tiers of committees as well as numerous subcommittees, constitutes the principle means for developing and coordinating U.S. government positions on international trade, including IPR. A specialized subcommittee is central to conducting the Special 301 review and determining the results of the review.

This interagency process is rigorous and effective, according to U.S. government and industry officials. A Commerce official told us that the Special 301 review is one of the best tools for interagency coordination in the government, while a Copyright Office official noted that coordination during the review is frequent and effective. A representative for copyright industries also told us that the process works well and is a solid interagency effort.

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## National Intellectual Property Law Enforcement Coordination Council (NIPLECC)

NIPLECC, created by the Congress in 1999 to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities, seems to have had little impact. NIPLECC consists of (1) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; (2) the Assistant Attorney General, Criminal Division; (3) the Under Secretary of State for Economic and Agricultural Affairs; (4) the Deputy United States Trade Representative; (5) the Commissioner of Customs; and (6) the Under Secretary of Commerce for International Trade.<sup>14</sup> NIPLECC's authorizing legislation did not include the FBI as a member of NIPLECC, despite its pivotal role in law enforcement. However, according to representatives of the FBI, USPTO, and Justice, the FBI should be a member. USPTO and Justice cochair NIPLECC, which has no staff of its own. In the council's several years of existence, its primary output has been three annual reports to the Congress, which are required by statute. (NIPLECC's 2004 report has been drafted but is not yet available.)

According to interviews with industry officials and officials from its member agencies, and as evidenced by its own reports, NIPLECC has struggled to define its purpose and has had little discernable impact.

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<sup>14</sup>NIPLECC is also required to consult with the Register of Copyrights on law enforcement matters relating to copyright and related rights and matters.

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Indeed, officials from more than half of the member agencies offered criticisms of NIPLECC, remarking that it is unfocused, ineffective, and “unwieldy.” In official comments to the council’s 2003 annual report, major IPR industry associations expressed a sense that NIPLECC is not undertaking any independent activities or effecting any impact. One industry association representative stated that law enforcement needs to be made more central to U.S. IPR efforts and said that although he believes the council was created to deal with this issue, it has “totally failed.” The lack of communication regarding enforcement results in part from complications such as concerns regarding the sharing of sensitive law enforcement information and from the different missions of the various agencies involved in intellectual property actions overseas. According to a USTR official, NIPLECC needs to define a clear role in coordinating government policy. A Justice official stressed that, when considering coordination, it is important to avoid creating an additional layer of bureaucracy that may detract from efforts devoted to each agency’s primary mission.

According to an official from USPTO, NIPLECC has been hampered primarily by its lack of its own staff and funding. In our September 2004 report, we noted that “If the Congress wishes to maintain NIPLECC and take action to increase its effectiveness, the Congress may wish to consider reviewing the council’s authority, operating structure, membership, and mission.” In the Consolidated Appropriations Act, 2005, the Congress provided \$2 million for NIPLECC expenses, to remain available through fiscal year 2006.<sup>15</sup> The act addressed international elements of the council and created the position of the Coordinator for International Intellectual Property Enforcement, appointed by the President, to head NIPLECC. This official may not serve in any other position in the federal government, and the NIPLECC co-chairs, representatives from USPTO and Justice, are to report to the Coordinator. The law also provides additional direction regarding NIPLECC’s international mission, providing that NIPLECC shall (1) establish policies, objectives, and priorities concerning international intellectual property protection and intellectual property law enforcement; (2) promulgate a strategy for protecting American intellectual property overseas; and (3) coordinate and oversee implementation of items (1) and (2) by agencies with responsibilities for intellectual property protection and intellectual

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<sup>15</sup>The Consolidated Appropriations Act, 2005, Public Law 108-447, Division B (118 Stat. 2809 at 2872-2873).

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property law enforcement. The Coordinator, with the advice of NIPLECC members, is to develop a budget proposal for each fiscal year to implement the strategy for protecting American intellectual property overseas and for NIPLECC operations and may select, appoint, employ, and fix compensation of such officers and employees as may be necessary to carry out NIPLECC functions. Personnel from other departments or agencies may be temporarily reassigned to work for NIPLECC. Agency officials told us that, as of June 2005, no Coordinator had been named (although a selection process was underway), the \$2 million in NIPLECC funding has not been spent, and NIPLECC continued to accomplish little.

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## Strategy Targeting Organized Piracy (STOP!)

In October 2004, USTR and the Departments of Commerce, Justice, and Homeland Security announced STOP! to fight trade in pirated and counterfeit goods. Other STOP! participants are the Department of State and the Department of Health and Human Service's Food and Drug Administration. STOP!, which is targeted at cross-border trade in tangible goods and was initiated to strengthen U.S. government and industry enforcement actions. STOP! has five general objectives:

1. **Stop pirated and counterfeit goods at the U.S. border.** Such efforts are to be achieved through, for example, the implementation of the DHS IPR risk model, mentioned above, to better identify and seize infringing goods at U.S. borders.
2. **Dismantle criminal enterprises that steal intellectual property.** Justice and DHS are taking measures to maximize their ability to pursue perpetrators of intellectual property crimes through, for example, the addition of the 5 new Justice CHIP units mentioned above. Justice and DHS are also committed under STOP! to work with the Congress to update IPR legislation.
3. **Keep counterfeit and pirated goods out of global supply chains.** Commerce is working with industry to develop voluntary guidelines companies can use to ensure that supply and distribution chains are free of counterfeits.
4. **Empower U.S. businesses to secure and enforce their rights at home and abroad.** For example, Commerce is meeting with small and medium enterprises to inform companies on how to secure and protect their rights in the global marketplace.
5. **Reach out to U.S. trading partners to build an international coalition to block trade in pirated and counterfeit goods.** USTR

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and State are engaging in multilateral forums, such as the Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC), through the introduction of new initiatives to improve the global intellectual property environment.

Agency officials told us that STOP! has both furthered ongoing agency activities and facilitated new initiatives. For example, Commerce officials told us that while they had been working on having the OECD conduct a study of the extent and impact of counterfeiting and piracy, STOP! provided additional momentum to succeed in their efforts. They said that the OECD has now agreed to conduct a comprehensive study on the extent and effect of international counterfeiting and piracy in tangible goods, with a study addressing the digital arena to follow. In addition, in March 2005, Justice announced the continuation of work by its intellectual property task force, which had been rolled into STOP!. Regarding new initiatives, USPTO has established a hotline<sup>16</sup> for companies to obtain information on intellectual property rights enforcement and report problems in other countries. According to USPTO, this hotline has received 387 calls since it was activated in October 2004. Commerce has also developed a website<sup>17</sup> to provide information and guidance to IPR holders for registering and protecting their intellectual property rights in other countries. The most visible new effort undertaken as a part of STOP! is a coordinated U.S. government outreach to foreign governments. In April 2005 officials from seven federal agencies traveled to Hong Kong, Japan, Korea, and Singapore and in June, they traveled to Belgium, France, Germany, and the United Kingdom. According to USTR officials, the goals of these trips are to describe U.S. initiatives related to IPR enforcement and to learn from the activities of “like-minded” trading partners with IPR concerns and enforcement capacities similar to the United States. DHS officials reported that their Asian counterparts were interested in the U.S. development of the IPR risk model to target high-risk imports for inspection, while a USTR official emphasized that U.S. participants were impressed by a public awareness campaign implemented in Hong Kong.

Officials involved in STOP! told us that one key goal of the initiative is to improve interagency coordination. Agency officials told us that to achieve

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<sup>16</sup>1-866-999-HALT.

<sup>17</sup>[www.stopfakes.gov](http://www.stopfakes.gov). According to Commerce, between November 2004 and May 2005, there were almost 70,000 visits to this website.

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this goal, staff-level meetings have been held monthly and senior officials have met about every 6 weeks. Agency officials also told us that as an Administration initiative with high-level political support, STOP! has energized agencies' enforcement efforts and strengthened interagency efforts. A USPTO official explained that STOP! has laid the groundwork for future progress and continued interagency collaboration. Agency officials noted that STOP! goals and membership overlap with those of NIPLECC, and remarked that STOP! could possibly be integrated into NIPLECC at some future date. In May 2005, a NIPLECC meeting was held to address coordination between STOP! and NIPLECC. According to a Justice official, once an International Intellectual Property Enforcement Coordinator is appointed, there may be an opportunity to continue the momentum that STOP! has provided in the context of NIPLECC activities.

One private sector representative we met with said that although U.S. industry has worked closely with agencies to achieve the goals of STOP!, he is frustrated with the lack of clear progress in many areas. For instance, he said that the administration has neither supported any pending legislation to improve intellectual property rights protection, nor proposed such legislation. He added that agencies need to do more to integrate their systems, noting the situation where companies must currently receive a trademark or copyright from USPTO or the Copyright Office, and then separately record that right with DHS. Another industry representative noted that STOP! has been announced with great fanfare, but that progress has been sparse. However, he noted that industry supports this administration effort and is working collaboratively with the federal agencies to improve IPR protection. Another industry official cited issues of concern such as insufficient enforcement resources "on the ground" (particularly at DHS).

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## Other Coordination Mechanisms

Other coordination mechanisms include the National International Property Rights Coordination Center (IPR Center) and informal coordination.<sup>18</sup> The IPR Center in Washington, D.C., a joint effort between DHS and the FBI, began limited operations in 2000. According to a DHS official, the potential for coordination between DHS, the FBI, and industry and trade associations makes the IPR Center unique. The IPR Center is

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<sup>18</sup> Another coordination mechanism is the IPR Training Coordination Group, led by the State Department. This voluntary, working-level group comprises representatives of U.S. agencies and industry associations involved in IPR programs and training and technical assistance efforts overseas or for foreign officials.



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intended to serve as a focal point for the collection of intelligence involving copyright and trademark infringement, signal theft, and theft of trade secrets. However, the center is not widely used by industry. For example, an FBI official told us that from January 2004 through May 2005, the FBI has received only 10 referrals to its field offices from the IPR Center. Further, the number of FBI and DHS staff on board at the center has decreased recently and currently stands at 10 employees (down from 20 in July 2004), with no FBI agents currently working there and fewer DHS agents than authorized. However, IPR Center officials emphasized one recent, important case that was initiated by the center. DHS, in conjunction with the Chinese government and with the assistance of the intellectual property industry, conducted the first ever joint U.S.-Chinese enforcement action on the Chinese mainland, disrupting a network that distributed counterfeit motion pictures worldwide. More than 210,000 counterfeit motion picture DVDs were seized, and in 2005, four individuals (two Chinese and two Americans) were convicted in China.

Policy agency officials noted the importance of informal but regular communication among staff at the various agencies involved in the promotion or protection of intellectual property overseas. Several officials at various policy-oriented agencies, such as USTR and the Department of Commerce, noted that the intellectual property community was small and that all involved were very familiar with the relevant policy officials at other agencies in Washington, D.C. Further, State Department officials at U.S. embassies regularly communicate with agencies in Washington, D.C., regarding IPR matters and U.S. government actions. Agency officials noted that this type of coordination is central to pursuing U.S. intellectual property goals overseas.

Although communication between policy and law enforcement agencies can occur through forums such as the NIPLECC, these agencies do not systematically share specific information about law enforcement activities. According to an FBI official, once a criminal investigation begins, case information stays within the law enforcement agencies and is not shared.<sup>19</sup> A Justice official emphasized that criminal law enforcement is fundamentally different from the activities of policy agencies and that

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<sup>19</sup>Further, a DHS official noted that the Trade Secrets Act (18 USC 1905) precludes sharing information about specific imports, even where there is criminal activity. The Trade Secrets Act makes it a criminal offense for an employee of the United States, or one of its agencies, to disclose trade secrets and certain other forms of confidential commercial and financial information except where such disclosure is “authorized by law.”

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restrictions exist on Justice's ability to share investigative information, even with other U.S. agencies.

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## Enforcement Overseas Remains Weak and Challenges Remain

U.S. efforts such as the annual Special 301 review have contributed to strengthened foreign IPR laws, but enforcement overseas remains weak. The impact of U.S. activities is challenged by numerous factors. Industry representatives report that the situation may be worsening overall for some intellectual property sectors.

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## Weak Enforcement Overseas

The efforts of U.S. agencies have contributed to the establishment of strengthened intellectual property legislation in many foreign countries, however, the enforcement of intellectual property rights remains weak in many countries, and U.S. government and industry sources note that improving enforcement overseas is now a key priority. A recent USTR Special 301 report states that "although several countries have taken positive steps to improve their IPR regimes, the lack of IPR protection and enforcement continues to be a global problem." For example, although the Chinese government has improved its statutory IPR regime, USTR remains concerned about enforcement in that country. According to USTR, counterfeiting and piracy remain rampant in China and increasing amounts of counterfeit and pirated products are being exported from China. In addition, although Ukraine has shut down offending domestic optical media production facilities, pirated products continue to pervade Ukraine, and, according to USTR's 2004 Special 301 Report, Ukraine is also a major trans-shipment point and storage location for illegal optical media produced in Russia and elsewhere as a result of weak border enforcement efforts.

Although U.S. law enforcement does undertake international cooperative activities to enforce intellectual property rights overseas, executing these efforts can prove difficult. For example, according to DHS and Justice officials, U.S. efforts to investigate IPR violations overseas are complicated by a lack of jurisdiction as well as by the fact that U.S. officials must convince foreign officials to take action. Further, a DHS official noted that in some cases, activities defined as criminal in the United States are not viewed as an infringement by other countries and that U.S. law enforcement agencies can therefore do nothing.

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## Challenges to U.S. Efforts

In addition, U.S. efforts confront numerous challenges. Because intellectual property protection is one of many U.S. government objectives pursued overseas, it is viewed internally in the context of broader U.S. foreign policy objectives that may receive higher priority at certain times in certain countries. Industry officials with whom we met noted, for example, their belief that policy priorities related to national security were limiting the extent to which the United States undertook activities or applied diplomatic pressure related to IPR issues in some countries. Further, the impact of U.S. activities is affected by a country's own domestic policy objectives and economic interests, which may complement or conflict with U.S. objectives. U.S. efforts are more likely to be effective in encouraging government action or achieving impact in a foreign country where support for intellectual property protection exists. It is difficult for the U.S. government to achieve impact in locations where foreign governments lack the "political will" to enact IPR protections.

Many economic factors complicate and challenge U.S. and foreign governments' efforts, even in countries with the political will to protect intellectual property. These factors include low barriers to entering the counterfeiting and piracy business and potentially high profits for producers. In addition, the low prices of counterfeit products are attractive to consumers. The economic incentives can be especially acute in countries where people have limited income. Technological advances allowing for high-quality inexpensive and accessible reproduction and distribution in some industries have exacerbated the problem. Moreover, many government and industry officials believe that the chances of getting caught for counterfeiting and piracy, as well as the penalties when caught, are too low. The increasing involvement of organized crime in the production and distribution of pirated products further complicates enforcement efforts. Federal and foreign law enforcement officials have linked intellectual property crime to national and transnational organized criminal operations. Further, like other criminals, terrorists can trade any commodity in an illegal fashion, as evidenced by their reported involvement in trading a variety of counterfeit and other goods.<sup>20</sup>

Many of these challenges are evident in the optical media industry, which includes music, movies, software, and games. Even in countries where interests exist to protect domestic industries, such as the domestic music

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<sup>20</sup>See GAO, *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms*, [GAO-04-163](#) (Washington, D.C.: Nov. 14, 2003).

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industry in Brazil or the domestic movie industry in China, economic and law enforcement challenges can be difficult to overcome. For example, the cost of reproduction technology and copying digital media is low, making piracy an attractive employment opportunity, especially in a country where formal employment is hard to obtain. The huge price differentials between pirated CDs and legitimate copies also create incentives on the consumer side. For example, when we visited a market in Brazil, we observed that the price for a legitimate DVD was approximately ten times the price for a pirated DVD. Even if consumers are willing to pay extra to purchase the legitimate product, they may not do so if the price differences are too great for similar products. Further, the potentially high profit makes optical media piracy an attractive venture for organized criminal groups. Industry and government officials have noted criminal involvement in optical media piracy and the resulting law enforcement challenges. Recent technological advances have also exacerbated optical media piracy. The mobility of the equipment makes it easy to transport it to another location, further complicating enforcement efforts. Likewise, the Internet provides a means to transmit and sell illegal software or music on a global scale. According to an industry representative, the ability of Internet pirates to hide their identities or operate from remote jurisdictions often makes it difficult for IPR holders to find them and hold them accountable.

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## Industry Concerns

Despite improvements such as strengthened foreign IPR legislation, international IPR protection may be worsening overall for some intellectual property sectors. For example, according to copyright industry estimates, losses due to piracy grew markedly in recent years. The entertainment and business software sectors, for example, which are very supportive of USTR and other agencies, face an environment in which their optical media products are increasingly easy to reproduce, and digitized products can be distributed around the world quickly and easily via the Internet. According to an intellectual property association representative, counterfeiting trademarks has also become more pervasive in recent years. Counterfeiting affects more than just luxury goods; it also affects various industrial goods. An industry representative noted that U.S. manufacturers of all sizes are now being adversely affected by counterfeit imports.

An industry representative also added that there is a need for additional enforcement activity by the U.S. government at the border. However, he recognized that limited resources and other significant priorities for DHS

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heighten the need to use existing resources more effectively to interdict more counterfeit and pirated goods.

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## Conclusions

The U.S. government has demonstrated a commitment to addressing IPR issues in foreign countries using multiple agencies. However, law enforcement actions are more restricted than other U.S. activities, owing to factors such as a lack of jurisdiction overseas to enforce U.S. law. Several IPR coordination mechanisms exist, with the interagency coordination that occurs during the Special 301 process standing out as the most significant and active. Efforts under STOP! appear to have strengthened the U.S. government's focus on addressing IPR enforcement problems in a more coordinated manner. Conversely, NIPLECC, the mechanism for coordinating intellectual property law enforcement, has accomplished little that is concrete and its ineffectiveness continues despite recent congressional action to provide funding, staffing, and clearer guidance regarding its international objectives. In addition, NIPLECC does not include the FBI, a primary law enforcement agency. Members, including NIPLECC leadership, have repeatedly acknowledged that the group continues to struggle to find an appropriate mission.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other members of the subcommittee may have at this time.

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## Contacts and Acknowledgments

Should you have any questions about this testimony, please contact me by e-mail at [yagerl@gao.gov](mailto:yagerl@gao.gov). I can also be reached at (202) 512-4128. Other major contributors to this testimony were Emil Friberg, Leslie Holen, Jason Bair, Ming Chen, Sharla Draemel, and Reid Lowe.

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