



100 Years Standing Up for American Enterprise
U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: Unfair Trading Practices Against the U.S.: Intellectual Property Rights Infringement, Property Expropriation, and other Barriers

TO: U.S. House of Representatives Committee on Foreign Affairs

BY: Mr. David Hirschmann, President and Chief Executive Officer, Global Intellectual Property Center, U.S. Chamber of Commerce

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

About the U.S. Chamber of Commerce

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

**Testimony of David Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center
U.S. Chamber of Commerce**

Introduction

Thank you Chairwoman Ros-Lehtinen, Ranking Member Berman, and distinguished members of the Committee on Foreign Affairs. My name is David Hirschmann, and I am the President and Chief Executive Officer of the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC).

The GIPC was established in 2007 as an affiliate of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

The GIPC champions intellectual property rights as vital to creating jobs, saving lives, advancing economic growth and development around the world, and generating breakthrough solutions to global challenges.

I appreciate the opportunity to speak with you today about the importance of protecting and enforcing the intellectual property rights of America's creators and innovators around the globe.

Economic Contributions of IP

Intellectual property (IP) is a key engine of growth and economic development in the global economy. IP-intensive industries create real jobs for Americans. These jobs can be found in every corner of the U.S., as evidenced by the U.S. Chamber's recently-released *IP Creates Jobs for America* study. According to this study, IP-intensive industries directly and indirectly support more than 55 million American jobs – jobs that pay 30% higher wages than those in other industries – and account for \$5.8 trillion in national output.

IP is also one of our most valuable trading assets and a key to our global competitiveness. In 2011, our innovative and creative industries comprised close to three quarters of all U.S. exports. In both Florida and California, for example, IP accounts for over 75 percent of each state's exports. With 95 percent of consumers living outside the United States, transparent, high standard and commercially

meaningful IP rules in the global marketplace are essential to the growth of our IP-intensive industries in all states.

For the U.S. to remain the most innovative economy on Earth, we must ensure that our IP-intensive industries remain confident that copyrights, patents, and trademarks will be enforced. Sound IP policies and enforcement of IP rights abroad are essential to advancing U.S. economic recovery, driving America's competitiveness and export growth, and creating high-quality, high-paying American jobs.

Challenges and Opportunities to Protecting IP Overseas

Today's global intellectual property rights (IPR) system is designed to incentivize individuals and businesses small and large to invest in innovation and creativity. This time-proven system also helps provide assurances to consumers that the products they use are authentic, safe and effective.

America's IP-intensive industries, however, are facing increasing challenges to bringing their creations and innovations to the global marketplace due to unpredictable and insufficient intellectual property systems in a number of foreign markets. Our innovative economy also faces growing threats from counterfeiting and piracy networks operating online and in the traditional marketplace. Moreover, some foreign governments are actively seeking to weaken IPR in their own countries and in multilateral institutions, undermining the ability of businesses to innovate, bring the newest and most effective technologies to market, and differentiate brands.

IP theft is a particular problem worldwide as counterfeiting and piracy have a significant influence on the global economy. The Organization for Economic Co-operation and Development (OECD) estimated in 2009 that for the G20 economies the value of counterfeited and pirated goods in international trade totaled \$250 billion per year.¹ However, that analysis did not include both domestically produced and consumed counterfeit and pirated products and pirated digital products being distributed via the Internet. If those metrics were included, the estimates would be "several hundred billion dollars more."²

In February 2011, Frontier Economics updated OECD's method of analysis to include those metrics, and concluded that the value of counterfeited and pirated goods

¹ OECD, Magnitude of Counterfeiting and Piracy of tangible products: An Update (Nov. 2009).

² OECD, The Economic Impact of Counterfeiting and Piracy, p.4 (2008).

would be up to \$650 billion every year.³ That same study estimates that the value of counterfeited and pirated goods could reach \$1.77 trillion by 2015.

The effect of counterfeiting and piracy are serious. In the G20 economies, 2.5 million jobs have been lost to counterfeiting and piracy.⁴ That number will continue to rise if the tide is not stemmed. In some cases, it is hard to quantify the loss to the global economy, but it is clear that online counterfeiting and piracy cut into the sale of genuine products, force manufacturers to raise the prices of authentic products to cover costs, lower employment, deter investment in R&D as well as capital investment, reduce tax receipts, and raise law enforcement costs.

Fighting intellectual property theft on the Internet is imperative. A study of websites dedicated to trading in infringing copyrighted or trademarked goods found that these websites generated over 53 billion visits annually.⁵ Approximately a quarter of all Internet bandwidth is used for digital theft.⁶ These websites undercut an intellectual property system that helps provide assurance to consumers that the products they use are authentic, safe, and effective and put consumers at risk.

A global patchwork of laws and enforcement invites the criminal enterprises behind online counterfeiting and piracy to shop for a forum in which they can elude justice. The Office of the United States Trade Representative (USTR) has recognized the significance of this problem in the context of its two Special 301 Out-of-Cycle Reviews of Notorious Markets. We urge the U.S. government to make action by foreign governments to address and fix Notorious Markets in their jurisdiction a top priority.

Country Analysis

Earlier this year, the GIPC submitted its first ever Special 301 Review comments to the Office of the U.S. Trade Representative. The Special 301 Report is a critical mechanism to shine a spotlight on countries that are threatening American jobs and economic growth by undermining the intellectual property rights of our creative and innovative industries.

³ Frontier Economics, Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy (Feb.2011).

⁴ Frontier Economics, Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy (Feb.2011).

⁵ MarkMonitor, Traffic Report: Online Piracy and Counterfeiting (Jan. 2011).

⁶ Envisional Report, “An Estimate of Infringing Use of the Internet” (Jan. 2011).

Our submission provided an overall assessment of eight countries that significantly deny adequate and effective IP protection and enforcement. These countries are Brazil, Canada, China, India, Mexico, Russia, Turkey and Ukraine. I would like to highlight a few of the greatest challenges and opportunities that we face in promoting IP improvements in a select number of these countries.

There is no better example of the challenges and opportunities our businesses face in protecting IPR than China.

China remains the leading source of counterfeit and pirated goods worldwide. According to the U.S. Customs and Border Protection, China accounts for 62 percent or \$124.7 million of the total domestic value of seizures. In a recent study by the Business Software Alliance (BSA), the piracy rate in China was 77 percent and almost \$9 billion of pirated software was illegally obtained in China in 2011—the highest in Asia.

China has taken some steps to advance certain IPR reforms. We appreciate the transparency of the Supreme People's Court in its drafting of a Judicial Interpretation regarding Internet liability, and the Chinese government's drafting of amendments to the Copyright law. In addition, China has made important commitments to expand its software legalization programs to local government departments. We continue to monitor these priority areas to ensure that domestic and U.S. rights holder concerns are addressed fully and effectively and also urge the government to ensure effective regulatory data protection for innovative pharmaceuticals.

We commend China for taking steps toward better IP enforcement by making permanent their 2010 Special IPR Campaign. In particular, the GIPC welcomes Premier Wen Jiabao's announcement of the creation of an IPR "Leading Group" within the State Council and looks forward to seeing the Leading Group advancing more robust intellectual property reforms that benefit domestic and U.S. rights holders.

The ultimate judgment of this campaign's success will be determined by whether it reduces levels of intellectual property violations, and correspondingly, increases legitimate sales. We believe that these outcomes will occur only when the intellectual property environment in China has changed.

Russia will join the World Trade Organization (WTO) in August. This is a welcome development for American workers, farmers, and companies because accession to the WTO requires Russia to further open its market to imports, safeguard investments, and strengthen the rule of law. Russia will also accede to the WTO

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and be subject to the organization's dispute settlement process. However, if Congress fails to approve Permanent Normal Trade Relations (PNTR) with Russia before the August district work period, Moscow will be free to deny U.S. workers, farmers, and companies the full benefits of its reforms. America risks being left behind as European and Asian companies build on their head start in the world's ninth largest market.

While the Chamber strongly urges Congress to approve PNTR before the August district work period, we also note that Russia continues to present significant challenges to U.S. innovators and creative artists. We urge the U.S. government and Congress to remain vigilant in ensuring that Russia implements its intellectual property commitments in full, including by making greater progress combating online piracy.

We also want to highlight significant concerns regarding recent actions in India that threaten innovation and overall health policy. In March, the Government of India issued its first compulsory license to allow for the generic manufacturing of a patented anti-cancer drug. In a public statement, we expressed our disappointment with this action. While we share the Government of India's desire to improve access to medicines, we believe the issuance of compulsory licenses for anything other than exceptional circumstances does irreparable harm not only to the biopharmaceutical industry but also to all innovative industries. Weakening patent protection for innovative pharmaceutical products will impede the development of new life-saving solutions without improving access to quality, affordable health care.

There have also been unwarranted efforts to weaken trademark protections in the name of public health. The GIPC is particularly concerned by government policies that reduce or eliminate the ability of manufacturers to distinguish their brands, especially when consumers are often reliant upon those brands to identify products they know and trust. An unfortunate precedent was set, for example, by Australia, in November 2011 when the government passed legislation that stripped trademark owners of their ability to use their brand on tobacco products.

While the challenges faced by our IP industries overseas are numerous, there are also important opportunities to seek greater improvements in IP systems around the globe. One of the most immediate opportunities is the negotiation of the Trans-Pacific Partnership (TPP) Agreement. If the TPP Agreement is to be "a model for ambition for other free trade agreements in the future," as declared by the TPP leaders in November 2011, it is essential that the Agreement include comprehensive, high-

standard IP protections, looking to the U.S.-Korea Free Trade Agreement and U.S. law as a benchmark.

We urge the U.S. government to show heightened leadership to ensure that the final text of the TPP provide robust protections for creators and innovators and the 55 million American jobs supported by IP-intensive industries. This includes pushing back on any efforts to weaken IP rights or to exclude any sector from protection in the Agreement. It is also essential that this Administration put forward any remaining text that secures commercially meaningful opportunities for all biotech and pharmaceutical companies to enter the TPP country markets, as well as provides 12 years of data protection for biologic products.

These efforts are essential as new entrants are poised to join the negotiations. Recently, the Chamber welcomed the invitations to Canada and Mexico to join the TPP.

Both Canada and Mexico have taken some steps to improve their IP systems in recent months. Earlier this month, Canada enacted copyright reforms that represent a positive step forward in ensuring IP rights for creators are protected. More recently, Mexico signed the Anti-Counterfeiting Trade Agreement.

There are still a number of outstanding IP issues that both the Canadian and the Mexican governments must deal with to ensure that IP is properly protected and enforced, including further copyright reforms, the provision of *ex officio* authority to customs officials and further improvements to provide greater certainty for pharmaceutical innovators. The Chamber looks forward to continued progress on IP matters in Canada and Mexico, including in the context of the TPP.

Conclusion

Adequate and effective protection and enforcement of intellectual property abroad is vital to our economy. It is essential that the Administration and this Congress continue to identify ways to combat foreign theft of our creative and innovative products and the 55 million jobs that these products support. The U.S. Chamber looks forward to working with members of the Committee to secure improvements in IP systems around the globe.

Thank you.