

**WRITTEN STATEMENT OF BRAD HUTHER,
ON BEHALF OF THE
U.S. CHAMBER OF COMMERCE**

**BEFORE THE
UNITED STATES SENATE SUBCOMMITTEE ON
SECURITY AND INTERNATIONAL TRADE AND FINANCE**

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Good afternoon Chairman Bayh and members of the subcommittee. My name is Brad Huther and I am appearing before you today on behalf of the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector and region of the economy.

Thank you for the leadership you and Senator Voinovich have provided on an issue of utmost importance to the U.S. business community.

The Chamber commends recent government-wide efforts to increase attention to the global threat of counterfeiting and piracy. The last few years have witnessed the launch of several public-private partnerships designed to combat intellectual property (IP) crime including the Administration's Strategy Targeting Organized Piracy or STOP! initiative, the Chamber's Global Anti-counterfeiting and Piracy Initiative and similar regional coordination efforts within Europe and North America, just to name a few. The current Administration's STOP! initiative has spurred the Department of Commerce, the Justice Department, the State Department, the United States Trade Representative, the Department of Homeland Security, and the Food and Drug Administration to elevate the importance of IP-related crime and coordinate previously disparate Federal activities to battle this crime. The Chamber and the more than 285 members of the Coalition Against Counterfeiting and Piracy have aggressively supported the STOP! initiative. This interagency effort has achieved a number of successes, for example, the

Department of Justice charged 350 defendants with intellectual property offenses in FY2005, nearly double the number charged in the previous year. Additionally, 2006 saw arrests and indictments resulting from investigations conducted by Immigration and Customs Enforcement increase by 40% over the 2005 level. These successes and the efforts of the STOP! initiative provided a good first step toward a comprehensive national strategy to combat IP crime.

Despite these and other noteworthy achievements under STOP!, the Chamber believes the *Intellectual Property Rights Enforcement Act* is a positive and necessary next step critical to the battle to curtail IP theft domestically as well as globally. This legislation builds upon the achievements of the STOP! initiative by creating a better organized and permanent interagency framework allowing for more efficient collaboration and intelligence sharing, while recognizing the necessity to team with foreign governments committed to making positive strides in battling IP crimes. Enacting this legislation would clearly demonstrate that the U.S. is prepared to handle this category of crime with the seriousness it demands on a permanent basis and with global reach.

IP fraud is an extremely lucrative and low-risk crime that threatens brand owners and creative innovators in all business sectors. We share your view, Mr. Chairman, that counterfeiting and piracy are cash-generating operations for organized criminal networks and terrorist activities.¹ These large criminal gangs possess international manufacturing capabilities and sophisticated distribution channels that rival, and sometimes surpass, those of legitimate businesses. The *Intellectual Property Rights Enforcement Act* elevates such criminal activity to

¹ See Official Testimony of John C. Stedman, Lieutenant County of Los Angeles Sheriff's Department before the United States Senate Committee on Homeland Security and Governmental Affairs, 25 May 2005. Officer Stedman testified to an investigation that linked the sale of counterfeit cigarettes to Hezbollah fundraising.

the levels of money laundering and black-market crimes. The Chamber supports this integrated approach in the fight against the theft of intellectual property.

The business community also recognizes the need to leverage its collective resources to partner with the government in battling this scourge. The Chamber has developed a strategic action plan with tangible steps to stop counterfeiting and piracy. Our strategy has three major components:

- First, to educate lawmakers, the media, businesses, innovators and consumers about health, safety and economic dangers that counterfeiters and pirates are imposing on us;
- Second, to enforce the legitimate rights of small companies, manufacturers and retailers to protect the goodwill of their product line and to have safe, reliable distribution channels in the United States;
- Third, to engage, on a global basis, countries that are not honoring their international trade obligations, crack down on counterfeiters and pirates of intellectual property, and strengthen their borders and shipping controls.

We believe our efforts, when combined with those of business organizations and governments around the globe, will create a safer marketplace for consumers, protect the jobs of American workers and expand our competitiveness internationally.

The Intellectual Property Rights Enforcement Act provides a strong foundation for our future collaboration. By creating an expanded and permanent interagency enforcement unit to combat IP theft, a better organized more disciplined force will emerge. This legislation proposes the formation of the Intellectual Property Enforcement Network (IPEN) to oversee coordination

among the players I have mentioned and to ensure that a strategic plan to combat IP crimes is effectively implemented. Agencies, while retaining their autonomous nature and continuing to perform their essential functions and duties, would belong to a group of high-level policy makers under a more disciplined structure that will be better prepared to counter highly organized counterfeiting networks. For example, S.522 would not modify the independent prosecutorial discretion of the Department of Justice or permit other agencies to unduly influence the essential operational duties the DOJ faces daily. IPEN would, however, enhance interagency cooperation and coordination on a broad range of strategically important activities, including intelligence sharing.

The Chamber has actively supported the establishment of regional frameworks to increase cooperation on enforcement of intellectual property rights among our most important trading partners. Here are just a few relevant examples of new enforcement efforts that are being pursued in ways that we believe are complementary to the global Intellectual Property Enforcement Network which you and Senator Voinovich have proposed in S.522:

- The EU-US Action Strategy for the Enforcement of Intellectual Property Rights includes fifteen bilateral, multilateral and public-private action strategies, many of which involve the sharing of enforcement intelligence with relevant law enforcement authorities;
- The Security and Prosperity Partnership of North America contains similar action items, most notably a goal to “develop a network of enforcement professionals among the governments of Canada, Mexico and the United States to jointly collaborate on enforcement against transnational counterfeiting and piracy.” The three governments are currently considering ways of identifying authorized law

enforcement officials to conduct domestic criminal investigations and prosecutions of counterfeiters and pirates and enhancing domestic industry/government cooperation and information sharing; and

- At the G8 Leaders Summit in St. Petersburg last year, a comprehensive IP enforcement strategy was announced, which included an agreement “...on a plan to establish a formal IP law enforcement infrastructure within the G8 ... for the pursuit of joint law enforcement operations targeted at IP crimes.”

IPEN would provide an excellent platform with which the U.S. private sector can interact to express its concerns and provide intelligence on criminal activity. The business community has a clear role to play by contributing its expertise and resources to assist the government in taking on all aspects of counterfeiting, including those relating to technical assistance and capacity building. Company-financed investigations, which complement the work of law enforcement officials, will have greater leveraged benefits via IPEN as well. Through the promotion of greater private sector collaboration and enhanced channels of communication, we believe IPEN will have a substantially more efficient and increased capacity to obtain and distribute intelligence on Intellectual Property Rights (IPR) crimes simultaneously to all relevant agencies.

Accordingly, we believe the *Intellectual Property Rights Enforcement Act* articulates a clear and compelling need for greater international enforcement cooperation in battling IP crimes. IPR crime adversely affects countries that are our potential trading partners. While all recent Free Trade Agreements contain substantive sections regarding intellectual property rights protection and enforcement, without greater international IPR enforcement activities the

investment climate and trading environment in these countries will be hampered. The *Intellectual Property Rights Enforcement Act* would be invaluable in creating a framework that rewards countries for having legal regimes that enforce IP laws, shut down piracy operations, arrest and prosecute those who commit IP crimes, and for having officials with the authority to inspect, seize and destroy counterfeit goods at ports of entry.

On June 14, 2005, I testified before the Senate Subcommittee on Oversight of Government Management, The Federal Workforce and the District of Columbia regarding the STOP! initiative. The Chamber's view then was that STOP! provided an excellent example of interagency collaboration and offered considerable promise in the fight against IP theft. We recommended, however, that provisions of the Government Performance and Results Act, especially those relating to establishing performance indicators and the means for validating actual versus planned achievement of them, are rigorously applied to measure the Administration's progress. Essential to the proper functioning of any interagency program is a requirement for increased oversight, including involving stakeholders in advising the Congress and the administration in the process of developing appropriate metrics for the measurement of success. By establishing performance indicators and the means for validating actual versus planned achievements, and linking them to the resources necessary for success, IPEN should achieve even greater advances in the future. We are pleased to see that S.522 incorporates these important concepts.

The Chamber understands how important this battle is and stands ready to support the enactment and implementation of this legislation.

Thank you, Chairman Bayh, for focusing on a dangerous and very real threat to our economy, jobs for our citizens, and the holders of intellectual property rights. I appreciate the opportunity to provide testimony and will be happy to respond to any questions you may have.