

GAO

Testimony

Before the Committee on Banking,
Housing and Urban Affairs, Subcommittee
on Security and International Trade and
Finance, United States Senate

For Release on Delivery
Expected at 2:00 p.m. EDT
April 12, 2007

**INTELLECTUAL
PROPERTY**

**National Enforcement
Strategy Needs Stronger
Leadership and More
Accountability**

Statement of Loren Yager, Director
International Affairs and Trade





Highlights of [GAO-07-710T](#), a testimony before the Committee on Banking, Housing and Urban Affairs, Subcommittee on Security and International Trade and Finance, United States Senate

Why GAO Did This Study

U.S. government efforts to protect and enforce intellectual property (IP) rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners and to avoiding health and safety risks resulting from the trade in counterfeit and pirated goods. IP protection and enforcement cut across a wide range of U.S. agencies and a coordinating structure has evolved to address coordination issues. First, Congress created the interagency National Intellectual Property Rights Law Enforcement Coordination Council (NIPLECC) in 1999. Later, in October 2004, the Bush administration initiated the Strategy Targeting Organized Piracy (STOP).

GAO's testimony focuses on (1) the effectiveness of NIPLECC and STOP as a coordinating structure to guide and manage U.S. government efforts; and (2) the extent to which STOP meets the criteria for an effective national strategy. This statement is based on GAO's November 2006 report ([GAO-07-74](#)), which included an assessment of STOP using criteria previously developed by GAO. In this report, we recommended that head of NIPLECC, called the IP Coordinator, in consultation with the National Security Council and relevant agencies (1) clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability roles and (2) take steps to ensure that STOP fully addresses the characteristics of a national strategy. The IP Coordinator concurred with our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-710T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

INTELLECTUAL PROPERTY

National Enforcement Strategy Needs Stronger Leadership and More Accountability

What GAO Found

The current coordinating structure that has evolved for protecting and enforcing U.S. intellectual property rights lacks leadership and permanence, presenting challenges for effective and viable coordination for the long term. NIPLECC has struggled to define its purpose and retains an image of inactivity among the private sector. It continues to have leadership problems despite enhancements made by Congress in December 2004 to strengthen its role. In contrast, the presidential initiative called STOP, which is led by the National Security Council, has a positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current administration leaves office. While NIPLECC adopted STOP in February 2006 as its strategy for protecting IP overseas, its commitment to implementing STOP as an effective national strategy remains unclear, creating challenges for accountability and long-term viability.

While STOP has energized agency efforts for protecting and enforcing intellectual property, its potential as a national strategy is limited since it does not fully address the desirable characteristics of an effective national strategy. For example, its performance measures lack baselines and targets to assess how well the activities are being implemented. In addition, STOP is missing key elements such as a discussion of risk management and designation of oversight responsibility. For instance, the strategy lacks a discussion of current or future costs, the types or sources of investments needed to target organized piracy, and processes to effectively balance the threats from counterfeit products with the resources available. While STOP partially addresses organizational roles and responsibilities, it does not discuss a framework for accountability among the STOP agencies, such as designating responsibility for oversight. Agency documents clarify some of the key elements of an effective national strategy that were not incorporated into STOP directly; however, the need to consult multiple documents underscores the strategy's lack of integration and limited usefulness as a management tool for effective oversight and accountability.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before the subcommittee to discuss our work on U.S. efforts to protect U.S. intellectual property (IP) rights. We appreciate the opportunity to further contribute to this discussion within the Congress. U.S. government efforts to protect and enforce intellectual property rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners and addressing health and safety risks resulting from the trade in counterfeit and pirated goods. IP protection and enforcement cut across a wide range of U.S. agencies and functions, as well as those of foreign governments, making coordination among all parties essential. Many of these efforts are coordinated through the interagency National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, and the Strategy for Targeting Organized Piracy (STOP) initiated by the White House in 2004. While NIPLECC is a coordinating council, STOP is a strategy coordinated by the National Security Council.

In my statement today, I will address two topics on IP enforcement: (1) the effectiveness of NIPLECC and STOP as a coordinating structure to guide and manage U.S. government efforts; and (2) the extent to which STOP meets the criteria for an effective national strategy. I am aware, Mr. Chairman, that you have co-sponsored proposed legislation to address some of the shortcomings of the current coordinating structure which impede effective IP enforcement and coordination.¹ In my statement today I will include some observations on how the proposed legislation addresses key weaknesses we have identified in our past work on IP enforcement.

¹In February 2007, Senators Evan Bayh and George Voinovich, through the Congressional Committee on the Judiciary, submitted proposed legislation in Senate Bill 522, titled the "Intellectual Property Rights Enforcement Act". The bill aims to "safeguard the economic health of the United States and the health and safety of United States citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement...."

To address these issues, I have drawn on completed GAO studies,² particularly a report that we completed on STOP and NIPLECC last fall. We examined NIPLECC and STOP official documents and reviewed the legislative history of NIPLECC. Our November 2006 study assessed the extent to which STOP serves as a national strategy for combating trade in counterfeit and pirated goods by using the six desirable characteristics of an effective national strategy developed in previous GAO work.³ GAO has used this methodology to assess and report on the administration's strategies relating to combating terrorism, restructuring DOD's global force posture, and rebuilding Iraq.⁴ National strategies with these desirable characteristics offer policymakers and implementing agencies a management tool that can help ensure accountability and more effective results. I should also mention that we have a number of other studies soon to be published that are also related to IP enforcement. These include (1) a study that we have completed for Senator Voinovich focusing on IP enforcement at the U.S. border, and (2) additional work on a Customs and Border Protection (CBP) program called the "in-bond system" that allows goods to transit the United States and enter U.S. commerce at a port other than the port of arrival. In conducting the GAO studies, we have performed work at multiple U.S. agency headquarters in Washington, D.C., and at U.S. ports of entry and agency field offices. In addition, we met with representatives from multiple industry associations and companies that are affected by IP violations, such as manufacturing, entertainment, luxury goods, and pharmaceutical industries. We also met with the head of NIPLECC, the IP Coordinator, to obtain information on steps taken to implement the recommendations presented in our November 2006 study. We also examined the March 2007 STOP document — the most current strategy document. All work was conducted in accordance with generally accepted government auditing standards.

²See GAO, *Intellectual Property: Strategy Targeting Organized Piracy (STOP) Requires Changes for Long-term Success*, [GAO-07-74](#) (Washington, D.C.: November 2006). GAO, *Intellectual Property: Initial Observations on the STOP Initiative and U.S. Border Efforts to Reduce Piracy*, [GAO-06-1004T](#) (Washington, D.C.: July 26, 2006). GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, [GAO-04-912](#) (Washington, D.C.: Sept. 8, 2004).

³GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, [GAO-04-408T](#) (Washington, D.C.: Feb. 3, 2004).

⁴GAO, *Defense Management: Comprehensive Strategy and Annual Reporting Are Needed to Measure Progress and Costs of DOD's Global Posture Restructuring*, [GAO-06-852](#), (Washington, D.C.: Sept. 13, 2006); and *Rebuilding Iraq: More Comprehensive National Strategy Needed to Help Achieve U.S. Goals*, [GAO-06-788](#) (Washington, D.C.: June 28, 2006).

Summary

The current coordinating structure for U.S. protection and enforcement of intellectual property rights lacks clear leadership and permanence, hampering the effectiveness and long-term viability of such coordination. Created in 1999 to serve as the central coordinating structure for IP enforcement across federal agencies, NIPLECC has struggled to define its purpose, retains an image of inactivity within the private sector, and continues to have leadership problems despite enhancements made by Congress in December 2004 to strengthen its role.⁵ In addition, in July 2006, Senate appropriators expressed concern about the lack of information provided by NIPLECC on its progress. In contrast, the presidential initiative called STOP, which is led by the National Security Council, has a positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current administration leaves office. Many agency officials said that STOP has increased attention to IP issues within their agencies and the private sector, as well as abroad, and attribute that to the fact that STOP came out of the White House, thereby lending it more authority and influence. While NIPLECC adopted STOP as its strategy for protecting IP overseas in February 2006, its commitment to implementing STOP as a successful strategy remains unclear, creating challenges for accountability and long-term viability. For instance, although NIPLECC's most recent annual report describes many STOP activities, it does not explain how the NIPLECC principals plan to carry out their oversight responsibilities mandated by Congress to help ensure a successful implementation of the strategy. In addition, the STOP strategy document has not been revised to mention NIPLECC's oversight role.

STOP is a first step toward an integrated national strategy to protect and enforce U.S. intellectual property rights, and it has energized agency efforts. However, we found that STOP's potential as a national strategy is limited because it does not fully address important characteristics of an effective national strategy. For example, its performance measures lack

⁵In December 2004, Congress augmented NIPLECC's capabilities in the Consolidated Appropriations Act of 2005. The act called for NIPLECC to (1) establish policies, objectives, and priorities concerning international IP protection and enforcement; (2) promulgate a strategy for protecting American IP overseas; and (3) coordinate and oversee implementation of the policies, objectives, and priorities and overall strategy for protecting American IP overseas by agencies with IP responsibilities. The act appropriated \$2 million for NIPLECC's expenses through the end of fiscal year 2006. It also created the position of the Coordinator for International Intellectual Property Enforcement, also known as the "IP Coordinator," to head NIPLECC.

baselines and targets to assess how well the activities are being implemented. In addition, the strategy lacks a risk management framework and a discussion of current or future costs – important elements to effectively balance the threats from counterfeit products with the resources available. Although STOP identifies organizational roles and responsibilities with respect to individual agencies' STOP activities, it does not specify who will provide oversight and accountability among the agencies carrying out the strategy. While individual agency documents include some key elements of an effective national strategy, they have not been incorporated into the STOP documents. This lack of integration underscores the strategy's limited usefulness as a management tool for effective oversight and accountability by Congress as well as the private sector and consumers who STOP aims to protect.

In our November 2006 report on this subject, we made two recommendations to clarify NIPLECC's oversight role with regard to STOP and improve STOP's effectiveness as a planning tool and its usefulness to Congress: First, we recommended that the head of NIPLECC, called the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy. Second, we recommended that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, take steps to ensure that STOP fully addresses the characteristics of an effective national strategy.

In its response to our recommendations, the IP Coordinator said his office planned to review them and identify opportunities for improvement based on those recommendations, where appropriate. Our discussions with the IP Coordinator, in preparation for this testimony, indicated that NIPLECC has taken some steps to address GAO's recommendations, such as working with the Office of Management and Budget (OMB) to understand agencies' priorities and resources related to IP enforcement. The proposed legislation at the forefront of discussion today proposes changes that address weaknesses we found in the current coordinating structure. The proposed legislation eliminates NIPLECC and creates a new coordinating structure called the Intellectual Property Enforcement Network, with leadership emanating from the White House under the auspices of the Office of Management and Budget. Although past congressional action also required NIPLECC to develop a strategic plan, the current legislation requires the new coordinating structure to prepare a strategic plan that addresses key elements of an effective national strategic plan, building in

mechanisms for accountability and oversight. These changes are consistent with the key findings of our report.

Background

Intellectual property is an important component of the U.S. economy, and the United States is an acknowledged global leader in its creation. However, the legal protection of intellectual property varies greatly around the world, and several countries are havens for the production of counterfeit and pirated goods. Technology has facilitated the manufacture and distribution of counterfeit and pirated products, resulting in a global illicit market that competes with genuine products and complicates detection and actions against violations. High profits and low risk have drawn in organized criminal networks, with possible links to terrorist financing. The public is often not aware of the issues and consequences surrounding IP theft. Industry groups suggest that counterfeiting and piracy are on the rise and that a broader range of products, from auto parts to razor blades, and from vital medicines to infant formula, are subject to counterfeit production. Counterfeit products raise serious public health and safety concerns, and the annual losses that companies face from IP violations are substantial.

Given the increasing threats to America's economy, health, and safety, U.S. government agencies have undertaken numerous efforts to protect and enforce intellectual property rights, and a structure to coordinate these IP enforcement efforts evolved. In 1999, Congress created the interagency National Intellectual Property Law Enforcement Coordination Council (NIPLECC) as a mechanism to coordinate U.S. efforts to protect and enforce IP rights in the United States and overseas.⁶ In October 2004, the Bush Administration announced the Strategy Targeting Organized Piracy (STOP) to "smash criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets." Although both NIPLECC and STOP were created to improve the United States' IP enforcement and protection efforts, they were established under different authorities – NIPLECC as a congressional mandate and STOP as a presidential initiative led by the White House under the auspices of the National Security Council. Table 1 compares NIPLECC and STOP.

⁶NIPLECC was established under Section 653 of the Treasury and General Government Appropriations Act, 2000 (Pub. L. No.106-58), 15 U.S.C. 1128.

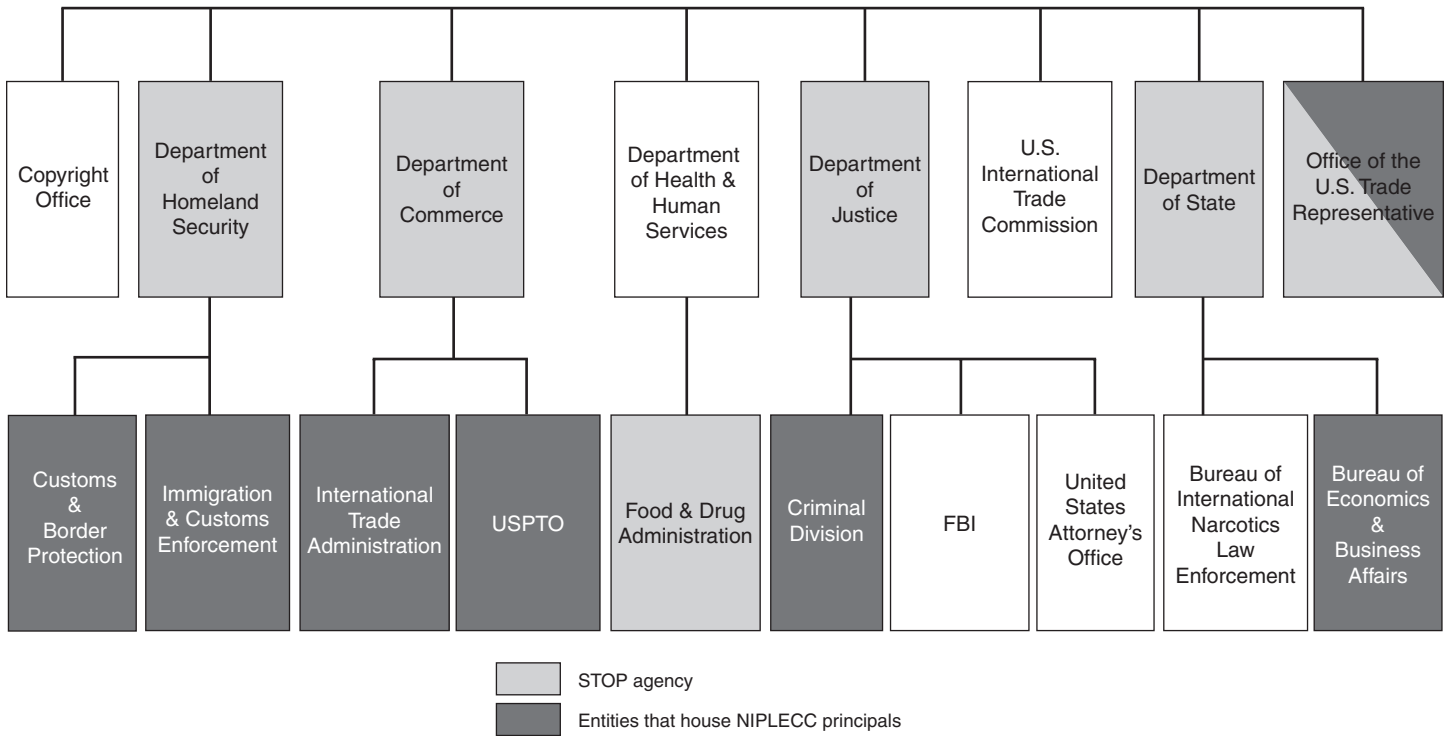
Table 1: Comparison of Features of NIPLECC and STOP

Features	NIPLECC	STOP
Origin	Congressional mandate, September 1999	White House initiative, October 2004
Leadership	<ul style="list-style-type: none">• Coordinator for International Intellectual Property Enforcement (IP Coordinator)• Co-Chairs from USPTO and Justice report to Coordinator	<ul style="list-style-type: none">• National Security Council
Dedicated funding	\$2 million (for fiscal years 2005 and 2006) \$900,000 (for fiscal years 2007)	None
Dedicated staff	As of October 2006: Seven (IP Coordinator, 4 staff members and 2 detailees) As of April 2007: Five (<i>IP Coordinator, 4 staff members and 1 detailee</i>)	None
Meetings	Quarterly	Monthly

Source: GAO.

STOP and NIPLECC share similar goals, including coordination of IP protection and enforcement, and involve nearly the same agencies. NIPLECC's membership is designated by statute and includes specific positions by agencies, whereas agencies that participate in STOP overlap with NIPLECC members, but do not designate any specific positions. (See figure 1.)

Figure 1: Primary U.S. Government Agencies and Entities Supporting U.S. Intellectual Property Rights



Source: GAO.

Note: NIPLECC is required to consult with the Register of Copyrights on copyright law enforcement matters. Immigration and Customs Enforcement, while not an original member, was reported as a member of NIPLECC in the council's fifth annual report issued in September 2006.

Lack of Leadership and Permanence Hampers Effectiveness and Long-Term Viability of IP Enforcement Coordinating Structure

The U.S. government has a coordinating structure for IP enforcement, but the structure's effectiveness is hampered by a lack of clear leadership and permanence, and despite some progress, it has not been developed in a manner that makes it effective and viable for the long term. NIPLECC and STOP form the central coordinating structure for IP enforcement across federal agencies. However, NIPLECC continues to have problems in providing leadership despite enhancements made by Congress, and STOP's authority and influence, which result from its status as a presidential initiative, could disappear after the current administration leaves office. While the current IP enforcement coordinating structure has contributed to some progress – particularly in increasing attention to IP enforcement domestically and abroad through STOP – NIPLECC's commitment to implementing STOP as a strategy remains unclear, creating

a challenge for effective accountability and the long-term viability of IP enforcement.

NIPLECC and STOP Originated Under Different Authorities

In 1999, Congress created NIPLECC to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities. The council's membership is designated by statute and includes six federal agencies. The Commissioner of Patents and Trademarks (USPTO) and Assistant Attorney General, Criminal Division from the Department of Justice serve as NIPLECC's co-chairs. NIPLECC's authorizing legislation included no specific dollar amount for funding or staff. Congress also required NIPLECC to report its coordination efforts annually to the President and various Congressional committees.⁷

Our September 2004 report noted that NIPLECC had struggled to define its purpose, had little discernible impact, and had not undertaken any independent activities, according to interviews with both industry officials and officials from its member agencies, and as evidenced by NIPLECC's own annual reports.⁸ From 1999 through the end of 2004, NIPLECC produced three annual reports that did little more than provide a compilation of individual agency activities. We also concluded in our 2004 report that if Congress wished to maintain NIPLECC and take action to increase its effectiveness, it should consider reviewing the council's authority, operating structure, membership, and mission.

Congress addressed NIPLECC's lack of activity and unclear mission in the 2005 Consolidated Appropriations Act in December 2004. The act called for NIPLECC to (1) establish policies, objectives, and priorities concerning international IP protection and enforcement; (2) promulgate a strategy for protecting American IP overseas; and (3) coordinate and oversee implementation of the policies, objectives, and priorities and overall strategy for protecting American IP overseas by agencies with IP responsibilities. It also created the position of the Coordinator for International Intellectual Property Enforcement, also known as the "IP Coordinator," to head NIPLECC. The IP Coordinator is appointed by the President and may not serve in any other position in the federal

⁷NIPLECC is required to report annually to Committees on Appropriations and on the Judiciary of the Senate and the House of Representatives.

⁸[GAO-04-912](#).

government. The co-chairs for NIPLECC are required to report to the IP Coordinator.

Unlike NIPLECC, STOP from its beginning has been characterized by a high level of active coordination and visibility. In October 2004, the President launched STOP, an initiative led by the White House under the auspices of the National Security Council, to target cross-border trade in tangible goods and strengthen U.S. government and industry IP enforcement actions. STOP members are the same agencies that house NIPLECC members, except that STOP includes the Food and Drug Administration. According to a high-level official who participated in the formation of STOP, the initiative was intended to protect American innovation, competitiveness, and economic growth. It stemmed from the recognition that U.S. companies needed protection from increasingly complex and sophisticated criminal counterfeiting and piracy. As part of STOP, agencies began holding meetings, both at working levels and higher, to coordinate agency efforts to tackle the problem.

STOP is viewed as energizing U.S. IP protection and enforcement efforts and is generally praised by agency officials and industry representatives. The IP Coordinator stated in congressional testimony that STOP has built an expansive interagency process that provides the foundation for U.S. government efforts to fight global piracy. Several agency officials participating in STOP said that it gave them the opportunity to share ideas and support common goals. Many agency officials with whom we spoke said that STOP had brought increased attention to IP issues within their agencies and the private sector, as well as abroad, and attributed that to the fact that STOP came out of the White House, thereby lending it more authority and influence. One agency official pointed out that IP was now on the President's agenda at major summits such as the G8 and European Union summits.⁹ In addition, most private sector representatives with whom we spoke agreed that STOP was an effective communication mechanism between business and U.S. agencies on IP issues, particularly through the Coalition Against Counterfeiting and Piracy (CACCP), a cross-industry group created by a joint initiative of the Chamber of Commerce and the National Association of Manufacturers.

⁹The G8 is an annual summit that involves nine countries, including Canada, France, Germany, Italy, Japan, the United Kingdom, Russia, and the United States. The European Commission President is also a G8 member.

IP Enforcement Coordinating Structure Lacks Clear Leadership and Permanence

The structure that has evolved to coordinate U.S. efforts to protect and enforce IP rights, NIPLECC and STOP, lacks clear leadership and permanence. Our November 2006 report noted that, despite the re-energized focus on IP enforcement as a result of STOP, the ambiguities surrounding NIPLECC's implementation of STOP as a strategy create challenges for the long-term viability of a coordinated federal IP enforcement approach. While NIPLECC adopted STOP as its strategy for protecting IP overseas in February 2006, its commitment to implementing STOP as a successful strategy remains unclear. For instance, it is not clear how NIPLECC will provide a leadership role in implementing STOP. While NIPLECC's most recent annual report describes many STOP activities and the IP Coordinator's direct involvement in them, it does not explain how the NIPLECC principals and the IP Coordinator plan to carry out their oversight responsibilities mandated by Congress to help ensure successful implementation of the strategy. In addition, while the current STOP strategy document (March 2007) states that the NIPLECC annual report provides details on interagency collaboration to achieve STOP goals, STOP does not mention NIPLECC's oversight role or articulate a framework for oversight and accountability among the STOP agencies carrying out the strategy.

Although Congress enhanced NIPLECC's powers through the Consolidated Appropriations Act of 2005, we found that NIPLECC retains an image of inactivity within some of the private sector. For example, representatives of almost half of the 16 private sector groups with whom we spoke expressed the opinion that NIPLECC was inactive or a nonplayer. In addition, representatives from 10 of these groups were unclear about NIPLECC's role, and many said that they were unclear about the difference between NIPLECC and STOP. In July 2006, Senate appropriators expressed concern about the lack of information provided to Congress by NIPLECC on its progress.

In contrast with NIPLECC, agency officials and members of the private sector attribute STOP's effectiveness to its status as a White House initiative and its resulting authority and influence. However, it lacks permanence since it is a presidential initiative and may disappear after the current administration leaves office. Furthermore, while agency officials we interviewed generally considered STOP to be the U.S. government's IP strategy, NIPLECC officials have sent mixed signals about effectively implementing STOP. One official representing NIPLECC said that the STOP strategy should have goals and objectives, including metrics to measure progress about which the IP Coordinator should report. However,

a NIPLECC representative from another agency told us that this document was a fact sheet that accounted for administration efforts rather than a strategy. Similarly, a NIPLECC representative from a third agency was skeptical about whether STOP should be assessed as NIPLECC's strategy. Finally, the IP Coordinator stated in March 2006 congressional testimony that STOP is NIPLECC's strategy; however, he also told us that STOP was never meant to be an institutional method for reporting priorities and metrics to the President or Congress, or to manage resources.

Improvements Needed to Achieve an Effective National IP Enforcement Strategy

STOP is a first step toward an integrated national strategy for IP protection and enforcement and has energized agency efforts. However, we found that STOP's potential as a national strategy is limited because it does not fully address important characteristics that we believe would improve the likelihood of its long-term effectiveness and ensure accountability. We found that some strategy documents belonging to individual STOP agencies supplemented some of the characteristics not fully addressed in STOP; however, the fact that they have not been systematically incorporated into STOP limits its usefulness as an integrated strategy to guide policy and decision makers in allocating resources and balancing priorities, and does not inform the private sector and consumers that it aims to protect.

Current IP Enforcement Structure Does Not Meet All the Characteristics of an Effective National Strategic Plan

While national strategies are not required by executive or legislative mandate to address a single, consistent set of characteristics, GAO has identified six desirable characteristics of an effective national strategy. It is important that a national strategy contain these characteristics because they enable implementers of the strategy to effectively shape policies, programs, priorities, resource allocations, and standards so that federal departments and other stakeholders can achieve the desired results. National strategies provide policymakers and implementing agencies with a planning tool that can help ensure accountability and effectiveness.

We found that STOP partially addresses five of the six characteristics and their key elements. Figure 2 provides the results of our analysis and indicates the extent to which STOP addresses the desirable characteristics of an effective national strategy.¹⁰

¹⁰For full details of GAO's analysis of characteristics of an effective national strategy, see [GAO-07-74](#).

Figure 2: Extent to Which STOP Addresses GAO’s Desirable Characteristics of an Effective National Strategy

1. Purpose, scope, methodology		●	○
Purpose	1a. The impetus that led to the strategy being written, such as a statutory requirement, mandate, or key event		○
	1b. The strategy’s purpose		●
Scope	1c. Key terms, major functions, mission areas, or activities the strategy covers		●
Methodology	1d. The process that produced the strategy, (e.g., what organizations or offices drafted the document, whether it was the result of a working group, or which parties were consulted in its development)		○
2. Problem definition and risk assessment		●	○
Problem definition	2a. The problems the strategy intends to address		●
	2b. The causes of the problems		○
	2c. The operating environment		○
Risk assessment	2d. The threats the strategy is directed toward		○
	2e. Discusses the quality of data available, e.g., constraints, deficiencies, and “unknowns”		○
3. Goals, subordinate objectives, activities, and performance measures		●	○
Goals and subordinate objectives	3a. Addresses the overall results desired, i.e., an “end-state”		●
	3b. Identifies strategic goals and subordinate objectives		○
Activities	3c. Identifies specific activities to achieve results		●
Performance measures	3d. Priorities		○
	3e. Milestones		○
	3f. Output-related and outcome-related performance measures		○
	3g. The process to monitor and report on progress		○
	3h. The limitations on progress indicators		○
4. Resources, investments, and risk management		○	○
Resources and investments	4a. The cost of the strategy		○
	4b. The sources (e.g., federal, state, local, and private) of resources or investments needed		○
	4c. The types of sources or investments needed (e.g. budgetary, human capital, information technology, research and development, contracts)		○
Risk management	4d. Where resources or investments should be targeted to balance risks and costs		○
	4e. Resource allocation mechanisms		○
	4f. How risk management will aid implementing parties in prioritizing and allocating resources		○
5. Organizational roles, responsibilities, and coordination		○	○
Organizational roles and responsibilities	5a. Who will be implementing the strategy		●
	5b. Lead, support, and partner roles and responsibilities of specific federal agencies, departments, or offices (e.g., who is in charge during all phases of the strategy’s implementation)		○
	5c. Which organizations will provide the overall framework for oversight and accountability		○
Coordination	5d. How they will coordinate both within agencies and with other agencies		○
	5e. The process for how conflicts will be resolved		○
6. Integration		○	○
	6a. Addresses how the STOP! strategy relates to each agency’s strategies, goals, and objectives		○

● Fully addresses ○ Partially addresses ○ Does not address

Source: GAO.

STOP addresses goals and activities but lacks important elements for assessing performance.

- Although STOP identifies five main goals,¹¹ it does not consistently articulate their objectives and is missing key elements related to assessing performance such as priorities, milestones, and a process for monitoring and reporting on progress. For example, under its goal of pursuing criminal enterprises, STOP clearly lists objectives such as increasing criminal prosecutions, improving international enforcement, and strengthening laws. Whereas STOP does not articulate clear objectives for its goal of working closely and creatively with U.S. industry. Also, STOP activities include implementing a new risk model to target high-risk cargo but do not specify time frames for its completion. Although STOP cites output-related performance measures¹²—such as the USPTO STOP hotline receiving over 950 calls during fiscal year 2005 and a 45 percent increase in the number of copyright and trademark cases filed from fiscal year 2004 to fiscal year 2005—these figures are presented without any baselines or targets to facilitate the assessment of how well the program is being carried out. In addition, STOP cites outcome-related performance measures for only few of many activities included in the strategy.¹³

STOP does not address elements relevant to resources, investments, or risk management, limiting the ability of decision makers to determine necessary resources, manage them, and shift them with changing conditions.

- STOP does not identify current or future costs of implementing the strategy, such as those related to investigating and prosecuting IP-related crime or conducting IP training and technical assistance, nor does it identify the sources or types of resources required. While the strategy states that “American businesses lose \$200 to \$250 billion a year to pirated and counterfeit goods,” it does not provide a detailed discussion of the economic threat to U.S. businesses. Further it does not discuss other risks

¹¹STOP’s goals are to: (1) empower American innovators to better protect their rights at home and abroad; (2) increase efforts to seize counterfeit goods at our borders; (3) pursue criminal enterprises involved in piracy and counterfeiting; (4) work closely and creatively with U.S. industry; and (5) aggressively engage our trading partners to join our efforts.

¹²An “output measure” records the actual level of activity or whether the effort was realized and can assess how well a program is being carried out.

¹³An “outcome measure” assesses the actual results, effects, or impact of an activity compared with its intended purpose.

such as potential threats to consumer health and safety from counterfeited products or discuss how resources will be allocated given these risks. STOP partially addresses organizational roles, responsibilities, and coordination but lacks a framework for oversight or integration.

- STOP does identify lead, support, and partner roles for specific activities. For example, it identifies the White House as leading STOP and indicates partnering roles among agencies, such as the joint role of the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's FBI in running the National Intellectual Property Rights (IPR) Center. However, STOP does not discuss a process or framework for oversight and accountability among the agencies carrying out the strategy. Although STOP discusses specific instances of coordination among member agencies, it lacks a clear and detailed discussion of how overall coordination occurs. For instance, there is no mention of STOP meetings, objectives, or agendas.
- We found that the STOP strategy does not consistently articulate how, as a national strategy, it relates to the strategies, goals, and objectives of federal agencies that participate in STOP. For example, under its goal of pursuing criminal enterprises, STOP does not discuss how the objectives of the Department of Justice's task force might be linked to the goals and objectives found in other agency IP enforcement strategies such as the Department of Homeland Security's ICE and CBP. It is important that STOP not only reflect individual agencies' priorities and objectives but also integrate them in a comprehensive manner, enhancing collaboration among the agencies and providing a more complete picture to policy makers with oversight responsibilities. While some of these elements of a national strategy are addressed in individual agency documents, the absence of clear linkages and the need to consult multiple agency documents underscores the strategy's lack of integration and limits the usefulness of STOP as a management tool for long-term effective oversight and accountability.

**GAO Recommended
Actions to Improve IP
Leadership and
Accountability Among U.S.
Agencies**

In our November 2006 report on this subject, we made two recommendations to clarify NIPLECC's oversight role with regard to STOP and improve STOP's effectiveness as a planning tool and its usefulness to Congress. We recommended that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy. In addition, we recommended that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, take steps to

ensure that STOP fully addresses the six characteristics of a national strategy.

We provided the agencies that participate in STOP and NIPLECC with a draft of the report for their review and comment and received written comments from the U.S. Coordinator for International Property Enforcement (IP Coordinator). In his comments, the IP Coordinator concurred with our recommendations, stating that his office planned to identify opportunities for improvement based on those recommendations. Our discussions with the IP Coordinator, in preparation for this testimony, indicated that the Office of the U.S. Coordinator for International Property Enforcement has taken some steps to address GAO's recommendations. For example, the IP Coordinator has been working with the Office of Management and Budget (OMB) to understand agencies' priorities and resources related to IP enforcement. In addition, the council has been coordinating with the Department of State and USPTO to examine the U.S.'s training portfolio and identify areas where capacity building and more training is needed overseas. The IP Coordinator stated that no steps have been taken with regard to changing the accountability framework under NIPLECC since, he believes, this is addressed through regular reporting to Congress via annual reports and testifying at hearings, and meetings with federal agencies involved in IP enforcement and the private sector.

The Intellectual Property Rights Enforcement Act under discussion today proposed by Senators Bayh and Voinovich recommends changes that may help address weaknesses we found in the current coordinating structure and the national IP enforcement strategy as well as improve coordination with private sector and international counterparts.

The legislation eliminates NIPLECC and creates a new entity called the Intellectual Property Enforcement Network (IPEN), to coordinate domestic and international IP enforcement efforts among U.S. agencies. The membership of IPEN involves most of the same agencies that are currently members for NIPLECC, and like NIPLECC, has an Intellectual Property Enforcement Coordinate appointed by the President. A clear difference between IPEN and NIPLECC, however, is that the leadership emanates from the White House. Under IPEN, the Deputy Director for Management of the Office of Management and Budget would serve as the chairperson for the network. While GAO does not have an opinion on whether OMB is the appropriate agency to coordinate IP enforcement and protection, we believe it is important to note that IPEN retains the

authority and leadership most valued under STOP— the role of the White House in providing leadership and authority.

The legislation addresses weaknesses we identified in the current national strategy by requiring the development of a strategic plan within 6 months from the date the bill is enacted, and updated every 2 years following. The requirements of the strategic plan, as laid out in the bill, include performance measures and risk analysis along with other key elements for oversight and accountability that we have identified as important to an effective national strategic plan.

Conclusions

The challenges of IP piracy are enormous and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry representatives to be successful. As we pointed out Mr. Chairman, NIPLECC's persistent difficulties create doubts about its ability to carry out its mandate – that of bringing together multiple agencies to successfully implement an integrated strategy for IP protection and enforcement that represents the coordinated efforts of all relevant parties. STOP has brought attention and energy to IP efforts within the U.S. government, however, as a presidential initiative, STOP lacks permanence beyond the current administration. This poses challenges to its long-term effectiveness because STOP depends upon White House support. In addition, STOP does not fully address the desirable characteristics of an effective national strategy that we believe would improve the likelihood of its long-term viability and ensure accountability. This limits its usefulness as a management tool for effective oversight and accountability by Congress as well as the private sector and consumers who STOP aims to protect. As we have pointed out, the Intellectual Property Rights Enforcement Act under discussion today addresses key shortcomings of the current IP coordinating structure that we have identified, including establishing a clearer leadership and framework for accountability.

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

Contacts and Acknowledgments

Should you have any questions about this testimony, please contact Loren Yager at (202) 512-4347 or yagerl@gao.gov. Other major contributors to this testimony were Christine Broderick, Adrienne Spahr, Nina Pfeiffer, Shirley Brothwell, and Jasmine Persaud.

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548