

**CHALLENGES AND OPPORTUNITIES FOR U.S.  
BUSINESS IN THE DIGITAL AGE**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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JUNE 15, 2016  
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## **CHALLENGES AND OPPORTUNITIES FOR U.S. BUSINESS IN THE DIGITAL AGE**

**WEDNESDAY, JUNE 15, 2016**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 2:10 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Crapo, Burr, Scott, Wyden, Stabenow, Cantwell, Menendez, Carper, Bennet, and Casey.

Also present: Republican Staff: Chris Armstrong, Deputy Chief Oversight Counsel; Chris Campbell, Staff Director; Everett Eissenstat, Chief International Trade Counsel; Kim Frankena, Detailee; and Andrew Rollo, Detailee. Democratic Staff: Elissa Alben, Senior Trade and Competitiveness Counsel; Greta Peisch, International Trade Counsel; Joshua Sheinkman, Staff Director; and Jayme White, Chief Advisor for International Competitiveness and Innovation.

### **OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Welcome, everyone, to this afternoon's hearing, which we have titled "Challenges and Opportunities for U.S. Business in the Digital Age."

Over the last decade, the digital economy has dramatically changed our way of life, from the way that we hail a cab, search for a new home, or order take-out. It has a profound effect on all of our lives.

This is also true for the ways in which companies conduct their business. The digital economy provides U.S. businesses of all sizes with great opportunities and challenges.

In today's marketplace, businesses no longer have to rely on the hope that a passerby will notice something in their storefront window and come in. Today, the business can set up shop wherever it wants and sell all kinds of products over the Internet to customers all over the world. This represents a huge portion of worldwide commerce.

According to the Internet Association, about \$8 trillion changes hands in the digital marketplace each year.

In addition to having a digital storefront that can be seen in every corner of the world, the Internet also provides new tools for businesses to find and retain customers. For example, it is now

possible to tailor advertisements to specific market segments and customers using social media.

However, as with all great technological and societal developments, there are challenges that come part and parcel with the opportunities. Although the United States has largely embraced and supported the changes brought about by expanded Internet commerce, there are many countries around the world that do not fully embrace this potential.

Many countries want to regulate various facets of the Internet, including the digital economy, operating under a mindset from the last century.

Put simply, that is not a wise or sustainable approach to dealing with the Internet. That is why the Finance Committee worked to make digital trade a priority in our international trade negotiations through the Trade Promotion Authority, or TPA, statute that was signed into law last year.

The digital trade negotiating objective in the new TPA law directs the administration to do a number of things in order to protect the Internet as we know it, including ensuring that our digital goods and services will be exported to other nations without duties, that our electronic goods and services are treated no less favorably than their physical counterparts, and that the free flow of data across borders is not inhibited.

Another equally important challenge facing businesses and consumers in the digital marketplace is the rise of counterfeits. Just as the digital economy has made it easier for businesses to find and engage with consumers, it has also enabled counterfeiters to do the same.

Small businesses are the backbone of our economy, and for these businesses, the Internet is a powerful tool.

Now, I have a call coming in from the President. So I am going to have to put the rest of my remarks into the record and turn to my colleague, my great colleague who works with me on this committee, Ron Wyden, and then come back as soon as I can.

[The prepared statement of Chairman Hatch appears in the appendix.]

The CHAIRMAN. Thank you, Ron. I appreciate it.

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN [presiding]. Thank you very much, Mr. Chairman. Thank you for scheduling this important hearing.

In my view, there are two issues at hand today, and in many respects, they are two sides of the same coin. The first is about how more small businesses are tapping foreign markets, thanks to the digital economy and e-commerce platforms.

The bottom line is that the Internet is the shipping lane of the 21st century, and every business in this country, in one way or another, is digital.

Take the example of Bike Friday, an Oregon company that makes folding bicycles. It may not always be bicycle season in Oregon, but it is always summertime somewhere. The Internet is an essential resource that enables Bike Friday to reach customers and process orders 24/7, regardless of time differences.

It is exactly the same story if you are talking about the steel industry, if you are talking about the manufacturing sector, if you are talking about clean energy, or if you are talking about apparel.

Digital technology is a booster shot in the arm for exports at a time when 95 percent of the world's customers live outside the borders of the United States.

American businesses and their workers today are not relying on listings in the yellow pages or waiting for new customers to walk through the door. Many of their storefronts are online, and they are always open.

That is one side of the coin.

The other is the challenge represented by counterfeit goods. For the trade enforcers, it used to be a matter of identifying a shipping container filled with fake computer chips or tennis shoes.

Although those shipping containers still come in, counterfeit goods are now also delivered in individual packages that go straight to the doorsteps of the American consumer.

So the challenge of rooting out counterfeits is a lot more difficult than it once was, and it poses a direct threat to family-wage jobs in our country and our businesses.

There is a firsthand case for a lot of Oregon businesses in various industries, from parts for autos and railcars to high-tech semiconductors.

Take Leatherman Tools as an example. They are a proud Oregon employer that makes high-quality outdoor gear that gets a lot of use in our State's recreation economy. But if you place an order for a Leatherman's tool pocketknife from an unknown seller, there is a chance that you will be receiving a cheap knockoff. The result is a disappointed consumer and an Oregon manufacturer who has lost a sale.

That is why buyer reviews of sellers on platforms like Amazon and eBay and liability laws that enable those reviews are so valuable to those seeking authentic merchandise.

So our policies have to take both of these issues into account, helping our workers and businesses to take advantage of digital shipping lanes and staying ahead of the online rip-off artists who want to sneak their counterfeit goods into our market and rip off American jobs.

On a bipartisan basis, this committee took a major step forward earlier this year in the fight against counterfeiters by passing the toughest package of trade enforcement policies in decades.

Thanks to that legislation, Customs and Border Protection now has additional tools to sniff out illegal goods before they make it into the home of the American consumer, including by encouraging Customs and Border Patrol to work with U.S. rights-holders on identifying potential counterfeits at the border.

As the digital economy continues to transform our lives and reshape the way business is done, this committee will have more work to do. It is our job to understand how technology and policies empower America's innovators, producers, and sellers. It is also our job to understand how the trade cheats are ripping off Americans and to respond accordingly.

So we want to thank our witnesses for joining us today. In effect, this digital hearing fits exactly into what I have said throughout

this debate. We have dealt with the rules for trade agreements—that is called TPA—and we have dealt with enforcement.

Obviously, there is a great deal of debate about trade agreements. But at the end of the day, it comes down, in my view, to trade done right. That is my vision of what America's trade policy ought to be all about: trade done right.

That is why today's hearing is so important. As you heard, the chairman is off talking to the President and should join us shortly.

We are going to make his prepared remarks a part of the record in their entirety, and he will rejoin us when he can.

[The prepared statement of Senator Wyden appears in the appendix.]

Senator WYDEN. Let me briefly introduce our witnesses.

We are going to hear from Mr. Bruce Foucart, the Director for the U.S. National Intellectual Property Rights Coordination Center within Customs. The Center heads a task force of over 20 agencies focused on preventing global intellectual property theft.

He is also responsible for U.S. Immigration and Customs Enforcement's trade fraud investigation program. Prior to his current position, Mr. Foucart had served for 8 years as the special agent in charge of ICE's homeland security investigations in Boston, overseeing their investigations across New England.

He has also had an extensive career in law enforcement.

We would like to thank you for your service and, Mr. Foucart, I can tell you that Senator Brown and I very much appreciate the meeting you had with us in following up the effort to stop child and forced labor. Senator Brown has done very good work on this. I have been happy to join him, and we thank you for the good work you and Mr. Kerlikowske are pursuing on this.

Next, we are going to hear from Mr. Norman Schenk, the vice president of global Customs policy and public affairs at UPS. Mr. Schenk has more than 30 years of experience working in Customs. He is also currently serving on several advisory committees and chairs the International Chamber of Commerce Commission on Customs and Trade Facilitation.

There is nothing that I enjoy more, and I am sure it is true for my colleagues, than going to a UPS center and standing on the little foot stool that is given when you get a chance to visit with your constituents.

So we thank you, Mr. Schenk, for joining us.

Then we are going to hear from Tom Triggs, general counsel and chief legal officer of Belkin International. Before joining Belkin, Mr. Triggs practiced law, focusing his expertise on global and technology law.

We thank all of you for making time to join us. We will hear from the witnesses in the order they were introduced. We will make your prepared statements part of the record in their entirety.

Mr. Foucart, why don't you begin?



**STATEMENT OF BRUCE FOUCAERT, ASSISTANT DIRECTOR, NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, ARLINGTON, VA**

Mr. FOUCAERT. Good afternoon, everyone. Thank you, Ranking Member Wyden and distinguished members, and I appreciate that meeting that we had yesterday as well. I also appreciate the opportunity to testify before you today concerning ICE's efforts to combat the illegal importation and sales of counterfeit products and the threats to consumers, public safety, national security, and the economy that counterfeit products pose.

ICE is the lead agency in the investigation of intellectual property violations involving the illegal importation of counterfeit merchandise and pirated works, as well as associated money laundering investigations and violations. In combination with U.S. Customs and Border Protection, we target and investigate counterfeit merchandise associated with these investigations and seize illicit goods that infringe on trademarks, trade names, and copyrights.

I recognize that no single U.S. law enforcement agency alone can succeed in the fight against IP crime. Rather, it is essential that all relevant agencies work together and with industry partners to confront this challenge. Law enforcement, public education, demand reduction, and global collaboration are all critical to successfully address these crimes.

To focus on government efforts and to enhance efficiencies, back in 1999, the former U.S. Customs Service's Office of Investigation, now known as ICE's Homeland Security Investigations, and the FBI formed the National Intellectual Property Rights Coordination Center. The Trade Facilitation and Trade Enforcement Act of 2015, which was recently signed into law by President Obama, officially authorized the IPR center.

The IPR Center's mission is to address the theft of innovation that threatens U.S. economic stability and national security, undermines the competitiveness of U.S. industry and world markets, and places the public's health and safety at risk. The IPR Center supports field personnel, operates via a task force model, and is comprised of 23 Federal and international partners.

As you know, the illegal importation, distribution, and sale of counterfeit products pose a significant and growing threat to health and safety. Counterfeiters do not care if their products contain the correct materials. Counterfeiters do not care if their products are made in sanitary conditions or unsanitary conditions. They do not care if their products physically harm consumers. They do not care if their products result in economic damage to legitimate companies.

Rather, they care about their products looking good enough to be purchased. They care about their bottom line.

Through the course of its investigations, ICE has uncovered counterfeit lithium batteries not properly vented; counterfeit airbags that have too much propellant; counterfeit jewelry that contains lead; counterfeit pharmaceuticals that contain potentially toxic substances; counterfeit health and beauty products that are made in unsanitary conditions; and goods entering the Department of Defense and U.S. Government supply chains.

Today, I would like to outline some of our efforts to protect the public's health and safety from counterfeit consumer products.

Operation Chain Reaction, for example, is an initiative that combines the efforts of 16 IPR Center agencies to target counterfeit items entering the Department of Defense and other U.S. Government supply chains. Operation Chain Reaction partner agencies coordinate their efforts to more productively protect the U.S. Government supply chain from substandard counterfeit parts that could impact the reliability of weapons systems, delay DOD missions, imperil the safety of servicemen and women, and waste taxpayer money.

Operation Engine Newity is another example that addresses safety threats posed by counterfeit automotive, aerospace, rail, and heavy industry components. These counterfeit parts are not only an evident health and safety risk to Americans, but they also impact the economy of the automotive industry.

Investigations and interdictions have uncovered counterfeit airbags, steering, braking, and seatbelt components, bearings, and diagnostic equipment. Operation Engine Newity resulted in 31 arrests, 32 indictments, 16 convictions, and the seizure of goods worth approximately \$18.4 million in fiscal years 2014 and 2015 combined.

Operations Apothecary and Plastic Beauty target counterfeit, unapproved, or adulterated pharmaceuticals and personal health care and beauty products.

In addition to the investigations carried out under these operations, the IPR Center supports the efforts of the new Verified Top-Level Domains Consortium, working to secure domain names, including dot-pharmacy, dot-med, dot-bank, and dot-insurance.

As you know, seals and logos can be faked online, but the dot-pharmacy domain is secure. Only safe, legal pharmacies are eligible for the dot-pharmacy domain. It is like baking the seal of legitimacy into the domain name itself.

We in law enforcement know we cannot arrest or seize our way out of this problem, so we welcome efforts by industry like this to help us protect their customers and the economy.

To further complement our enforcement actions and to help educate consumers on emerging dangers of counterfeit products and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation Joint Venture. This effort is designed to increase consumer awareness, communication, training, and international cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts.

IP cases demand attention from criminal investigators and regulatory agencies. We take this responsibility to protect American consumers and industry very seriously, and ICE's priorities in IP crime enforcement remain to protect the public's health and safety, the military supply chain, and the American economy.

Thank you again for the opportunity to appear before you today, and I look forward to working closely with the members of this committee on this issue, as it directly threatens consumers' health and safety, as well as the economy worldwide.

[The prepared statement of Mr. Foucart appears in the appendix.]

Senator WYDEN. Mr. Foucart, thank you.  
Mr. Schenk, welcome.

**STATEMENT OF NORMAN T. SCHENK, VICE PRESIDENT, GLOBAL CUSTOMS POLICY AND PUBLIC AFFAIRS, UPS, WASHINGTON, DC**

Mr. SCHENK. Thank you, Senator Wyden.

At UPS, our processes are complex and our technology is advanced, but our objective is simple—to ensure world-class service for our customers while providing the necessary data to law enforcement and other government agencies. This allows them to target contraband and identify bad actors who seek to import dangerous goods and counterfeit items into the U.S. in small packages.

UPS works closely with U.S. Customs and Border Protection at our own expense to comply with and even exceed existing legal requirements to provide data to target high-risk inbound shipments and screen them out. In addition to enabling better screening for counterfeit contraband, this data can also be used to screen for shipments from potential terrorists, for illicit drugs, and for other potentially dangerous products.

To achieve these goals, UPS provides advance data to CBP on our packages before they enter the United States, and, in addition, we share shipment data through the Air Cargo Advance Screening system.

The most important aspect of package screening is the use of advance data. In May of 2000, I testified before the House Government Oversight Committee on how UPS provides advance data to help Federal agencies combat illegal drug trafficking. At that time, there were about 21 million package shipments entering the U.S. annually: about 10 million through the private sector—which were accompanied by advance electronic data—and 11 million through the international mail system, which did not have any electronic data.

Even back then, it was clear that Customs and other Federal agencies could not manually screen packages that were not accompanied by advance data purely because of volume and that the most effective way of interdicting bad shipments was through the use of advance electronic data.

By 2016, the volume of packages entering the U.S. has increased many times over. The Department of Homeland Security reports that in 2014, CBP processed approximately 340 million mail parcels arriving from foreign post operators, most without electronic data. It also estimated that 35 million packages entered the U.S. through private carriers like UPS, all with electronic data.

If Customs could not effectively manually screen 11 million packages without advance electronic data in 2000, imagine what they are tasked with when screening 30 times that amount.

UPS and other private express carriers use advance electronic data to manifest their shipments on a package-level basis, present them to Customs, and provide critical screening data to law enforcement to counteract illicit trade.

We have been using electronic data for years, even before it was required by the Trade Act of 2002, to provide CBP with item-level detail about each and every shipment entering the country.

The data consists of seven data points: who and where it is coming from, who and where it is going to, a description of the goods, piece count, and item weight. This not only helps us reduce the potential of dangerous goods entering through our system but also aids in manifest compliance, payment of duties and fees, and clearance through Customs.

Perhaps more importantly, UPS is also working with CBP, the Transportation Security Administration, and other Federal agencies by sharing data through the ACAS system. ACAS, currently a pilot program, builds on datasets from electronic manifests required in the past and provides the necessary information before shipments depart for the United States. It allows authorities and watch groups to target potentially high-risk shipments.

As the advance electronic submission allows for risk assessment or data-level screening prior to the arrival in the U.S., it reduces the need for physical inspections, which are cumbersome and ineffective.

UPS is committed to help Federal authorities identify bad packages in our system and believes that the best way to do so is through the smart policy requiring electronic manifesting on all shipments, public and private, so that Customs is well-equipped to combat illegal trade.

With cross-border e-commerce growing at an unprecedented rate and showing little signs of abating, the only way to protect our borders, national security, American business and consumers, and even our own supply chain, is to employ data-driven solutions and share the intelligence with law enforcement and other Federal agencies.

Thank you.

[The prepared statement of Mr. Schenk appears in the appendix.]  
Senator WYDEN. Thank you very much.

Mr. Triggs?

**STATEMENT OF TOM TRIGGS, CHIEF LEGAL OFFICER AND  
GENERAL COUNSEL, BELKIN INTERNATIONAL, INC., PLAYA  
VISTA, CA**

Mr. TRIGGS. Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for the opportunity to testify on the important subject of challenges and opportunities facing U.S. businesses in the digital age.

My name is Tom Triggs. I am the chief legal officer and general counsel with Belkin International, and it is truly an honor and a pleasure to be here.

As the committee is aware, e-commerce presents tremendous opportunities for businesses both here in the United States and abroad. At Belkin, we celebrate the digital age. We also advocate for the consumer in every aspect of our business.

Our grand purpose is this: that technology exists to make people's lives better, easier, and more fulfilling.

Belkin is about peace of mind, and product quality is essential to this. We have invested billions of dollars in development of products, and that has been our mission since 1983 when our founder and still current CEO, Chet Pipkin, created the company in his parents' garage.

Today, we have over 1,200 employees in 22 countries around the world, more than 700 employed in the United States.

Now the Internet provides a virtual storefront to the rest of the world. Today, anybody online, including criminals, can sell anything anywhere. Third parties who have not invested the resources that we have invested to develop and design products are now able to manufacture inexpensively inferior counterfeit copies and then sell them to unsuspecting customers around the globe.

We have invested many millions of dollars in time and energy to protect our company and our customers from counterfeit goods. We have systematically focused for years on this effort, and it requires around-the-clock vigilance on a global basis and the application of consistent pressure to the relevant law enforcement authorities around the world.

We have taken legal action in more than 30 countries against those who violate our intellectual property rights, and, unfortunately, we know that there are many more we will not discover and that we will not be able to get out of the market.

And I have a good story about this. In December of 2014, after months of investigation and undercover surveillance, Belkin worked with the local law enforcement agencies all across southern China. We conducted raids of 11 manufacturers and sellers, and we seized more than 1 million counterfeit Belkin goods. Six people went to jail.

That is a good result. Those raids also revealed the presence of Melkin branded products, which are identical in packaging and identical in products, and I have them here. Here is the Belkin, this is our product, and this is a Melkin product.

It is almost funny. I mean, it is a little bit crazy. Under Chinese law—I will put these up here. Under Chinese law, if you change the first letter of a trademark, then it is not trademark infringement against the rightful owner of that trademark.

So we have struggled to obtain relief in China to stop this company from infringing our company IP.

I think all of us would agree that under U.S. trademark laws, this Melkin clearly infringes Belkin. It is a classic law school example of infringement.

So what we have been forced to do is, we have chased Melkin in more than 20 countries. In China, we have worked with various agencies: the Administration for Industry and Commerce, the Quality Technical Supervision Bureau, the trademark office there, the courts there. And in Hong Kong, we filed an action, a lawsuit, and we obtained an injunction against Melkin from doing business in Hong Kong.

We filed an action at the ITC here in the United States, and we filed in the ITC because we could not otherwise get jurisdiction over Melkin in the Federal courts.

But our efforts are not as effective in China. Simply put, IPR and IPR enforcement are less developed, less predictable in China than they are at home.

So let us be clear. The business of counterfeiting is big business in these other countries, and because of that economic benefit there, those countries make it hard to shut down those businesses.

But I do want to be very clear on this one point. We at Belkin, we celebrate the global marketplace, the online platforms. We believe in the value of global e-commerce and its importance to Belkin and American job growth.

Like our peer companies, we simply want to advocate for the level playing field and believe that with fair competition, we and other American companies will succeed in that competition by working harder and being more innovative than our foreign competitors.

So Belkin will continue to enjoy the opportunities that every U.S. business will enjoy in the digital age and we will continue to work and enjoy working with this committee in that effort.

Thank you.

[The prepared statement of Mr. Triggs appears in the appendix.]

The CHAIRMAN. Thank you. I apologize for having to leave, but that was a conversation with the President, and he seemed to think it was important. [Laughter.]

I did too.

Let me start with you, Mr. Foucart. Shutting down counterfeit websites is almost like playing a game of whack-a-mole. Are there any better ways to stop counterfeiters? Are there ways to cut off their payment stream?

Mr. FOU CART. Yes, there are, Senator. Yes, you are right. It is like playing whack-a-mole, and we have pushed a lot of that responsibility civilly onto industry for them to protect their goods, and we have created almost a procedure for the different marketplaces that they can go to—such as eBay, for example, Amazon—the procedures that would be required for industry to shut these websites down, either civilly or with cease-and-desist orders. So we have assisted in that way.

Secondly, we have joined up with specific coalitions and consortiums within—actually, within the Washington, DC area. One I mentioned in my remarks is called the Verified Top-Level Domains Consortium. And how it works is, it is a verification process for someone who wants to sell their goods. And when I say sell their goods, I mean to sell them legitimately.

They go through this background or vetting process in which the people who are vetting them ensure that what they are going to be selling is licensed and it is proper and they have a secure supply chain.

Then, working with the registries, they will provide a specific dot-pharmacy or dot-bank in the banking industry domain. And so that is the first part of this action, working with industry doing that.

The second part of that action will be getting that word out to the consumer, educating the consumer that when they go online, if they want to buy product from XYZ Corporation that sells pharmaceuticals, look for it to be [www.xyz.pharmacy](http://www.xyz.pharmacy). That way we know that they have been vetted and they are wearing this badge of approval, so to speak.

Secondly, along those lines, we have worked with a coalition called the Trustworthy Accountability Group that deals with advertisement fraud as well as malware, and they have a verification

program as well very similar to wearing the Good Housekeeping seal.

To be part of this, to be an advertiser, you undergo a background check for legitimacy, and then you will get this seal that you will be able to wear or put on your website. It shows that you have been vetted, you have no criminal activity, and, again, you have a secure supply chain as well.

So with that, this TAG payment ID system, there are records kept in which all ad impressions that advertisers are paid for, they will keep a record of this. So a legitimate seller of a product would be able to go to this Trustworthy Accountability Group and ask to see if they are part of this.

So those are just three ways in which we have worked with on-line companies to further these efforts.

The CHAIRMAN. Thank you.

Mr. Schenk, UPS has a long tradition of working with CBP to stop fakes from entering into the stream of commerce in the United States.

As you know, the Customs bill recently passed by Congress contains a number of provisions both to facilitate trade and ensure effective protection of U.S. intellectual property rights.

What additional steps do you think Congress can or should take to help stop fakes from reaching the U.S. consumer?

Mr. SCHENK. Thank you, Mr. Chairman.

I think, clearly, the one thing that Congress could do to help that is to mandate through legislation that advance electronic data be required for all packages coming into the U.S.

A package is a package, and in order for CBP to do risk assessment, and the other government agencies, they need the advance data to do that.

The CHAIRMAN. Thank you.

Mr. Triggs, you testified that your company has significant experience working with China to stop counterfeiting at its source.

Can you please describe your experience working with U.S. Government officials overseas, including our IP attachés, and tell us what more Congress can do to support these efforts?

Mr. TRIGGS. Thank you, Mr. Chairman.

Well, we have been working with the U.S. Embassy in China for a few years now. I have made at least two trips to Beijing. In fact, about 1 month ago, 2 months ago, I enjoyed a lovely dinner with the former chairman of this committee, Ambassador Max Baucus, and I can tell you directly here that he and his US PTO team and the State Department teams are working hard to open those markets for us and all U.S. businesses.

They are working with the platforms that are out there. I have made two trips to Alibaba's headquarters in Hangzhou, China and met with their IPR teams. And we have worked together with the U.S. Embassy and the attaché group there. And I really appreciate personally, as well as our company and on behalf of the U.S. interest, we really do appreciate the work that the U.S. Embassy is doing in China.

The CHAIRMAN. My time is up.

Did you want to add something?

Mr. TRIGGS. What you could do to help—if I could add something really quickly, I will just jump into it.

Senator Wyden yesterday, in yesterday's hearing, asked a great question about the cost of uncertainty in the tax code.

At today's hearing, we are looking at that same problem: the cost of uncertainty. And the cost of uncertainty is not, as yesterday, an investment decision; today we are talking about purchase decisions by every consumer, every business, when they ask, "Am I getting what I paid for; is it worth the risk to upgrade my technology because of all these counterfeits?"

It is not only consumer confusion that is at stake here. It is also the hidden effect of the consumer who chooses not to buy something, not to buy technology, not to buy a product, and the demand that that would create for jobs and the economy, not only for us, but for all consumers.

So there is a microeconomic effect here to this. There is also a macroeconomic effect as a result of that, the cost of uncertainty.

So we would ask this committee and the U.S. Government to reduce that cost of uncertainty to give us predictability, enhanced IPR standards, and enforcement across the globe, especially in the Asia-Pacific region.

Thank you.

The CHAIRMAN. Thank you.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman. I am very glad you are here. This is a particularly important hearing, because it really reflects what this committee is all about and how the challenge has changed over the years.

The Finance Committee—if you look at the history of what has been done, the chairman and I have tried to emphasize that there is a very long bipartisan history, and we have been the committee that has financed so many modes of transportation and opportunities for American industry and American commerce.

We finance roads, we finance ports, we finance the way farmers get their cattle to market. A number of colleagues on this committee are from the Midwest, and so we have, in effect, financed the ways in which American cars get into global markets, creating jobs for Americans and transportation opportunities for global consumers.

What I have said is, we are now in the midst of looking at avenues for these kinds of economic opportunities, and I really describe it, the Internet, as the shipping lane of the 21st century, and every business one way or another is digital.

Mr. Triggs, your company has grown out of the digital revolution, including innovations and products that support the architecture of the Internet and the innovative services that are going to mean that before too long, more Americans are going to be able to access smart cars and perhaps live in smart houses.

So you demonstrate how our country leads in critical sectors for future growth. Your testimony mentions the value of global e-commerce, and I think it would be very important if you could lay out—since this is really something of a groundbreaking hearing, I think it would be very helpful if you could lay out the benefits of



e-commerce platforms from your company, since you are one of the ones that has been on the cusp of this revolution.

Mr. TRIGGS. Thank you, Senator. Certainly, I would be happy to. Like I mentioned, at Belkin, we celebrate this digital marketplace, and you said it best, that it really is the shipping lane of the 21st century, and trade done right across that shipping lane is the way we want to be thinking about it.

We view the online platforms as an opportunity to dramatically expand our business, as well as our partners' businesses. In doing that, we open new markets to us and to others who might not have had access to those. So it not only helps Belkin, but it helps all U.S. businesses and countless numbers of small businesses that have access now to potentially billions of customers globally.

The second point I would make is that distribution is a really hard thing for a hardware company to do. So for us in consumer electronics, it is tough to get a peg on a shelf locally, no less globally.

The online platform levels that playing field for the small business, for the large business. We like that.

The third thing—and it is interesting. I spoke about the risks that come with the online platform and counterfeits. At Belkin, we view the online platform also, almost paradoxically, as a tool to combat counterfeit activities as well.

Technology provides transparency, and technology allows us to deeply educate potential customers. We have web pages that educate on how to spot infringing or counterfeit products. We talk about safety and security on the web page as well.

So we believe it is an effective tool to help the problem.

I would just say one last thing, that the online platforms globally, they are here to stay. We want trade done right, I think is what you said, and we appreciate your work in that effort.

Senator WYDEN. Thank you very much.

Assistant Director Foucart, all types of products are now being targeted by counterfeits. We are looking at clothing, jewelry, shoes, pharmaceuticals, smart phones, the list just goes on and on.

Not only do these counterfeits pose a threat to our businesses, but many also threaten the health and safety of the American consumer. Fake drugs impede the treatment of patients. Fake electronics catch fire. Fake auto parts can make an automobile malfunction.

How do you all prioritize your enforcement agenda against counterfeit goods based on the potential harm to the health and safety of the U.S. consumer?

I assume, for purposes of this question, you all are working all the time with the FDA, the Food and Drug Administration, and the Product Safety Commission and the like. But I think it would be helpful to get a sense of how you prioritize your enforcement agenda given the fact that I think we know that there is really an avalanche of counterfeit materials coming into our country.

Mr. FOUCART. Certainly, health and safety are probably, if not the most important, in the top three as far as our priorities go, and many of the operations I mentioned earlier involve health and safety issues, like Operation Engine Newity. And yes, the FDA is part

of the IPR Center, and we work hand-in-hand with them with counterfeit pharmaceuticals and adulterated medicines.

If there is an imminent or an immediate health and safety issue, obviously, that rises to the top.

Probably the end of last summer, early fall of this last year and, to an extent, during the Christmas season, we saw the lithium batteries that were counterfeit in the hover boards, and we took immediate action. We took immediate action, with CBP making seizures. We worked with the Department of Transportation and the Consumer Product Safety Commission to get those hover boards off the streets and off of airplanes and transportation modes, et cetera.

That is a great example of how an imminent health and safety risk rose immediately to the top.

Additionally, we are, obviously, guided, as far as our prosecutions go, by the Department of Justice, and I know for a fact, working with the Department of Justice, both in DC as well as in the field, that health and safety issues are absolutely their number one priority as well.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Menendez, we will turn to you.

Senator MENENDEZ. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate you having this hearing with the ranking member.

I have repeatedly raised how counterfeit imports are increasingly threatening the viability of U.S. businesses, and I sought to draw Customs and Border Protection's attention to this growing issue, adding report language to the recent Customs enforcement bill, calling on the agency to better screen, for example, small packages sent from international businesses to U.S. consumers, often illegally marked as gifts to evade Customs duties.

But I also recognize that we need to be looking at what can be done to prevent the proliferation of counterfeit goods in the first place.

Companies from around the country have been contacting me, explaining how their copyrighted imaging is increasingly being pirated and used by counterfeiters in advertisements on online search engines like Google, social media networks, and other websites.

This deceptive practice tricks consumers into thinking that they are purchasing an authentic branded product at a discount, and what they are really getting is a cheap imitation.

On the easel here, on the left, I have an example of an image that was stolen from a U.S. company and used in an online advertisement by a Chinese counterfeiter. Images like these are often displayed to unsuspecting U.S. consumers in online ads and counterfeiter websites.

On the right is a picture posted by the woman who bought the dress. As you can see, the final product is a cheap imitation of what was promised.

I have seen this in the wedding dress industry, which is an incredibly important industry, one of the few domestic industries we have left in this regard. It is killing them, and, at the same time, shattering one of the most important days in a person's life.

I believe that these online search engines, like Google and other websites, that aid and abet these counterfeiters by failing to police

the use of copyrighted product imaging in online ads, bear some responsibility.

Clearly, companies that sell online advertising have some capacity to pre-screen advertisements. In fact, it has been brought to my attention that some search engines will remove counterfeit websites from their organic search results but continue to display those same companies' advertisements.

In other words, some sellers of online ads may be continuing to receive advertising fees from companies that they know to be breaking the law, because they, in essence, took their counterfeited websites off their organic search results but still are taking their other sites and taking their fees.

If search engines, social networks, and other sellers of online ads are unwilling to filter these types of illegal advertisements, I hope the committee will work with me to explore policy options to address a growing threat to American business.

So let me, having that as the premise of what I am focused on here, turn to Mr. Foucart and ask you this.

Director, I have written to the IPR Center raising this and other issues related to counterfeit imports. I have always believed that this problem requires more than one isolated agency, and I am looking into ways to encourage both business and other parts of the Federal Government to tackle the problem head-on.

But as I said earlier, I am interested to hear what CBP can do to stop counterfeits from entering the country, but also, I want to address how we prevent the proliferation of counterfeit goods in the first place.

How is your office addressing the misappropriation of copyrighted imaging for online advertisements, which is the initial theft of the U.S. intellectual property to deceive American consumers into buying what they think is a legitimate product? And how is your office implementing the report language that I offered with Chairman Hatch to raise the enforcement priority for counterfeit products, specifically those marked as gifts to evade Customs duties and detection?

Mr. FOU CART. Let me start off by saying we did have the wedding dress and wedding gown industry at a meeting at the IPR Center, probably within the last month. Prior to that, we had them in, as far as creating dialogue with them, 2 years prior to that. So we have engaged them with communication, and we are aware of their problems.

One of our responsibilities at the IPR Center is to educate the consumer. It is education, education, education. And I mentioned that we cannot arrest, indict, and seize our way out of this problem. It is just too much.

A \$500-billion-a-year problem annually internationally is just too big. There have been estimates that over 6 percent of all goods out there are counterfeit. That is staggering.

So we try, in addition to enforcement, to include education, and what we look at are really consumers—a consumer who is going to go out on the Internet and look for that cheap wedding dress at a very cut-rate cost, and we try to educate them that there are links to criminality behind this. There are criminal organizations that

are selling this. This is a gateway crime to other crimes, such as drug trafficking, identity theft, human trafficking.

So we try to effectively educate those folks by that link to criminality.

Then it is the consumer who goes out there and just gets duped, and that is an additional group of people whom we have to reach on a regular basis.

So that is going to take effort. It is going to take a very challenging effort with industry to continually get that word out.

Until those policies are changed through legislation or otherwise, we will have to continue to work the way we have been working and then effectively, if that legislation is changed, create a different route to affect that.

Senator MENENDEZ. If I may, Mr. Chairman, with the chair's indulgence. I appreciate the education part, and that is very important. But if we had a \$500-billion problem in any other context, we would not just accept education as the only vehicle for dealing with it.

For example, I have the Port of Elizabeth in Newark, the megaport of the east coast, in my State, and I have dealt with those issues for years.

CBP uses algorithms, for example, since we do not screen every piece of cargo that comes into the United States. Very different context. They do those algorithms for the purposes of trying to spot a cargo that might have some potential explosive or some other security threat or, for that matter, drugs and narcotics.

Is there not a way to have a similar algorithm system when we know, for example, that the Chinese consistently send products back to the United States through the mail, maybe through private handlers, and it is a small package and it is a gift all the time, and we know the companies and we have a universe of companies that consistently do this, and we know their geographical location?

It just seems to me that there is more that we could do, because while education, I think, is critically important—and I certainly applaud that effort—at the same time, when you go after a few people and the message is sent that there is a real consequence to this, then behavior at least begins to change.

There are those who are always willing to break the law. We will have to deal with those people. But I just get a sense that right now, they feel they can do so with impunity. And in that respect, what are the consequences?

Mr. FOUCART. It is extremely difficult for what we like to call the onesies, twosies, directly to the consumer. We are not seeing those 40-foot containers come in as much anymore. Like you indicated, it is through the mail.

CBP has started an abandonment pilot program, a process that UPS has been part of, in which if it is under a certain value, that item—a letter will be sent out to the consumer who imported it, who had it mailed to them, asking them to explain if these are counterfeit or, if they are not, what their position is as far as the product goes.

Many times during the course of this pilot program, the consumer is not going to reply, and in those instances, the items get destroyed.

But as far as enforcement action goes, it is extremely difficult to prosecute that single consumer. So we have to look at it at more of a macro level, such as drop-shipment points maybe within the United States. We have seen them with counterfeit pharmaceuticals, where they may be going to one mail drop and then are disseminated out to a group of people in a certain area.

But in those instances, we are looking at organized crime more than that one individual, where we will get a little bit more bang for our buck with either a local prosecution or, as well, a Federal prosecution.

Senator MENENDEZ. I will close, because the chairman has been gracious with the time. But I will just say I am not looking necessarily to prosecute the consumer, because in many cases, I believe the consumer was duped.

What I am looking to is to prosecute the entities that are violating intellectual property rights and counterfeiting. If we prosecuted some of those entities—if they are foreign in nature, there are ways to do that. There are also ways to deny them access to the U.S. banking system; there are ways to deny them visas. There are real consequential efforts in which a \$500-billion challenge can begin to have a more aggressive tool—so I would love to meet with you at some point to talk about this.

Mr. FOUCART. Absolutely. One of our initiatives at the IPR Center is to work with the credit card companies and the payment providers to obtain that information for overseas banking. Certainly, hitting them there would hurt them.

And we do have our enforcement tools, and we work with overseas law enforcement partners to obtain that information.

Sometimes we get cooperation in certain countries, sometimes we do not. My agency, specifically, we have 67 offices in 48 countries, which span the globe.

So we are out there, we are diligent, we are working with foreign law enforcement for the same effort, and that is to effectuate prosecutions here in the United States.

Senator MENENDEZ. We look forward to following up with you.

Thank you, Mr. Chairman, for your courtesy.

The CHAIRMAN. Thank you.

Let me just ask you a question, Mr. Foucart. One of the purposes of this hearing is to help us think proactively about the steps that we might be able to take today to meet the challenges of tomorrow.

In that vein, what trends do you see in counterfeiting practice that Congress needs to take into account when devising solutions to this, what really is a growing problem?

Mr. FOUCART. I think I mentioned them before, some of the ways that we are effectively working with online industry. But it would have to be changes in policy, similar to Senator Menendez's comments about changes with search engines, et cetera, and holding their feet to the fire.

Additionally, the registrars and registries that knowingly are allowing domains for rogue websites or rogue companies or criminal organizations, holding their feet to the fire as well. And if you can provide us with those enforcement tools, that would be something that we would appreciate.

The CHAIRMAN. Thank you.

Mr. Schenk, you spoke about how UPS and other private carriers work with CBP to provide advance electronic data to CBP to help fight counterfeits and terrorism, but the United States Postal Service does not.

I know that you do not work for the USPS, but as someone in the industry, are you able to discuss how difficult it would be for USPS to provide advance electronic data to CBP?

Mr. SCHENK. Thank you, Mr. Chairman. I will give you an example of what we did, and I cannot speak for USPS. But back when the Yemen incident took place, where there was the printer cartridge that was caught over in the UK, it was identified that it had a potential threat to the U.S. on that one.

We received a call from CBP and subsequently TSA that said, "We need you to do more to get advance data to us so we can do this type of thing." Within 45 days, working together with CBP and TSA, we developed a system, and we are up and running and transmitting all that data.

So, from a private-sector perspective, we were able to do it within 45 days. Is that practical for the Post Office? I cannot speak for them. But certainly, I think, going back to your point that you made, Customs now has more tools to use to help with enforcement, but unless they have the advance data to the risk assessment, it is like finding a needle in a haystack.

So everything—and I know we are talking about counterfeits here, but this also has to do with potential shipments from terrorists. It could be fake airbags, it could be drugs. Unfortunately, since back in 2000 when I testified on a similar subject, there has not been much change in terms of getting everybody playing by the same rules with the advance data.

Two things have changed. The volumes are much higher, and the risk is much higher. I participated in another Senate hearing, a roundtable a little while back, that fentanyl—it used to be amphetamines, and now it is fentanyl. So the situation is much more serious than it was, and the only way for CBP to use those tools that you referred to is by having the risk assessment from advance data.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you.

A question for you, Mr. Foucart. With the volume of shipments coming in, it is important that ICE and CBP make sure targeting methodologies keep up with technology and the resulting changing patterns in trade.

Now, we are in a high-tech age, and we have high-tech digital criminals. How are you all in enforcement leveraging the technologies that we need to target and detect counterfeit imports and bring charges against criminals?

Mr. FOUCART. We are leveraging our cooperation and our partnerships with private industry. We are targeting information. CBP and—to a certain extent ICE—sits at the National Targeting Center, which is out in McLean, VA.

It is a real state-of-the-art facility. But we rely on industry to provide us with that targeting data so we can put it through our system, through our automated systems, computer systems worldwide, as well as CBP-specific systems.

So we are aware that potential shipments can be or may be coming into the United States. So a lot of that intelligence, again, has to be guarded by industry itself, and I am happy to say we do have those relationships with private industry, because we are protecting their brands.

Senator WYDEN. I do not have any other questions, Mr. Chairman. I want to make one comment though, because we have had a little bit of discussion with respect to websites and search engines. I think as we all know, U.S. websites take down copyrighted photos when you have an owner of the photo notifying the website that the use of the photo is not authorized.

The big challenge, the area we have to zero in on—and we learned about this during the whole debate about PIPA and SOPA and a variety of issues—is the foreign websites.

Our trade agreements get at this issue by requiring that we make a special priority to have foreign countries adopt the kind of take-down process used by the United States.

So we are going to be spending time on these kinds of issues, but I just want it understood that there is a difference between American websites, U.S. websites, and the foreign websites as we go forward with this kind of discussion.

I appreciated the effort that you and I were able to work together on, Mr. Chairman, to deal with these foreign websites, because I think that is a serious problem.

I thank all of you. I think it has been a terrific hearing. I am sure the chairman has additional remarks, but I want to thank him for scheduling this, and I look forward to working with him.

The CHAIRMAN. Thank you, Senator Wyden.

I am going to keep the record open so that members can submit questions to you, because this is extremely interesting to me, and there are so many other questions we could ask. But I think you have been an excellent panel, and I am just very appreciative of you taking time to come and be with us here today.

With that, we will thank you all for coming today and for your thoughtful comments and participation. These are really important issues, and I hope that we can continue working together to find bipartisan solutions.

I would ask that any questions for the record be submitted by Friday, June 24th of this year.

With that, we will adjourn this meeting. Thanks so much.

[Whereupon, at 3:10 p.m., the hearing was concluded.]





# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF BRUCE FOUCART, ASSISTANT DIRECTOR, NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

### INTRODUCTION

Chairman Hatch, Ranking Member Wyden, and distinguished members of the Committee:

On behalf of the Department of Homeland Security (DHS), thank you for the opportunity to testify before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to combat the illegal importation and sale of counterfeit products, and the threats to public safety and national security that counterfeit products may pose.

As you know, ICE is the largest investigative component within DHS, with an extensive portfolio of enforcement authorities. ICE Homeland Security Investigations (HSI) is responsible for a wide range of domestic and international criminal investigations arising from the illegal movement of people and goods into, within, and out of the United States, often in coordination with other federal agencies.

ICE has a legacy of enforcement against intellectual property (IP) crime that spans from our past as U.S. Customs Service investigators to our present role as Homeland Security investigators. ICE is the lead agency in the investigation of IP violations involving the illegal importation and exportation of counterfeit merchandise and pirated works, as well as associated money laundering violations. In coordination with U.S. Customs and Border Protection (CBP), we target and investigate counterfeit merchandise and pirated works, and we seize such illicit goods associated with these investigations, including those that infringe on trademarks, trade names, and copyrights. Investigating counterfeit products falls within ICE's broad IP mandate.

ICE recognizes that no single U.S. law enforcement agency alone can succeed in the fight against IP crime. Rather, it is essential that all relevant Federal agencies work together and with IP industry partners to confront this challenge. Law enforcement, public education, demand reduction, and global collaboration are all critical to successfully combat these crimes. To focus government efforts and enhance efficiency, the former U.S. Customs Service's Office of Investigations (now known as ICE HSI) and the Federal Bureau of Investigation (FBI) established in 1999 the multi-agency National Intellectual Property Rights Coordination Center (IPR Center), which combats violations of intellectual property rights with a focus on trademark and copyright infringement. Recently, the IPR Center was expressly codified in statute by section 305 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. No. 114-125), which was signed into law by President Obama on February 24, 2016. In section 305, Congress also cemented the IPR Center's role as the lead office within the U.S. Government for coordinating with other Federal agencies on IP infringement investigations, law enforcement training, and private sector and public outreach.

Pursuant to the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) (Pub. L. No. 110-403), ICE and CBP are members of the interagency intellectual property enforcement advisory committee established by section 301 of the PRO-IP Act (15 U.S.C. § 8111). Chaired by the White House Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC), the com-

mittee is responsible for developing the PRO-IP Act's 3-year "Joint Strategic Plan against counterfeiting and infringement" (section 303; 15 U.S.C. § 8113). In addition to its role in developing and implementing the Joint Strategic Plan, the IPR Center collaborates regularly with the IPEC and other Federal agencies on IP policy issues. The IPR Center also shares the investigative outcomes and trend information that we obtain with interagency partners and the IPEC to further inform the administration's IP policy development process, the U.S. Trade Representative's Special 301 Report, and the administration's legislative recommendations.

The IPR Center's mission is to address the theft of innovation that threatens U.S. economic stability and national security, undermines the competitiveness of U.S. industry in world markets, and places the public's health and safety at risk. The IPR Center brings together many of the key domestic and foreign investigative agencies to efficiently and effectively leverage resources, and promotes the skills and authorities to provide a comprehensive response to IP crime.

The IPR Center operates on a task force model and is comprised of 23 relevant Federal and international partners. While ICE HSI holds the director position, the IPR Center includes U.S. Government team members from: ICE HSI, CBP, the Food and Drug Administration (FDA) Office of Criminal Investigations (OCI), the FBI, the U.S. Postal Inspection Service (USPIS), the U.S. Department of Commerce's International Trade Administration and U.S. Patent and Trademark Office, the Defense Criminal Investigative Service (DCIS), the U.S. Consumer Product Safety Commission (CPSC), the National Aeronautics and Space Administration (NASA), the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigative Command Major Procurement Fraud Unit, the U.S. Air Force Office of Special Investigations, the Nuclear Regulatory Commission, the U.S. Department of State's Office of International Intellectual Property Enforcement, the Defense Logistics Agency (DLA), the U.S. Postal Service Office of the Inspector General and the Inspector General's Office from the General Services Administration, and the Federal Maritime Commission. In addition, Department of Justice (DOJ) trial attorneys from the Computer Crime and Intellectual Property Section (CCIPS) regularly provide input for ongoing enforcement operations and policy.

In 2010, the Government of Mexico and INTERPOL joined the IPR Center as our first international partners. Since then, the Royal Canadian Mounted Police and Europol have joined as well.

#### PROTECTING NATIONAL SECURITY, HEALTH, AND SAFETY

The illegal importation, distribution, and sale of counterfeit products pose a significant and growing threat to public health and safety. Counterfeiters do not care if their products contain the correct materials. They do not care if their products are made in sanitary conditions. They do not care if their products physically harm consumers. They do not care if their products result in economic damage to legitimate companies. Rather, they care about their product looking good enough to be purchased. They care about their bottom line.

The IPR Center has a wealth of experience and subject matter expertise to combat these counterfeiters and we support our field agents in their significant efforts to enforce IP rights. Working collaboratively with our law enforcement partners, the IPR Center has developed numerous initiatives and interdiction efforts to combat the infiltration of counterfeits that pose a risk to the health and safety of the American public, or could potentially harm the economy of this country. Specifically, the IPR Center focuses efforts on health and beauty products, automotive, aerospace, and heavy industry products, as well as goods entering the U.S. Department of Defense (DOD) and U.S. Government supply chains. Today, I would like to discuss our efforts to protect the public's health and safety from counterfeit consumer products.

Using interdiction, enforcement, and outreach, the IPR Center promotes a comprehensive layered approach that focuses on the production, import, and distribution of counterfeit goods. Partnerships are essential; the IPR Center works closely across agency boundaries with law enforcement colleagues at the local, State, and Federal levels and across international boundaries to form a united front against criminal enterprises and international organizations that threaten public safety and security.

#### *Operation Chain Reaction*

Operation Chain Reaction is an IPR Center initiative that combines the efforts of 16 Federal law enforcement partner agencies to target counterfeit items entering the DOD and other U.S. Government agencies supply chains. Operation Chain Reaction (OCR) partner agencies coordinate their efforts to more productively protect the

U.S. Government supply chain from substandard counterfeit parts that could impact the reliability of weapons systems, delay DOD missions, imperil the safety of servicemen and women, and waste taxpayer money.

For example, in a case investigated by ICE, DCIS, and NCIS, a Massachusetts man pleaded guilty in 2014 to importing thousands of counterfeit integrated circuits (ICs) from China to Hong Kong and then reselling them to U.S. customers, including contractors supplying them to the U.S. Navy for use in nuclear submarines. The subject told his customers, many of whom specified in their orders that they would only accept new ICs that were not from China that the ICs were brand new and manufactured elsewhere, including in Europe. However, the subject instead wired nearly \$2 million to his suppliers' bank accounts in China and Hong Kong to order ICs. Testing by the Navy and one of their contractors revealed that many of the ICs had been resurfaced to change the date code and to affix counterfeit marks to hide the fact that they were actually older, used parts. On October 6, 2015, the defendant was sentenced to 37 months imprisonment. This was the second conviction ever under the new enhanced penalties for trafficking in counterfeit military goods enacted in 2011.

In another case, the former Chief Executive Officer (CEO) of Powerline, Inc., a battery distributor, was found guilty of five counts of wire fraud and one count of conspiracy to defraud the United States by selling more than \$2.6 million in cheap, counterfeit batteries to the DOD. In a joint case by ICE and DCIS, with assistance from DLA and the Defense Contract Audit Agency, investigators discovered that Powerline sold the DOD more than 80,000 batteries and battery assemblies that the U.S. Navy used for emergency back-up power on aircraft carriers, minesweepers, and ballistic submarines. Powerline, Inc. affixed counterfeit labels falsely identifying the batteries as originating from approved manufacturers and used chemicals to remove "Made in China" markings from the batteries. The CEO fled the United States, but was arrested on December 6, 2013, after he spent more than 2 years near St. Martin. On October 15, 2014, he was sentenced to 87 months incarceration and ordered to pay \$2,787,193 in restitution. In fiscal years (FY) 2014 and 2015, OCR cases have resulted in 15 criminal arrests, 28 indictments, 23 convictions, and seizures with a Manufacturer's Suggested Retail Price (MSRP) of \$13,768,355 in counterfeit parts, currency, and vehicles.

#### *Operation Plastic Beauty*

Operation Plastic Beauty was initiated in FY 2014 by the IPR Center to combat the illegal importation, sale, and distribution of counterfeit healthcare and beauty products, such as shampoo, toothpaste, makeup, and lip balm. Through Plastic Beauty, the IPR Center combines the expertise of ICE, FDA-OCI, and CBP, and coordinates with industry.

As a result of operations conducted by CBP, multiple shipments of counterfeit name-brand cosmetics were discovered. ICE opened an investigation and linked the cosmetics to a woman in Florida. A review of seizure records uncovered that she had been trafficking in counterfeit cosmetics for several years, and bank records related to her business indicated that over \$1 million had been deposited as proceeds. ICE, with assistance from the Postal Inspection Service, conducted an enforcement operation and seized approximately \$16,905 and over 1,500 counterfeit brand name cosmetic products that had an estimated resale value of \$31,715. The defendant pled guilty to trafficking in counterfeit goods and, on July 20, 2015, was sentenced to 18 months imprisonment and ordered to pay \$961,744.75 in restitution.

In FY 2015, Plastic Beauty resulted in 18 arrests, 19 indictments, 19 convictions, and the seizure of goods valued at over \$7 million.

#### *Operation Engine Newity*

Operation Engine Newity addresses safety threats posed by counterfeit automotive, aerospace, rail, and heavy industry components. These counterfeit parts are not only an evident health and safety risk to Americans, but they also impact the economic health of these industries. Investigations and interdictions have uncovered counterfeit airbags, steering, braking, and seatbelt components, bearings, and diagnostic equipment.

To combat counterfeit automotive parts, Operation Engine Newity member agencies work closely with the private sector, including the Automotive Anti-Counterfeiting Council. This is a collaborative voluntary industry group comprised of BMW, Fiat Chrysler Automobiles, Ford, General Motors, Honda, Hyundai, Kia Motors, Mercedes-Benz, Nissan, Subaru, Toyota, and Volkswagen. Automakers have shared lead information with the IPR Center that is now being worked in the field, and

are actively cooperating with the agents investigating this information. Additionally, they have shared knowledge regarding upcoming trends in counterfeit automotive parts, which is being used to target potential shipments and redirect government resources to top priorities focusing on health and safety concerns.

In September 2014, an ICE Public Service Announcement (PSA) was released to alert the public of the dangers of counterfeit automotive parts. The PSA, which was coordinated through CBP, the FBI, and the National Highway Traffic Safety Administration, is displayed by automotive industry partners in dealership service departments. In one ICE-led case, two brothers sold counterfeit airbags in an online marketplace. The brothers, both Canadian citizens, were importing the airbags from China into Canada. They would drive the counterfeit airbags into the United States to mail them to customers from a U.S. address. As part of its investigation, ICE identified the entities in China providing the counterfeit airbags. Working through the United States-China Joint Liaison Group (JLG) on Law Enforcement Cooperation, ICE HSI Beijing provided information on the Chinese sources to the Chinese Ministry of Public Security (MPS), which led to the arrests of the individuals who made the airbags in China. In September and October 2014, the brothers were sentenced to 6 and 4 months incarceration, respectively.

In FY 2014 and 2015, Operation Engine Newity resulted in 31 arrests, 32 indictments, 16 convictions, and the seizure of goods worth approximately \$18.4 million.

#### *Operation Joint Venture*

To help educate consumers on emerging dangers of counterfeit products and facilitate productive partnerships with the public and private sectors, the IPR Center launched Operation Joint Venture. This effort is designed to increase support, communication, and cooperation for our ongoing IPR enforcement initiatives and our critical public health and safety efforts. Operation Joint Venture is the IPR Center's method to provide industry with valuable information about our efforts to combat the importation of hazardous and counterfeit products, and it gives industry a point of contact they can use to provide us with leads and tips regarding efforts to compromise intellectual property rights. Also, we have developed a website (<https://www.iprcenter.gov/>) where the public can obtain information on the efforts of all IPR Center partner agencies to combat IP crime and we have placed a button on the website where consumers and industry can report allegations of counterfeit or pirated products.

#### *Other Interagency Efforts*

ICE shares its border security and trade mission responsibilities with its sister agency, CBP. ICE and CBP work closely to target counterfeit and other illicit goods crossing the borders, including through the co-location of personnel at Trade Enforcement Coordination Centers (TECC) in Los Angeles, New York/Newark, Detroit, New Orleans, Houston, and Chicago Ports of Entry (POE). The TECCs enhance communication and combine resources to identify and combat trade fraud and IP crime. The TECCs proactively identify, interdict, and investigate inbound cargo that may enter U.S. commerce in violation of U.S. customs and trade laws. TECCs ensure joint CBP and ICE oversight and prioritization of the enforcement and interdiction process in the local area, and involve ICE early in the enforcement process. ICE and CBP are establishing additional TECCs in El Paso, Texas; Buffalo, New York; and San Juan, Puerto Rico.

The IPR Center also has agents who sit full-time at the National Cyber-Forensics and Training Alliance (NCFTA) in Pittsburgh, Pennsylvania. The NCFTA is a non-profit organization, which brings together experienced personnel from academia, law enforcement, and industry. By merging a wide range of expertise in one location, the NCFTA provides a neutral forum for information sharing regarding emerging and ongoing threats. In FY 2015, our NCFTA agents, working with IPR Center analysts, processed 17,990 viable new leads.

#### TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015

The TFTEA is the most comprehensive customs legislation in over two decades. Many of its provisions directly impact ICE's trade fraud, intellectual property, and the forced labor enforcement missions. Specifically, the TFTEA enhances the ability of the Government to combat IP violations. The IPR Center and ICE HSI are currently implementing the Act's requirements, working closely with its partners in the Federal Government, including CBP, DHS, and the IPEC. The IPR Center welcomes this new focus and is rapidly ramping up its efforts to enforce IP laws.

*Key Provisions Impacting ICE's IP Enforcement Efforts*

Sections 305 and 306 codify the establishment of the IPR Center within ICE. TFTEA outlines the IPR Center's duties to include: coordinating investigations of IP violations; conducting and coordinating domestic and international law enforcement training on IP investigations; coordinating with CBP activities to prevent the importation or exportation of IP infringing merchandise; supporting international interdiction of prohibitive IP merchandise destined for the United States; collecting and integrating domestic and international information on IP infringement; disseminating information on IP infringement to other Federal agencies; developing and implementing, in coordination with CBP, a risk-based alert system to improve targeting; coordinating with U.S. Attorneys to develop expertise in IP investigation and prosecution; and conducting private sector outreach and information sharing.

*Implementation*

ICE and the IPR Center are proactively working to implement the provisions of this law and have formed a team that will oversee the implementation. Implementation will require close cooperation with CBP and DHS Office of Policy, and initial steps have been made to coordinate efforts among our offices. The IPR Center will continue to co-host the 2-week advanced training, Intellectual Property and Trade Enforcement Investigations Course, with CBP, which has been recently revised and updated. This training is provided to ICE HSI and CBP personnel to gain a better understanding of trade fraud and IP investigations and current priorities. The training also includes presentations from the DOJ and the private sector.

## CHALLENGES AHEAD

Our biggest challenge is that criminals are willing to counterfeit and market any product that will sell, regardless of whether it could result in serious and significant injury to consumers or the public. Through the course of its investigations, ICE has uncovered counterfeit lithium batteries that are not properly vented, counterfeit airbags that have too much propellant, counterfeit jewelry that contains lead, counterfeit pharmaceuticals that contain potentially toxic substances, and counterfeit health and beauty products that are made under unsanitary conditions.

ICE anticipates that cyber-commerce and for-profit streaming will continue to be challenges, along with the following upcoming technologies: 3D printing; additive manufacturing; and the dark web and virtual currency. ICE feels that IP criminals will continue to use these technologies, and others we have not seen, in furtherance of their criminal activity. One other challenge that lies ahead is the use of e-commerce platforms with a business direct to consumer business model that utilizes the express mail environment. There are numerous weaknesses in this model that counterfeiters can exploit.

IP cases demand attention from criminal investigators and regulatory agencies. We take our responsibility to protect American consumers and industry very seriously, and ICE's priorities in IP crime enforcement remain to protect the public's health and safety, the military supply chain, and the American economy. The IPR Center successfully brings together members of industry, State and local partners, Federal Government and international counterparts to train, exchange best practices and ultimately remove counterfeit and pirated products from the marketplace and put the criminals behind them in jail.

## CONCLUSION

Thank you again for the opportunity to appear before you today to discuss the work of ICE and the IPR Center in protecting U.S. consumers from the international illicit trade of dangerous counterfeit, unapproved, and/or adulterated products. I look forward to working closely with Congress on this issue of critical importance as it directly threatens worldwide health and safety.

I would be pleased to answer any questions.

## QUESTIONS SUBMITTED FOR THE RECORD TO BRUCE FOUCAIT

## QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

## EDUCATING CONSUMERS

*Question.* I am concerned that far too many Americans don't fully understand the dangers of purchasing potentially counterfeit goods. They purchase a product at a

significant discount, without fully appreciating that it may be fake and the consequences that may follow. Fake toys can contain lead and other toxic chemicals, fake pharmaceuticals can contain life-threatening substances, and fake electronic goods can create fire hazards as well as endangering the user directly.

That is one reason why I insisted on including language in our recently passed customs bill that directs Homeland Security to develop and carry out an educational campaign to inform travelers about the legal, economic, and public health dangers inherent in purchasing potentially fake products overseas.

What do you think are the best ways for consumers to identify fake products?

And, do you have any recommendations on educating consumers on the harm of counterfeit products and training them to better identify fake goods?

Answer. The National Intellectual Property Rights Coordination Center (IPR Center) recommends that consumers minimize the risk of purchasing counterfeit products by buying only from a reputable vendor or retailer. They should beware of vendors or retailers selling items significantly cheaper than most other retailers. The “Golden Rule” for identifying counterfeit products is: If the price is too good to be true . . . it probably is.

Consumers should follow the 10 steps on the <https://www.stopfakes.gov/welcome> page to protect themselves against counterfeit goods. These steps include scrutinizing labels, packaging and contents, seeking authorized retailers, insisting on secure transactions, and trusting your instincts. Specifically, consumers of pharmaceuticals who want to verify that their online prescription purchases are legitimate may want to consult with their health care provider to request a list of legitimate Internet pharmacies, if available. Consumers should purchase pharmaceuticals from a state-licensed pharmacy in the United States where the consumer can be confident in the quality, safety, and efficacy of drugs. Consumers should refer to the National Association of Boards of Pharmacy’s (NABP) Verified Internet Pharmacy Practice Sites (VIPPS) program, which accredits online pharmacies that dispense prescription drugs. Consumers have to be vigilant when doing business with Internet pharmacy sites because the pharmacy may not be legitimately licensed, their location can be almost anywhere in the world, and the product received may not be an FDA-approved drug. The BeSafeRx program, of the Food and Drug Administration (FDA) is a national campaign to raise awareness of the dangers of buying prescription medicines from fake online pharmacies by providing resources to help consumers know the risks and signs of fake online pharmacies, and find safe online pharmacies.

The IPR Center recognizes the value of strong relationships with industry, Federal, State and local officials, and nonprofit organizations to educate the public about the effects of counterfeit goods. The IPR Center conducts aggressive stakeholder outreach to inform and educate companies and the consumers they serve about intellectual property theft, trade fraud, and how to report allegations. This campaign focuses attention on how counterfeit goods pose health and safety hazards (for example counterfeit prescription pain medicines made of fentanyl can cause deadly overdoses), threaten the U.S. economy, and fund criminal organizations. Outreach efforts have been especially effective in the automotive industry, where the black-market sale of counterfeit airbags prompted major auto makers to warn consumers about counterfeit airbags and provided online links to the IPR Center for reporting allegations. The Motion Picture Association of America, Motor and Equipment Manufacturer’s Association, National Crime Prevention Council, and the Pharmaceutical Security Institute are other examples of enterprises featuring the IPR Center’s “To Report IP Theft” link.

#### LEGAL LIMITATIONS

*Question.* Mr. Foucart, thank you for your testimony this afternoon. You spoke about many of the positive things that the IPR Center is doing today.

Do you know of any legal limitations that hinder your ability to do your job?

Answer. As noted within the administration’s White Paper on Intellectual Property Enforcement Legislative Recommendations,<sup>1</sup> there are legal limitations that hinder the ability of U.S. Immigration and Customs Enforcement to effectively combat intellectual property theft. In particular, the list of offenses in 18 U.S.C. §2516(1) for which the U.S. Government is authorized to seek wiretap authority from a court to obtain interceptions of wire or oral communications as evidence of

<sup>1</sup>[https://www.whitehouse.gov/sites/default/files/ip\\_white\\_paper.pdf](https://www.whitehouse.gov/sites/default/files/ip_white_paper.pdf)

those offenses does not currently include criminal copyright (17 U.S.C. § 506, 18 U.S.C. § 2319) and criminal trademark offenses (18 U.S.C. § 2320). The enhancement of wiretap authority would assist U.S. law enforcement agencies with the effective investigation of copyright and trademark violations, including in instances where counterfeit goods directly impact the health and safety of consumers, particularly in organized crime.

Additionally, because infringement by streaming remains a misdemeanor, it is often difficult to justify the use of investigative and prosecutorial resources for such violations. The availability of more significant penalties, in appropriate circumstances, for infringement by streaming or by means of other similar evolving technology would assist U.S. law enforcement in effectively combating infringement involving new technology.

#### CAPACITY BUILDING

*Question.* Congress has made protection of intellectual property rights a key component of our international trade strategy for many years. Ensuring that our international trading partners agree to strong enforcement provisions in our trade agreements is a vital element of this strategy.

During our hearing, I touched on the importance of making sure that our trading partners effectively implement their obligations before we allow an agreement to enter into force, but I think that even more can be done. Not only must we put strong rules into place, but we must work with our trading partners to make sure that adequate capacity building is available so that they can develop the technical expertise to stop fakes before they even cross U.S. borders.

Can you comment on whether you believe capacity building is an effective tool to stop fakes from entering our country and, if so, what type of capacity building is most effective?

*Answer.* U.S. Immigration and Customs Enforcement (ICE) and the National Intellectual Property Rights Coordination Center (IPR Center) believe that capacity building is an effective tool to stop counterfeit goods and pirated content from entering our country. Traditional classroom training, coupled with real world practical enforcement scenario exercises, have proven effective in providing police and customs officials with intellectual property (IP) enforcement detection, interdiction, and investigation fundamentals. For the past few years, the IPR Center has provided this training, as part of the International Law Enforcement Academy training program funded by the U.S. Department of State's (DOS) Bureau of International Narcotics and Law Enforcement Affairs (INL). The IPR Center also participates in international capacity building programs sponsored by DOS, the U.S. Patent and Trademark Office, U.S. Department of Justice, INTERPOL, and the World Customs Organization as IP enforcement subject matter experts.

In June 2015, the IPR Center led, in conjunction with ICE Attaché Hong Kong and utilizing funding from INL, an Advanced IPR Enforcement Workshop that involved 35 U.S. law enforcement and 64 foreign law enforcement, customs, and judicial officials. The workshop had participation from the Governments of India, Bangladesh, China, Macau, Hong Kong, Vietnam, Malaysia, Thailand, Cambodia, Korea, Philippines, Indonesia, and Singapore. The training focused on public health and safety violations, and U.S. and foreign law enforcement officials exchanged techniques, best practices, and experiences for combating IP theft.

IPR Center workshops such as these promote stronger relationships and information sharing between the United States and the participating governments. In addition, IPR Center IP enforcement workshops increase subject matter knowledge and investigative capacity for the participants and inform participants about recent or anticipated trends in IP-related crimes and enforcement.

One of the best examples of developing effective capacity building for IP enforcement abroad can be seen when ICE or IPR Center partner agency Special Agents work in close collaboration with foreign law enforcement and customs administrations to enhance cooperation on IP enforcement. In November 2014 and July 2015, ICE sent two Special Agents to Thailand as technical advisors to provide subject matter expertise and assist in overseeing the startup of the Thailand National Intellectual Property Rights Centre for Enforcement. While on temporary assignment, these Special Agents also assisted the Thai Department of Special Investigations in the planning and implementation of IP enforcement actions. During the two temporary assignments in 2014 and 2015, ICE Special Agents advised on 20 IP enforcement operations, which resulted in 82 seizures and 16 criminal arrests by the Thai government. The seizures totaled over \$18 million (manufacturer suggested retail

price, had the goods been genuine). Much more important than the resultant seizures and arrests was the repeated operational experience and subject matter expertise gained by the Thai police officers taking part in 20 enforcement operations.

TAOBAO

*Question.* Mr. Foucart, Chinese government agencies have estimated that two-thirds of what is sold on Taobao is counterfeit.

How does the IPR Center coordinate with CBP to use the information that you have to better target these shipments so that CBP interdicts counterfeits sold on Taobao?

*Answer.* The Intellectual Property Rights (IPR) Center notes that there are many factors considered by U.S. Immigration and Customs Enforcement (ICE) and other IPR Center partners when determining whether to pursue a criminal investigation into the production, transportation, sale, and/or distribution of counterfeit merchandise. These factors may include, but are not limited to, the number and value of counterfeit goods at issue, whether the sale of counterfeit merchandise is part of a larger criminal enterprise, and the extent of available actionable information.

The IPR Center deconflicts all actionable leads with the 23 IPR Center partners, including U.S. Customs and Border Protection (CBP), and the rights holder whose rights are being infringed. IPR Center analysts conduct searches of open source and law enforcement databases to compile a lead package, which is sent to the appropriate agency and field office including ICE field offices. In cases where there is not enough actionable intelligence for a criminal case, the IPR Center may refer those leads back to industry for civil actions. Additionally, the information gathered in these lead packages can be used by CBP to improve targeting of future shipments.

The IPR Center recognizes the challenges that rapidly expanding e-commerce places on legitimate commercial marketplaces. To facilitate legitimate commerce while protecting consumers against the sale of counterfeit goods, the IPR Center is creating a guide for industry on the different processes third-party marketplaces have in place to report counterfeit and pirated merchandise and content on their sites. The guide will provide industry with reference information on how to report counterfeit and pirated merchandise and content.

The IPR Center has initiated a process of ongoing dialogue with online marketplaces. Where possible, the IPR Center will work with them to recommend detection methods and law enforcement lead referral mechanisms. Liaising with the marketplaces can be effective as long as the dialogue is conducted on a regular basis, preferably in person, to account for changes in personnel and/or policy within the marketplace. As part of these outreach efforts, the IPR Center has met with representatives from Alibaba twice to suggest ways to better combat counterfeits on their various sites.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

COUNTERFEITS AT THE SOURCE

*Question.* Because international trade involves a larger volume of small packages shipped to individuals, we need new strategies to have a meaningful impact on preventing counterfeit imports. It seems that one strategy is to go after the source, to work with countries where the counterfeits are coming from and prevent shipments and shutdown manufacturing operations before individual counterfeit products are sent off in hundreds or thousands of separate packages.

Can you discuss what ICE is doing to address counterfeits at the source? Most counterfeits come to the United States from China and Hong Kong—what in particular are you doing in those countries to prevent exports of counterfeits to the United States?

*Answer.* U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), through its attaché offices and the National Intellectual Property Rights Coordination Center (IPR Center), has taken a proactive approach to increasing international cooperation on law enforcement efforts to combat intellectual property (IP) violations and trade fraud. Only by working together with our international counterparts are we able to address counterfeits at their source.

As you indicated, most counterfeits come to the United States from China and Hong Kong. ICE attaché office personnel engage regularly with Chinese law enforcement and customs officials to increase law enforcement cooperation on IP investiga-



tions. ICE HSI participates in the U.S.-China Joint Liaison Group on the Law Enforcement Cooperation Intellectual Property Criminal Enforcement Working Group (IPCEWG). The IPCEWG meets yearly and has resulted in an open dialogue on IP enforcement, the sharing of information on selected investigations, and several successful joint IP operations.

The Assistant Director of the IPR Center, Bruce Foucart, and the U.S. Customs and Border Protection (CBP) Director of IPR Policy and Programs, Michael Walsh, traveled to Beijing and Guangzhou, China, for a series of meetings with Embassy, industry, and Government of China officials. Meetings were held with the American Chamber of Commerce, U.S. industry representatives in China, the Ministry of Public Security, and the General Administration of Customs to discuss ICE and CBP's mission in combatting IP violations.

In an effort to combat counterfeits from China that are being transshipped through Singapore, CBP and ICE HSI held a joint IP enforcement operation focused on counterfeit pharmaceuticals with Singapore Customs at Changi Airport, as well as at the Miami International Mail Facility and the Cincinnati DHL Hub. The operation was notable as this is the first time Singapore Customs has participated in joint enforcement efforts on goods re-packaged and transiting their Free Trade Zone bound for the United States. In an effort to disguise the counterfeits, they were re-packaged as if they originated in Singapore, using Singapore's reputation for clean operations and health controls. Singapore Customs located packages of possible interest at the Changi Airport mail and DHL hub through cooperation with ICE HSI and marked them for CBP officers to find when they arrived in the United States.

Training and outreach is also a key component to our international efforts. In fiscal year 2015, ICE HSI conducted 125 international outreach and training events on IP and customs fraud investigations for more than 3,400 people. For example, ICE HSI Hong Kong partners with Hong Kong Customs on capacity building, and recently co-hosted a Department of State-funded regional IP workshop for representatives of 13 Asian governments.

These examples demonstrate the close cooperation that occurs between ICE HSI and our international law enforcement counterparts to combat counterfeit goods before they enter the United States.

#### NEW TOOLS

*Question.* With the high volume of shipments coming in, it is important that ICE and CBP make sure their strategies keep up with technology and the resulting changing patterns in trade. We are in a high-tech digital age, with high-tech digital criminals. What new tools are U.S. enforcement agencies using to fight counterfeit imports and bring charges against criminals?

*Answer.* U.S. Immigration and Customs Enforcement (ICE) is constantly exploring and testing new tools and technologies that can advance our investigative efforts across the spectrum of our authorities. Many of these tools are cross-cutting, with applicability across multiple investigative areas, including trade fraud and intellectual property (IP) enforcement.

Partnering with the private sector and academia is also one way that ICE stays ahead of the technological curve. The National Intellectual Property Rights Coordination Center (IPR Center) serves a crucial role in bringing together law enforcement and the private sector to discuss new trends, strategies, and best practices in IP enforcement. In fiscal year 2015, IPR Center staff met with 4,893 private industry representatives not only to collaborate on enforcement initiatives and share information, but also to ensure that IPR Center Special Agents, analysts, and program managers are up to date on various cutting edge technologies and detection tools available in the private sector.

ICE has assigned two full-time personnel to the National Cyber Forensics Training Alliance (NCFTA) in Pittsburgh, Pennsylvania. The NCFTA is a non-profit organization that brings together experienced agents and analysts, government experts, and leaders in the business world to form an integral partnership. By merging a wide range of expertise in one location, the NCFTA provides a neutral forum for information sharing regarding emerging and ongoing threats. Having personnel at the NCFTA enables ICE to benefit from the cyber expertise located there by vetting, adding value to, and de-conflicting lead and case information.

Additionally, ICE runs the Cyber Crimes Center (C3), which maintains expertise in the latest computer forensics and cybercrimes trends. Special Agents who are investigating IP crimes can leverage their local computer forensic agents or contact

C3 for support on cyber-related issues that may arise during the course of a criminal investigation.

As part of a more comprehensive approach to combatting digital crimes, ICE has altered its strategy to focus on developing long-term investigations that identify targets, assets, and financial schemes used in operating infringing websites. Through this revised strategy, ICE seeks to arrest, prosecute, seize assets, and criminally seize domain names. In support of this strategy, ICE Special Agents participate in the Intellectual Property and Trade Enforcement Investigations Course at the Federal Law Enforcement Training Center, where they learn about IP enforcement intelligence tools, online trends and structures, and digital media case studies.

#### COUNTERFEIT IMPORTATION REPORT

*Question.* This committee has placed enormous emphasis on trade enforcement. When people ask me what I think about a new trade agreement, the first question I ask is how past trade agreements are being enforced. How the trade remedy laws on the books are being enforced. Trade policy starts with trade law and trade agreement enforcement. In section 310 of the Trade Facilitation and Trade Enforcement Act (the “Trade Enforcement Act”) that was signed into law a few months ago, we directed the Director of ICE and the CBP commissioner to deliver a report to us by the end of September that describes the efforts that ICE is undertaking to address counterfeit imports, particularly those facilitated by online commerce. As you know, in the Trade Enforcement Act Congress also gave ICE and CBP new tools to help identify counterfeit imports, by specifically authorizing more cooperation and information sharing with rights holders. This committee intends to be a partner in implementation of the Trade Enforcement Act, so we need to know how its implementation is helping address the problems to which the bill intends to respond. We don’t just send bills to the President and move on. Implementation of legislation is as important as getting legislation to the President’s desk.

Will the report described in section 310 be delivered to Congress on time, and does ICE intend to include in the report an assessment of how the new tools Congress has provided are successfully being utilized?

*Answer.* U.S. Immigration and Customs Enforcement is working closely with U.S. Customs and Border Protection and the Department of Homeland Security to complete all reports mandated by the Trade Facilitation and Trade Enforcement Act by the timelines defined in the legislation, including the report required by section 310. Because the report is due on September 30, 2016, before the fiscal year statistics have been finalized, the report will address enforcement efforts from fiscal year 2015. Therefore, this year’s report will serve as a baseline that can be used to better identify enforcement successes resulting from implementation of the legislation. Included in the September 30, 2017 report on section 310 will be an assessment of how the new tools provided by Congress were successfully utilized.

#### ENFORCEMENT PRIORITY FOR COUNTERFEIT PRODUCTS I

*Question.* All types of products are being targeted by counterfeiters, from clothing, jewelry, and shoes, to pharmaceuticals, smart phones, and high-tech components for airplanes. Not only do the counterfeits pose a threat to U.S. businesses, but many threaten the health and safety of the U.S. consumer. Fake drugs impede the treatment of patients, fake electronics can catch fire, and fake auto parts can make a car malfunction.

Does ICE prioritize enforcement against counterfeit goods based on the potential harm to the health and safety of the U.S. consumer? How do you work with FDA, the Consumer Product Safety Commission and other agencies to protect U.S. consumers?

*Answer.* The National Intellectual Property Rights Coordination Center (IPR Center) brings together 23 partners, consisting of 19 key Federal agencies, INTERPOL, Europol, and the Governments of Canada and Mexico in a task force setting. This structure enables the IPR Center to effectively leverage the resources, skills, and authorities of each of the partners and provide a comprehensive response. The Food and Drug Administration (FDA) Office of Criminal Investigation (OCI) is one of the 23 partners, and ICE regularly partners with FDA OCI on criminal investigations that involve counterfeit, unapproved, or adulterated pharmaceuticals. The Consumer Product Safety Commission (CPSC) is also a partner of the IPR Center. ICE collaborates with the CPSC on issues that would fall under their area of expertise.

Through its leadership of the IPR Center, U.S. Immigration and Customs Enforcement (ICE) prioritizes enforcement against counterfeit goods that pose a health and

safety risk to the U.S. consumer. The IPR Center's mission is to address the theft of innovation that threatens U.S. economic stability and national security, undermines the competitiveness of U.S. industry in world markets, and places the public's health and safety at risk. In furtherance of this mission to protect the health and safety of the public, the IPR Center has developed the following initiatives:

- (1) Operation Chain Reaction targets counterfeit goods entering the supply chains of the U.S. Department of Defense (DOD) and other U.S. Government agencies. These counterfeits pose a health and safety risk because they can potentially delay DOD missions, affect the reliability of weapon systems, imperil the safety of service members, and endanger the integrity of sensitive data and secure networks.
- (2) Operation Apothecary targets the smuggling, illegal importation, and sale of unapproved, counterfeit, or adulterated pharmaceuticals in the United States. People with substance use disorders seeking pharmaceutical grade medicines they believe to be relatively safe such as Oxycontin are now encountering lab-made fentanyl that is pressed into counterfeit pills that are branded to look like prescription medicines. When consumers take these, they often rapidly overdose because the counterfeit contains extremely potent illegally made product.
- (3) Operation Plastic Beauty addresses the illegal production, importation, and sale of counterfeit personal healthcare and beauty products, such as cosmetics or perfumes.
- (4) Operation Engine Newity counters the threat of counterfeit automotive, aerospace, rail, and heavy industry related components, such as airbags and bearings.
- (5) Operation Guardian is an umbrella investigation that covers all counterfeit products that pose a health and safety risk to consumers, whether or not the products specifically fall under one of the other initiatives. Examples of products that are covered by Operation Guardian include toys, electronics, and batteries.

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QUESTION SUBMITTED BY HON. ROBERT MENENDEZ

ENFORCEMENT PRIORITY FOR COUNTERFEIT PRODUCTS II

*Question.* Assistant Director Foucart, in follow up to the question I asked you at the hearing, how is your office implementing the report language to the Trade Facilitation and Trade Enforcement Act of 2015 that I authored with Senator Hatch to raise the enforcement priority for counterfeit products, specifically those marked as "gifts" to evade customs duties and detection? What new resources have been brought to bear? What share of our agents' time is focused on this? I would appreciate a written answer on the IPR Center's compliance plan and actions.

*Answer.* The Department of Homeland Security's (DHS) role to facilitate legitimate trade and travel, while identifying and preventing counterfeit products from entering into commerce, presents a significant challenge for law enforcement officials. Intellectual property rights (IPR) related seizures by DHS have risen 444 percent, from 6,500 in fiscal year (FY) 2003 to 28,865 in FY 2015. In FY 2015, express consignment and international mail shipments were the top areas for IPR seizures, combined making up 90 percent of all IPR seizures. This is a 3 percent increase over FY 2014, and the volume of small packages entering through express consignment and international mail shipments are expected to increase as direct-to-consumer sales and e-commerce industries surge.

High-volume, low-value shipments create a tremendous resource challenge for U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). Although express consignment and international mail shipments generally contain a smaller piece count and can be minimal in declared value, they nonetheless are subject to the same seizure and forfeiture procedures as larger cargo shipments.

To combat this challenging issue, CBP and ICE work closely together. CBP analyzes all seizures, including those described as gifts. The analyzed seizure data is used to identify recidivists, target their shipments, and refer violators as leads to ICE for investigation.

The official establishment of the National Intellectual Property Rights Coordination Center (IPR Center) by the Trade Facilitation and Trade Enforcement Act of

2015 (TFTEA) is a welcome recognition of this great resource and the work it continues to do to advance U.S. Government efforts and resources to attack counterfeit products, including those marked as gifts to evade customs duties and detection. The IPR Center's priorities include coordinating investigations of IPR violations, conducting and coordinating domestic and international law enforcement training on intellectual property (IP) investigations, coordinating with CBP on U.S. activities to prevent the importation or exportation of IP infringing merchandise, supporting international interdiction of IPR merchandise destined for the United States, collecting and integrating domestic and international information on IPR infringement, disseminating information on IPR infringement to other Federal agencies, and conducting private sector outreach and information sharing.

The IPR Center has begun to implement many of the new TFTEA requirements already, and is working on identifying the resources and funding necessary to fulfill all facets of this new law, including developing a risk-based alert system to improve the targeting of persons that repeatedly infringe on intellectual property rights. In furtherance of its TFTEA implementation responsibilities, the IPR Center has asked each ICE Special Agent in Charge office to develop a strategic plan to enhance their commercial fraud and intellectual property enforcement efforts. These plans address training for the agents; enforcement best practices and challenges; interagency cooperation, including enhancing relationships with CBP and the Department of Justice; and private sector outreach. Based on this assessment, the IPR Center is working with ICE to identify where additional resources can be best placed as they become available.

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QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

OPERATION CHAIN REACTION

*Question.* Mr. Foucart, counterfeits and theft of Intellectual Property not only threaten U.S. economic competitiveness, they can be a threat to consumer health and safety and to national security.

The Pennsylvania defense industrial base helps ensure that our warfighters have the most innovative, most effective equipment and technology to ensure that they are never in a fair fight, as General Odierno used to say. I am concerned about the impact that counterfeiting has on the defense supply chain.

In your testimony, you referenced Operation Chain Reaction, which addressed counterfeit circuits made in China. What are the main countries behind this counterfeit activity, and how does ICE work with the Department of Defense to identify vulnerabilities in our supply chain?

*Answer.* Operation Chain Reaction (OCR) is a comprehensive initiative that targets counterfeit goods entering the supply chains of the U.S. Department of Defense (DOD) and other U.S. Government agencies. These counterfeit parts come primarily from China.

OCR combines the expertise of the following agencies: U.S. Immigration and Customs Enforcement (ICE); Air Force Office of Special Investigations (AFOSI); Naval Criminal Investigative Service (NCIS); Defense Criminal Investigative Service (DCIS); U.S. Army Criminal Investigation Command; Defense Logistics Agency, Office of the Inspector General (OIG); Department of Justice (DOJ), Computer Crimes and Intellectual Property Section (CCIPS); U.S. Customs and Border Protection; Federal Bureau of Investigation; General Services Administration, OIG; INTERPOL; National Aeronautics and Space Administration (NASA), OIG; Department of Energy; National Reconnaissance Office, OIG; Nuclear Regulatory Commission; and Coast Guard Investigative Service.

Under the auspices of OCR, ICE works closely with its DOD counterparts to identify and investigate incidents of counterfeit goods in the supply chain. This cooperation involves a combination of training, outreach, supply chain assessments, and enforcement activities. In addition:

- ICE conducts presentations at the Defense Counter-Proliferation Training Program (DCTP), which is a joint effort by AFOSI, NCIS, and DCIS at the Federal Law Enforcement Training Center in Glynco, Georgia. DCTP is an introductory course that promotes awareness of the threats facing DOD technologies and endorses partnerships within the DOD to counter foreign intelligence entity initiatives, protect critical U.S. information, and ensure a continued technical and military advantage for the U.S. military. This course dis-

cusses the processes required to successfully investigate and prosecute the illegal transfer of technology, the roles and responsibilities of the intelligence community, and how investigators can effectively work together to combat threats to technology.

- ICE works with the Defense Logistics Agency (DLA) to test the reliability of their procurement process. The project aides DLA with obtaining product authentication from the original equipment manufacturers.
- ICE works with the Naval Sea Systems Command (NAVSEA) and AFOSI for commodity expertise, testing of suspected counterfeit integrated circuits, and real-time identification of suspect parts during ICE enforcement operations. NAVSEA provided ICE with a list of typically obsolete military grade integrated circuits that would likely be counterfeited by suspect companies, leading to successful investigations. AFOSI supply chain risk management continues to support the analysis of companies suspected of counterfeiting military grade integrated circuits. Both NAVSEA and AFOSI request seized counterfeit circuits for testing in order to increase their knowledge base.
- ICE co-hosts the biannual Microelectronics Working Groups, led by DOJ CCIPS. The focus of the meetings is enhancing communication between law enforcement and industry. Attendees include defense industry representatives, law enforcement (both civilian and DOD), and Assistant United States Attorneys.
- OCR also conducted 7 webinars that reached 114 special agents and intelligence analysts. The webinars consisted of an OCR 101, case overviews from agents who are subject matter experts on OCR investigations, and presentation by DOJ CCIPS. In addition to the webinars, OCR traveled to Los Angeles, California, and Tampa, Florida, to provide on-site training for ICE, DCIS, NCIS, and NASA OIG. The goal of the training was to increase the investigative capacity of the agents with regard to investigating counterfeits entering the DOD supply chain.

#### INTERNATIONAL PARTNER TRENDS

*Question.* Mr. Foucart, I note that China accounts for the lion's share of counterfeits seizures—with 52 percent by value coming from the Chinese mainland and 35 percent by value from Hong Kong.

On average, do our international partners see the same trends in counterfeit imports as we do in the United States, particularly with respect to the share of counterfeits coming from China, and trends in counterfeit pharmaceuticals?

*Answer.* U.S. Immigration and Customs Enforcement (ICE) does not officially monitor the influx of Chinese goods into other countries; however, based on information shared with the ICE Attaché in China and discussions with American corporations operating in the region, China continues to be a major source of counterfeit goods coming into the United States, as well as into Brazil, Spain, Russia, and the United Kingdom. Even though Hong Kong accounts for 35 percent of the value, the counterfeit goods are likely sourced from mainland China and transported to Hong Kong for shipment.

With regard to the movement in counterfeit pharmaceuticals, the current trend leans toward India as a significant source. Much like China, India has a robust legal chemical industry that provides criminal organizations with a ready source of chemicals that are used in the production of counterfeit pharmaceuticals. ICE Homeland Security Investigations has seen an increase in the number of seizures of counterfeit pharmaceuticals originating from India.

#### COORDINATION WITH TREASURY AND IRS

*Question.* Mr. Foucart, in addition to IPR violations, I presume many of the cases you discuss in your testimony may also have a revenue component. Can you describe your coordination with Treasury and IRS, and to the extent you are able in this setting, discuss instances where your investigations have led to cases involving trade based money laundering?

*Answer.* Trade-based money laundering (TBML) is one of the most complex and dynamic forms of illicit money movement to investigate. TBML undermines legitimate business and commerce. Transnational criminal organizations will often dump imported goods at a discount to expedite the process of receiving “clean” proceeds. TBML can also destabilize sovereign governments through the loss of tax revenue

on discounted goods and duty collection on undervalued imports and fraudulently manifested goods.

U.S. Immigration and Customs Enforcement (ICE) special agents have jurisdiction and authority to investigate money laundering violations of titles 18 and 19 of the U.S. Code. Criminal enterprises often engage in a variety of criminal schemes designed to make illicit profits. Examples of these activities result in unlawful activities include, trade-based fraud, intellectual property rights violations, and customs violations such as false statements or smuggling. Applying money laundering and asset forfeiture laws is a powerful means of attacking the threat of trade fraud and intellectual property theft. Enhanced penalties for violating money laundering statutes are significant and include fines up to \$500,000 and/or imprisonment up to 20 years.

ICE is very active in the financial investigation arena and employs its existing relationships with other Federal agencies to detect, investigate, and prosecute those involved in money laundering or illicit proceeds of crime schemes. ICE has created various units and initiatives that serve the sole purpose of targeting organizations that seek to exploit trade and the U.S. financial system for their illegal gain.

These units include the Trade Transparency Units (TTU) to develop partnerships with domestic and international trade, customs, and financial representatives to detect trade discrepancies and investigate criminal violations focusing on TBML. TTUs allow for the exchange of trade data with foreign partners. The values reported on U.S. import/export declarations are compared against the corresponding values reported on foreign counterpart import/export declarations. This exchange of information adds a level of transparency to the international trade system. The TTU works with its international partners to identify abnormal trade transactions that may indicate TBML, customs duty evasion, and other related financial crimes.

The success of ICE collaboration was recently illustrated when ICE Homeland Security Investigations (HSI) Buffalo conducted an illicit trade/TBML investigation into imported Chinese magnesium powder disguised, mislabeled, and undervalued to circumvent a 305.56 percent antidumping duty, resulting in a loss to the U.S. Government of \$14.6 million in customs duties. The investigation proved that a conspiracy was orchestrated to defraud the Department of Defense (DOD) by using substandard Chinese magnesium powder to manufacture countermeasure flares used in the defense of U.S. military aircraft. The defendants were able to sell the DOD 1.8 million fraudulent, untested substandard countermeasure flares at a cost of \$42 million. On January 13, 2015, ICE HSI Buffalo reported this investigation resulted in three guilty pleas to charges of Smuggling; Money Laundering; and Aiding and Abetting Illegal Importation by Presenting/Transmitting Forged, Altered, or False Documents to U.S. Customs and Border Protection. This case ultimately resulted in 10 indictments, 7 arrests, 5 convictions, 27 search and seizure warrants, \$950,000 seized, \$330,467 forfeited, and a DOD penalty of \$30 million.

ICE has partnered with the Treasury Executive Office for Asset Forfeiture (TEOAF) to identify and target Third Party Money Launderers who often launder illicit proceeds through a broad range of schemes. These schemes may include creating shell corporations, opening offshore bank accounts in the shell corporation's name, and creating or using front businesses for their illegal activity and money laundering, to name a few. Complicit businesses, accountants, lawyers, brokers, and financial institutions may be enlisted to launder money. Human smugglers, human traffickers, arms traffickers, drug traffickers, terrorists, and other criminals depend on money laundering networks and financial systems to move, store, and conceal illicit proceeds. They also depend on fraudulently created or fraudulently obtained documents, such as passports and visas, to move themselves or their clients into the United States to reside or conduct business within our borders.

In September 2014, ICE conducted large-scale enforcement actions in the Los Angeles Fashion district targeting trade-based money launders and third party money launders. The results of those actions were the seizure of more than \$90 million in cash and initiated forfeiture proceedings on several real properties. ICE worked collaboratively with CBP, Internal Revenue Service, and State and local agencies during this operation.

ICE will continue to leverage all its tools to coordinate and unite domestic and international law enforcement efforts to combat illicit trade crimes.

PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing to examine trade opportunities and challenges for American businesses in the digital age:

Welcome, everyone, to this afternoon's hearing, which we've titled "Challenges and Opportunities for U.S. Business in the Digital Age."

Over the last decade, the digital economy has dramatically changed our way of life—from the way we hail a cab, search for a new home, or order take-out, it has a profound effect on our lives.

This is also true for the ways in which companies conduct their business.

The digital economy provides U.S. businesses of all sizes with great opportunities and challenges. In today's marketplace, businesses no longer have to rely on the hope that a passerby will notice something in their storefront window and come in. Today, a business can set up shop wherever it wants and sell all kinds of products over the Internet to customers all over the world.

This represents a huge portion of worldwide commerce. According to the Internet Association, about \$8 trillion changes hands in the digital marketplace each year.

In addition to having a digital storefront that can be seen in every corner of the world, the Internet also provides new tools for businesses to find and retain customers. For example, it is now possible to tailor advertisements to specific market segments and interact in meaningful ways with customers using social media.

However, as with all great technological and societal developments, there are challenges that come part and parcel with the opportunities. Although the United States has largely embraced and supported the changes brought about by expanded Internet commerce, there are many countries around the world that do not fully embrace this potential.

Many countries want to regulate various facets of the Internet, including the digital economy, operating under a mindset from the last century.

Put simply, that's not a wise or sustainable approach to dealing with the Internet. That is why the Finance Committee worked to make digital trade a priority in our international trade negotiations through the Trade Promotion Authority, or TPA, statute that was signed into law last year.

The digital trade negotiating objective in the new TPA law directs the administration to do a number of things in order to protect the Internet as we know it, including ensuring that our digital goods and services can be exported to other nations without duties, that our electronic goods and services are treated no less favorably than their physical counterparts, and that the free flow of data across borders is not inhibited.

Another equally important challenge facing businesses and consumers in the digital marketplace is the rise of counterfeits. Just as the digital economy has made it easier for businesses to find and engage with consumers, it has also enabled counterfeiters to do the same.

Small businesses are the backbone of our economy and, for these businesses, the Internet is a powerful tool.

I don't think I'm the only who remembers a time in which the first steps to launching a successful business were finding the right spot to physically locate the business and advertising in the local newspaper. Clearly, times have changed, and, today, small businesses start by launching a website and creating a Facebook page.

Unfortunately, the relative simplicity and efficiency of this process can sometimes be a double-edged sword.

We hear all the time from businesses that have established a robust web presence to grow their business only to find that, as their products became more popular, counterfeiters started to sell fake versions of their products. Some of these counterfeiters are so brazen that they steal photos from legitimate websites and use them to advertise their fake products on search and social media platforms. Equally as unnerving, the consumer often doesn't know that they are purchasing a counterfeit good.

Sadly, the threat of counterfeit goods is only growing.

The Organisation for Economic Co-operation and Development (OECD) recently released a study that shows that counterfeit products accounted for up to 2.5 per-

cent of world trade, or \$461 billion, in 2013. This is a dramatic increase from a 2008 estimate that showed that fake products accounted for less than half that amount.

Counterfeits are a worldwide problem, but the OECD estimates that the United States is the hardest hit, followed by Italy and France. Of the estimated \$461 billion in counterfeit trade in 2013, goods with registered intellectual property rights in the U.S. represented 20 percent, or \$92 billion, of the OECD estimate.

U.S. trade data also shows a growing trend in counterfeits. U.S. Customs and Border Protection, along with Immigration and Customs Enforcement, tracks, on an annual basis, the number of seizures conducted at the border to stop products that violate U.S. intellectual property rights from entering the United States. Over the last decade, these seizures have nearly doubled from approximately 15,000 in 2006 to over 28,000 in 2015. The 2015 seizures represent approximately \$1.4 billion of goods.

As we all know, this is a multifaceted problem with no simple solutions.

Congress has taken a number of steps to address these challenges. In addition to establishing a TPA negotiating objective on digital trade, we addressed counterfeits in our Customs bill, which was signed into law earlier this year. This new law established a Chief Innovation and Intellectual Property Negotiator in the office of the United States Trade Representative, strengthened the "Special 301" report, required CBP to publish information concerning the seizure of unlawful circumvention devices, and codified the National Intellectual Property Rights Coordination Center.

These are all important developments. However, as we learned at our FTA Implementation hearing earlier this year, we also must ensure that our trading partners fully implement their commitments in our trade agreements. All too often, we have seen the executive branch allow agreements to enter into force without first ensuring that our trading partners have fully met their obligations. This is especially true when it comes to provisions relating to protecting intellectual property, particularly under the current administration.

Going forward, if the Obama administration wants Congress's support for trade agreements like the Trans-Pacific Partnership, they must not only address outstanding congressional concerns, but also demonstrate that they have achieved a common understanding through detailed plans with our trading partners on how they intend to implement these and other commitments.

As the digital economy continues to evolve, Congress must be vigilant in finding new and better solutions. That is one reason why we are holding this hearing today, to hear firsthand what steps we can take to ensure a safe and secure digital environment for the future.

We have some very accomplished witnesses with us this afternoon. I am very much looking forward to their testimonies and to what I hope will be a robust discussion of how we can more effectively ensure that our workers, consumers, and job creators receive the full benefits of the digital marketplace while also preventing the growing threat of counterfeits going forward.

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PREPARED STATEMENT OF NORMAN T. SCHENK, VICE PRESIDENT,  
GLOBAL CUSTOMS POLICY AND PUBLIC AFFAIRS, UPS

Thank you, Chairman Hatch, Ranking Member Wyden, and distinguished members of the committee. I appreciate the opportunity to appear before you today.

At UPS, our processes are complex and our technology is advanced, but our objective is simple: to ensure world-class service for our customers while providing the necessary data to law enforcement and other government agencies so they can target contraband and identify bad actors that seek to import dangerous goods and counterfeit items into the United States in small packages.

UPS works closely with U.S. Customs and Border Protection (CBP), at our own expense, to comply with, and even exceed, existing legal requirements to provide data to target high-risk inbound shipments and screen them out. In addition to enabling better screening for counterfeit contraband, this data can also be used to screen for shipments from potential terrorists, for illicit drugs, and for other potentially dangerous products.

To achieve these goals, UPS provides advance data to CBP on our packages before they enter the United States; and, in addition, we share shipment data through the Air Cargo Advance Screening (ACAS) system.



The most important aspect of package screening is the use of advance data. In May of 2000, I testified before the House Government Oversight Committee on how UPS provides advance data to help Federal agencies combat illegal drug trafficking. At that time, there were about 21 million package shipments entering the United States annually: about 10 million through the private sector—which were accompanied by advance electronic data—and 11 million through the international mail system, which did not have any electronic data. Even back then, it was clear that Customs and other Federal agencies could not manually screen packages that were not accompanied by advance data—purely because of volume—and that the most effective way of interdicting bad shipments was through the use of advance electronic data.

By 2016, the volume of packages entering the United States has increased many times over: the Department of Homeland Security reports that in 2014, CBP processed approximately 340 million mail parcels arriving from foreign postal operators, most without electronic data. It is also estimated that 35 million packages enter the United States through private carriers like UPS, all with electronic data. If Customs couldn't effectively manually screen 11 million packages without advance electronic data in 2000, imagine what they are tasked with when screening 30 times that amount.

UPS and other private express carriers use advance electronic data to manifest their shipments on a package-level basis, presents them to customs, and provides critical screening data to law enforcement to counteract illicit trade.

We have been using electronic data for years, even before it was required by the Trade Act of 2002, to provide CBP with item-level detail about each and every shipment entering the country. This data consists of seven data points: who and where it is coming from; to whom and where it is going; what's in the shipment (item description); piece count; and item weight. This not only helps us reduce the potential of dangerous goods entering through our system, but also aids in manifesting compliance, payment of duties and fees, and clearance through customs.

Perhaps more importantly, UPS is also working with CBP, the Transportation Security Administration, and other Federal agencies, by sharing data through the ACAS (Air Cargo Advance Screening) system.

ACAS, currently a pilot program, builds on data sets from electronic manifests required in the past, and provides the necessary information before shipments depart for the United States. It allows authorities and watch-groups to target potentially high-risk shipments.

As the advance electronic submission allows for risk assessment or data level screening prior to arrival in the United States, it takes away the need for physical inspections, which is cumbersome and ineffective.

UPS is committed to help Federal authorities identify bad packages in our system, and believes that the best way to do so is through smart policy requiring electronic manifesting on all shipments—public and private—so that Customs is well-equipped to combat illegal trade. With cross-border e-commerce growing at an unprecedented rate and showing little signs of abating, the only way to protect our borders, national security, American businesses and consumers, and even our own supply chain, is to employ data-driven solutions and share this intelligence with law enforcement and other Federal agencies.

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QUESTIONS SUBMITTED FOR THE RECORD TO NORMAN T. SCHENK

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

*Question.* You talked about the power of advance manifest data to stop fakes from entering our country and suggested that such data could be a useful tool for the U.S. Postal Service as well. There is another angle to the postal issue that I would like to raise. Just 6 months ago, USTR issued its Notorious Market Report. In that report, USTR raised significant concerns with Alibaba platforms, saying that: “Brand owners continue to report that Alibaba platforms, particularly Taobao, are used to sell large quantities of counterfeit goods. USTR is increasingly concerned by rights holders’ reports that Alibaba Group’s enforcement program is too slow, difficult to use, and lacks transparency. Stronger and more efficient systems for addressing right holders’ concerns should be undertaken without delay.”

Given these concerns, I was surprised to learn that the U.S. Postal Service recently entered into a Memorandum of Understanding with Alibaba that will help

speed delivery of merchandise sold through AliExpress to consumers in the United States. Given USTR's concern about Alibaba as a platform for fakes, does this new arrangement raise any red flags for you?

Answer. At the outset, I would note that UPS as a matter of policy does not comment on arrangements between other companies. This is especially true for any agreement between the Postal Service and AliExpress, as there is little public information available regarding the agreement.

However, more generally, any arrangement involving volume destined for the United States—postal or otherwise—that is not required to provide advance electronic manifesting and screening data raises red flags. As I testified before the committee, perhaps the most important aspect of package screening is the use of advance electronic data to enable Customs and Border Protection and other law enforcement to identify and interdict dangerous and illegal shipments. The use of screening data not only allows for advance detection and diversion of items coming from known bad actors, it also greatly reduces the need for physical inspections, which are costly and less effective.

Again, while UPS declines to comment on the Postal Service, AliExpress, or either of their respective capabilities for data sharing, we maintain the position that any volume that is allowed to enter the United States without advance electronic information being shared presents significant challenges to combating illegal cross-border trade, including trafficking in counterfeit goods.

*Question.* Congress has made protection of intellectual property rights a key component of our international trade strategy for many years. Ensuring that our international trading partners agree to strong enforcement provisions in our trade agreements is a vital element of this strategy.

During our hearing, I touched on the importance of making sure that our trading partners effectively implement their obligations before we allow an agreement to enter into force, but I think that even more can be done. Not only must we put strong rules into place, but we must work with our trading partners to make sure that adequate capacity building is available so that they can develop the technical expertise to stop fakes before they even cross U.S. borders.

Can you comment on whether you believe capacity building is an effective tool to stop fakes from entering our country and, if so, what type of capacity building is most effective?

Answer. UPS agrees that enhanced capacity coupled with smart, strong border rules is integral to combatting illegal trade, including preventing the entry of counterfeit and/or dangerous goods into the United States. However, exponential growth in cross-border e-commerce volume presents unique challenges that affect the way the United States and our trading partners need to focus our capacity building efforts.

Namely, large flows of e-commerce packages into the United States necessarily require that we implement data-driven solutions instead of attempting to approach illegal trade interdiction through manual inspection. For example, the volume of packages from China to the United States through the international postal system has grown a reported 70 to 90 percent annually, according to China Post, and shows little sign of slowing. It is virtually impossible to develop an effective interdiction system if U.S. Customs and Border Protection is required to manually screen these items without electronic data on a package-level basis.

Of course, the onus for investment in customs and security capabilities does not fall on the United States alone. Our trading partners, to the extent that they want to be able to participate in American markets, must be brought up to speed through requiring increased investment in information sharing capabilities. This is, to a certain extent, limited by the United States' participation in the Universal Postal Union (UPU) Convention, a congressional-executive agreement between the United States and 191 other member countries to deliver each other's mail, including small packages.

Regulations promulgated under the UPU Convention do not require the sharing of advance electronic data, and instead allow for "simplified" customs procedures for shipments from postal operators like China Post or India Post. The United States, led by the State Department in its delegation to the UPU, has proposed measures that would require non-discriminatory treatment of all packages—through private carriers as well as postal carriers—but those proposals face strong political headwinds, especially from China, who has actively fought any proposal to mandate data sharing for packages.

Unfortunately, the United States cannot, by itself, alter the UPU Convention or the regulations promulgated thereunder. However, this should not deter the United States from exploring all options to enforce border security laws for all shipments through posts and private carriers alike. With cross-border e-commerce growing at an unprecedented rate and showing little signs of abating, the only way to protect our borders, national security, American businesses and consumers is to mandate advance data sharing capabilities for all shipments entering the United States.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* As you noted in your testimony, the volume of small packages has increased substantially in recent years. In large part, this is due to the changing landscape of trade resulting from digital technologies. For example, we know that small and medium-sized U.S. businesses are now participating in the global economy—accounting for about 50 percent of U.S. exports—which used to be reserved for only large multinational companies.

Could you speak to changes you have seen in your customer base and how trade patterns reflect this dynamic? The United States is pretty open for business, and we have low barriers for imports. What are the challenges that our smaller exporters face in shipping to foreign markets?

*Answer.* Over the years, UPS has seen a number of trends emerge that are shaping global trade. Of course there is the e-commerce boom, where digital trade has served as an equalizer allowing companies who offer the best products to thrive regardless of location and size. We have also seen the growing need of companies to compete internationally and the internationalization of supply chains where nearly 60% of trade is in intermediate goods, including the inputs and components that cross borders dozens of times in the production of a good.

These trends have increased the pressure on international trade infrastructure both in terms of the volume of goods being traded and the time pressures many of our customers face. Burdensome customs procedures, which involve excessive paperwork and sometimes extremely lengthy hold-ups at borders, have a huge impact on businesses of all sizes, but especially for our smaller exporting customers. These border barriers can lead to missed shipment deadlines and damaging financial losses, and over time can make or break a business' relationship with a client. For time- and temperature-sensitive shipments such as pharmaceuticals and healthcare products, the time window may be even more critical.

Big companies have the resources and expertise to tackle these challenges, but much of the increase in small parcel package volume crossing borders comes from small to medium size companies who lack the expertise to understand the laws and regulations of international trade. While service providers like UPS have developed software tools to support our customers, it doesn't negate the challenges the challenges facing companies that don't understand the complex processes. Simplifying clearance processes to reduce administration burdens would help to improve the flow of goods across borders and enhance both security and compliance.

UPS is a strong advocate of trade agreements like TPP given the role they play in breaking down customs and regulatory and other barriers our customers face. As you note, U.S. barriers are already quite low so these agreements disproportionately tear down other countries' trade barriers. As one piece of evidence of this positive effect on U.S. exporters, UPS on average has seen our export volume grow about 20% to countries with which the U.S. has recently implemented a trade agreement. While eliminating market barriers is of benefit to our customers of all sizes, our smaller customers particularly benefit as they don't have the experience and resources to navigate barriers as effectively.

*Question.* Many companies in Oregon, from large multinationals to small businesses, sell an increasing share of their products through the Internet, rather than brick and mortar retail stores. For customers around the globe, they take orders, process payments, search inventory, and arrange for the delivery of products, including via UPS. These transactions are highly data intensive, requiring safe and secure transfers of data across borders for processing in major regional technology hubs.

In recent years, several countries have considered or even imposed measures that would restrict cross-border data flows and require companies to store and process data on servers located in the jurisdiction where the data is collected. I am particularly concerned that U.S. companies face uncertainty regarding their ability to transfer data between the United States and the European Union.

Mr. Schenk, can you comment on how restrictions on cross-border data flows would affect UPS and the business customers it serves?

Answer. UPS shares the concern you raise about measures that would restrict cross-border data flows and/or require companies to store and process data on local servers. In today's economy, global data flows are essential for businesses across all sectors—manufacturers, service providers, and agricultural firms. E-commerce, in particular, has allowed small and medium-sized businesses to go global from day 1, creating a new engine of innovation and jobs.

UPS relies on the continuous, seamless movement of data, often across borders. Data transfer restrictions that limit how companies process information on a global basis impede UPS's operations and harm both our individual and business customers. At UPS, data flows ahead of our packages and behind our packages. We send customs and security data ahead to government authorities and our customers track and trace to follow their packages on the back end. Last year we averaged 58.2 million daily tracking requests.

We are pleased that TPP's e-Commerce chapter includes a number of important provisions to prohibit government restrictions on cross-border data flows and data localization, which should help fuel the digital economy.

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PREPARED STATEMENT OF TOM TRIGGS, CHIEF LEGAL OFFICER AND  
GENERAL COUNSEL, BELKIN INTERNATIONAL, INC.

I. INTRODUCTION

Chairman Hatch, Ranking Member Wyden, and distinguished members of the Senate Finance Committee, thank you for the opportunity to testify on the important subject of challenges and opportunities facing U.S. businesses in the digital age.

My name is Tom Triggs, and I am the Chief Legal Officer and General Counsel of Belkin International, Inc. I lead an international team of attorneys that assists the company in growing, developing, and protecting all aspects of Belkin's business.

As the esteemed members are well aware, ecommerce presents tremendous opportunities for businesses both here in the United States and abroad. That much is obvious. We at Belkin celebrate the digital age. This is reflected by the praise we have received from a variety of publications for our innovative spirit, including recognition from *Fast Company* as one of the top 10 most innovative "Internet of Things" (IoT) companies in the world.

The digital economy has contributed to Belkin's growth from its humble beginnings in a southern California garage in 1983, while also creating significant challenges for the operation of our businesses. I would like to speak to you today about certain of those challenges, in particular, the increasing complexity of international brand management, the proliferation abroad of counterfeit products, and the ease with which such products are purchased and sold online.

II. ABOUT BELKIN

*i. Belkin's Businesses*

At Belkin, we create products that help people realize the power of technology and make their lives better, easier, and more fulfilling. This has been Belkin's mission since 1983 when our Founder and CEO, Chet Pipkin, created the company in his parents' garage in Hawthorne, California. Even back then, Chet's passion was driven by a desire to satisfy customers' needs. He manufactured computer cable assemblies in the evenings and on weekends, and sold them to local computer manufacturers and dealers in response to the burgeoning personal computer market in the 1980s.

We remain true to our southern California origins, and today we are based in Playa Vista, in the heart of Silicon Beach, the Los Angeles tech center. We have grown significantly since our roots in Chet's parents' garage. We currently employ over 1,200 employees in 22 countries throughout the world, over 700 of whom are based here in the United States. While we are at our core an American company, we are global in reach and outlook.

Belkin owns three core brands: Belkin, Linksys and WeMo, each a premium consumer electronics brand. Belkin delivers mobile and computer accessories, known for their quality, reliability, simplicity and ease of use. Linksys delivers consumer

networking products, and helped make wireless connectivity mainstream around the globe, delivering top-ranked consumer Wi-Fi routers and connectivity devices. Our newest brand, WeMo, is taking on the Internet of Things, delivering market-leading customizable smart home experiences that empower people to monitor, measure and manage their electronics, appliances and lighting at home and on-the-go.

Belkin has recently embarked on an ambitious joint venture called “Phyn” with our new Finnish partner Uponor, a leading supplier worldwide of plumbing for residential and commercial spaces. Phyn’s mission is to utilize Belkin’s technology-leading intellectual property to provide an intelligent water solution that protects families and their homes from leak damage, enables mindful conservation of water within the home, and enhances household water usage with automated and anticipatory controls.

#### *ii. Belkin’s Product and Brand Development*

At Belkin, we believe we enjoy success because we are an advocate for the consumer in every facet of our business. Our brand purpose is built on the belief that the sole reason technology exists in the world is to make people’s lives better, easier and more fulfilling. We realize this purpose by making it our mission to understand what people wish technology would do, what drives them crazy about technology, and what they never even dreamed technology could do. We simplify, streamline, enhance, and beautify to make technology work effectively, effortlessly, harmoniously, and efficiently.

Belkin is about peace of mind. Product quality is essential to this. Our products are thoughtfully designed to be highly desirable, delightful to use, and a pleasure to live with. We seek to lead the standard for design quality in the consumer electronics industry.

For over 30 years, Belkin has invested billions of dollars in developing and manufacturing products that provide the highest quality experience for our consumers. Our cross-functional teams work together to ensure that our products work seamlessly, are safe and reliable, and look good. This commitment to quality is the reason our products are found at major retail stores that U.S. customers know and trust, such as Best Buy, Walmart, Target, and Apple stores.

Our products are recognized both by industry experts and consumers for their excellence, and the substantial investment we make in delivering the best experience possible to our consumers is reflected in the numerous awards we have won, particularly for our innovative product designs.

In addition to the resources that we devote to product development, Belkin also spends tens of millions of dollars each year developing our brands. These brands communicate who we are, and our values, to consumers. When consumers see a Belkin product, or a Linksys product, or a WeMo product, they know that it is a product they can trust, and one that carries a rich heritage of commitment to quality and excellence.

### III. BRAND MANAGEMENT IN AN INTERNATIONAL DIGITAL MARKET

#### *i. The Digital Revolution*

When Belkin was formed in 1983, the Internet and the transformative role that it would play in global commerce was unknown and unknowable. Our products were originally sold, like all other consumer products at the time, in brick and mortar retail stores, and developing brand awareness was dependent upon gaining shelf space in those retail stores.

Today, according to a UPS report released last week, online orders now surpass in-store purchases, with 51% of shoppers’ purchases, excluding groceries, made online within the 3-month period prior to the report’s publication. Also, those consumers who are not buying online are likely to be researching products online before making a purchase, whether to locate product specifications, read product reviews or simply find the best prices.

As the ecommerce market emerged and grew, so did our business, and the way we interacted with our consumers evolved in sync with these developments. We launched an online store in the United States, <http://www.belkin.com/us/>, in 2000, and we currently operate online stores in the Americas, Europe, Asia, and Australia. Today virtually all of our retail store customers operate their own websites in addition to their physical stores. In fact, some of our largest customers are now exclusively online sellers, such as Amazon and Newegg. Our websites are an important tool for not only selling products to customers, but also for educating them about who we are, what products we offer and how to communicate with us.

*ii. New Challenges Presented by the Digital Age*

While the Internet has opened new markets and provided Belkin with global growth momentum, it has also brought challenges, one of the most significant being the unprecedented access to markets that online commerce has afforded counterfeiters.

The Internet has provided us all with a virtual storefront to the rest of the world. While Belkin built the foundations of its business by developing strong retail relationships, today anybody online, including criminals, can sell anything, anywhere. There are very low barriers to entry. Third parties who have not invested the money, time, and resources that Belkin has in developing, designing, testing, and manufacturing products and building strong, dependable brands, are now able to inexpensively manufacture inferior counterfeit copies of our products and sell them to unsuspecting consumers on the global market.

The sale of counterfeit products has now become a big business worldwide; as estimated by the International Chamber of Commerce (“ICC”) in a 2012 report, the annual value of counterfeit goods sold globally would exceed U.S.\$1.7 trillion by 2015, representing over 2% of the world’s total economic output in 2012.<sup>1</sup>

The United States is the country that is hardest hit by the trade in fake goods. According to an April 2016 report by the Organisation for Economic Co-operation and Development (“OECD”) and the European Union’s Intellectual Property Office, almost 20% (by total value) of the fake goods seized globally infringe intellectual property rights registered in the United States.<sup>2</sup> In 2015, U.S. Customs and Border Protection and Immigration and Customs Enforcement seized over 28,000 shipments of counterfeit goods valued at U.S.\$1.35 billion, of which 18% (by value) were consumer electronics products.<sup>3</sup> We ourselves have been notified of more than 100 seizures since 2013 of counterfeit Belkin products that third parties attempted to import into the United States; these are just the shipments that were identified to us, and we know that many more such shipments made it through despite the diligence of our customs enforcement agents.

There is a real and substantial cost associated with the sale of these fake products; the ICC has estimated the annual cost of lost tax revenue and additional welfare spending due to counterfeit goods at U.S.\$125 billion in the G20 countries alone.<sup>4</sup>

*iii. Belkin’s Anti-Counterfeiting and Brand Management Program*

At Belkin, we are committed to protecting our consumers from these counterfeiters, thieves who profit from the creativity, good will, and investment of others.

We have already invested many millions of dollars in legal and other fees, as well as valuable time and resources, in our unstinting efforts to protect our company and our consumers from counterfeit goods.

We have been systematically focused for years on the goal of eliminating counterfeits of our products, in order to maintain both the strong Belkin brand recognition and the trust of consumers, as well as to provide a safe and quality product experience to the end user. Counterfeiting is a problem that does not go away if ignored. It is not curbed with a single legal notice. Rather, it requires around the clock monitoring on a global basis and the application of consistent pressure to the relevant law enforcement authorities around the world. It is because we have this focus that we are a leader in the worldwide effort to rid the consumer electronics space of counterfeit products. Our extensive anti-counterfeiting and brand management program leverages the strong relationships that we have established with customs officials in the U.S. and around the world by proactively informing them of instances of counterfeiting and other illegal brand-dilutive activities that we track through our private resources.

Counterfeiting and other illegal brand-dilutive activities present in a myriad of different forms, and, as a result, require experts drawn from a variety of disciplines to combat effectively. To ensure that we protect our brand, we have established an internal business unit network to detect potential violations of our intellectual prop-

<sup>1</sup> See: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>.

<sup>2</sup> See: <http://www.oecd.org/governance/risk/trade-in-counterfeit-and-pirated-goods-9789264252653-en.htm>.

<sup>3</sup> See: <https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/FY%202015%20IPR%20Stats%20Presentation.pdf>.

<sup>4</sup> See: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>.

erty rights (“IPR”), and to investigate, identify, report, and enforce our rights with respect to actual violations. This business unit network is comprised of subject matter experts in a broad range of fields, including legal, NetNames, testing (to determine whether a product is counterfeit), reporting (of the suspected items to the appropriate authorities), and customs. Our coverage is global in nature and collected (using SharePoint software) in a single in-house repository of information.

We constantly monitor the Internet, no small task indeed, for potential instances of counterfeiting or other illegal brand-dilution activities. We compile a monthly report listing instances of detected infringement, ranging from brazen counterfeiting to brand abuse. Oftentimes, in the case of U.S.-based online marketplaces operating both in the U.S. and abroad, when we identify a counterfeit product online, we are able to have that product removed relatively quickly from the subject marketplace. Counterfeit sellers, unfortunately, know how to manipulate the safety measures that many of the marketplaces have established. They do this in a variety of different ways. They may occasionally feature neither quantity nor pricing information, instead advising the buyer to contact the seller directly to discuss options. In some instances, where listings have been successfully closed, the seller may simply re-list the auction and attempt to sell the infringing item again, necessitating multiple actions to close the case successfully.

You might be wondering how we are able to identify a potentially infringing product. The answer is through a multifactor process. During the initial stage, we look for the following indicia of counterfeit packaging, among others:

- (1) Shipments of Belkin-branded products sent directly from Asia are almost always counterfeit, as Belkin does not ship from resellers in Asia to any other market;
- (2) The existence of spelling mistakes on the rear of a package;
- (3) The security sticker being clear;
- (4) Location of advertising, *e.g.*, in the case of an iPhone model, on the front of the product;
- (5) The language and scope of warranties; and/or
- (6) The product being sold purportedly under the Belkin brand is simply one that we do not make (internally, we refer to these as “ghost” products).

In an effort to educate the public and minimize consumer confusion, we have included a page on our website with information to help consumers identify fake products and report potential incidents.

Overall, we are an efficient and effective team. This year alone, we have already taken down 5,738 online listings of counterfeit Belkin products in Europe and the United States.

When we have evidence of extensive counterfeiting activity by a seller abroad, we go in country, engage in private investigations, and then reach out to the relevant law enforcement authorities.

As a result of our constant vigilance, Belkin has filed complaints and injunctions in more than 22 countries against entities that violate its intellectual property rights, all in an effort to thwart the sale of unlawful and potentially dangerous products. Counterfeit electronics affect much more than our bottom line. These cheap, knock-off products also harm the business of legitimate retailers and can even pose a safety risk to end consumers. Our ultimate goal is to rid the market entirely of these counterfeit items so that only authentic Belkin-branded products that provide a quality and safe experience for our consumers are available under our name.

Working with U.S. Customs and Border Protection and foreign agencies, we have seen some success in removing counterfeit products from the market. Below are a couple of salient examples of our work to detect and remove these products. Unfortunately, we know that there are many more we won’t discover or won’t be able to get off the market.

In December 2014, after months of investigation, undercover surveillance, planning, and coordinated effort, Belkin’s Supply Chain Team in Hong Kong and Shenzhen, SinoFaith (an IPR group that specializes in this type of operation) and the law enforcement agencies in Shenzhen, Dongguan, and Guangzhou conducted concurrent raids on 11 counterfeit manufacturing or selling sites in southern China. Belkin and the China State Administration for Industry and Commerce seized more than 1 million counterfeit Belkin goods in this effort, leading to jail time for six individuals. The company would not have been able to see this operation through without the cooperation of both the U.S. and Chinese governments.

Our most recent success story occurred earlier this year when, in coordination with the Department of Economic Development (DED) of Dubai, we oversaw a series of raids across Dubai. In this sting, authorities raided 22 separate stores located in four main Dubai marketplaces and confiscated more than 1,400 counterfeit Belkin-branded products. The counterfeit Belkin products confiscated during the raids included smartphone accessories such as cases, cables, and chargers for both car and home. In Dubai, these resellers, including Dragon Mart and E-City Shop, caught with counterfeit goods are subject to confiscation of merchandise and a fine of 15,000 AED.

While we are able to point to a few success stories today, the reality is that we meet with far more obstacles than success stories when it comes to fighting those who seek to profit from the strength of our brand and its association with consumer safety. Our global fight against the counterfeit brand “Melkin” is one such example of the continued frustrations that we face. We currently have suits pending in China, Hong Kong, and the United States, as well as over 20 trademark oppositions around the world, relating to these infringing products manufactured by a China-based company.

These products are branded with the express purpose of confusing consumers into thinking that in purchasing these products they are purchasing Belkin products. This company, and the individuals and entities behind it, are benefiting unfairly from the Belkin name and reputation while causing significant harm to our business. The infringing products are sold to the same customers through the same channels of trade at a price slightly lower than that of the genuine Belkin products.

In June 2015, we were granted an injunction from the courts in Hong Kong to block Melkin-branded products from entering Hong Kong, which included an order to remove such products from the Global Sources trade fair in Hong Kong.

On November 13, 2015, Belkin filed a complaint under section 337 of the Tariff Act of 1930 with the U.S. International Trade Commission (“USITC”) against Dongguan Pinte Electronic Co., Ltd. and Dongguan Shijie Fresh Electronic Products Factory (the entities behind Melkin). The complaint details the infringement of Belkin’s federally registered trademarks resulting from these companies’ unlawful importation into the United States, sale for importation into the United States and/or sale within the United States after importation, of certain computer cables, chargers, adapters, peripheral devices, and packaging under the brand name “Melkin.” We are seeking in this action an Exclusion Order that would bar from entry into the United States such infringing products, and also a cease and desist order to bar sales of such infringing products that have already been imported into the United States. In December 2015, the USITC agreed to open the complaint for an official review, which is now underway. We expect to prevail in this action, but at a cost of several hundreds of thousands of dollars.

#### IV. BELKIN’S EXPERIENCE AS A MICROCOSM OF THE PROBLEMS FACING U.S. BUSINESSES IN THE INTERNATIONAL DIGITAL MARKETPLACE

Of course, Belkin’s experiences with the explosion in counterfeit goods in the international digital marketplace are not unique. As government and industry witnesses have previously observed before both this and other congressional committees, the availability of cheap manufacturing around the globe makes it easy for counterfeiters to produce packaging that is almost identical to that of the brand owners. However, in our case, and that of many other quality American manufacturers and distributors, the product inside is nothing close to the quality product that we deliver to our consumers. It has not passed through the rigorous safety certifications, testing, or protocols that we are required to satisfy to market our products. Consumers simply cannot know this from looking at the package or the product, for counterfeiters even have the audacity to include counterfeit safety certification marks on the packaging. The result is consumer frustration, Belkin brand damage, and, occasionally, harm to consumers. This story is the same regardless of whether you are talking about consumer electronics, clothing, medicine or a wide range of other industries impacted by this worldwide problem.

Ecommerce presents tremendous opportunities and risks for consumer electronics firms like Belkin. On the one hand, a powerful platform for reaching vast numbers (billions, in fact) of new customers, both at home and abroad, has been created. But this same platform also presents a new, almost universally accessible, channel for counterfeiters to sell fake products through, hurting brand owners like us and in some cases endangering consumer safety.



No place illustrates both the relevant opportunities and risks on the same scale as China. China reportedly has over 700 million Internet users, and last year recorded U.S.\$672 billion in ecommerce sales from approximately 380 million Chinese consumers shopping online.<sup>5</sup> And by 2020, China's ecommerce market is expected to reach U.S.\$1.1 trillion. But that market is also plagued by rampant sales of on-line fakes. The above-referenced OECD study from April 2016 also found that nearly all of the counterfeit goods captured by customs offices around the world came from China.

China has in place a recently revised Trademark Law that provides some new enforcement tools, and we have recently seen improvement in effective enforcement from Chinese agencies like AIC that we work with. We also spend significant time with large Chinese ecommerce companies, and I personally have traveled twice to Alibaba's campus in Hangzhou, China, to identify and take down criminals using Alibaba's platforms to sell counterfeit Belkin products in huge volumes. Alibaba has told me repeatedly that they want their ecommerce sites and brands to meet the highest standards of integrity and support for U.S. businesses.

But our efforts are not as effective in China as they are, say, here at home. China's comparatively weak rule of law in general, and an IPR protection regime that still has a long way to go, both on paper and in practice, before it even approaches international best practices, pose big barriers for U.S. companies seeking effective solutions to these problems. Simply put, IPR enforcement is less developed, and less predictable, in China than it is in the West.

On that front, I want to point out that the former chairman of this Committee, Ambassador Max Baucus, is doing a great job to help U.S. companies in this fight. I have met with him, and his team of State and USPTO officers, numerous times, and I can tell you directly that our Mission in China is working vigorously with the Chinese government to strengthen its IPR regime, and is also calling on Chinese ecommerce platforms to live up to their "no tolerance" rhetoric.

There is no cut and dried answer to what Congress or any other legislative or regulatory body across the globe can do to eliminate or substantially reduce the online sale of counterfeit goods. Hearings like these are an important step, and certainly helpful in highlighting the nature and scope of the problem so that our legislators have the "facts on the ground" needed to craft the appropriate remedial legislation. However, beyond that, it becomes much more murky, as one approaches the intergovernmental/diplomatic side of the equation. Belkin appreciates the efforts of the U.S. Government to work within the current system. We also appreciate its efforts to raise the IPR bar internationally and especially in the Asia-Pacific region. The high IPR standards embodied in the Trans-Pacific-Partnership (TPP) would be particularly conducive to our efforts in the Asia-Pacific region, clearly with TPP members, but also, we would hope, with non-members like China.

#### V. CONCLUSION

Chairman Hatch, Ranking Member Wyden, and distinguished members of the committee, I want to thank you again for the opportunity to testify before you today. If I were to leave you with one last thought, it would be that the business of counterfeiting is big business in other countries, and one which many such countries make (both on paper and in practice) hard to shut down, if not actively encourage. The branded intellectual properties of American businesses are not only critical to the success of those businesses but to the success of our American economy as a whole, and, I would posit here, of the still expanding global digital economy in which we all participate. We must ensure that our representatives abroad actively monitor any activity in foreign jurisdictions that may unfairly dilute the value of our American brands. We love the digital marketplace, as we support all channels of commerce, and appreciate that we, like other businesses, must evolve with the evolution of such marketplaces. We believe in the value of global ecommerce and its importance to Belkin and American job growth. Like all of our peer-group companies, we are simply advocating for level playing fields across all of those marketplaces, and believe that, with fair competition, we and other American companies will succeed in that competition by working harder and with more innovation than our competitors abroad. We therefore need enhanced and predictable IPR standards

<sup>5</sup> See: <http://beijing.usembassy-china.org.cn/2016ir2/ambassador-baucuss-remarks-on-iacc-conference.html><<http://redirect.state.sbu/?url=http://beijing.usembassy-china.org.cn/2016ir2/ambassador-baucuss-remarks-on-iacc-conference.html>>.

and laws, and corresponding enforcement mentality, across the globe, especially in the Asia-Pacific region.

Belkin will continue to enjoy the opportunities and challenges that U.S. businesses face in the digital age. And we will continue to work with appropriate authorities around the globe to enforce our intellectual property rights to shut down the sellers of counterfeit Belkin products. We as a company are firmly committed to fighting those who seek to damage our brand, undermine our valued customer relationships and flood the market with inferior and potentially dangerous products. We hope this information will be contributory to, and helpful in, the decision-making ahead of you that will impact all of us.

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QUESTIONS SUBMITTED FOR THE RECORD TO TOM TRIGGS

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

*Question.* Do you believe that section 337 of the Tariff Act of 1930 is an important and necessary tool to help stop fakes from entering the United States?

Answer. Section 337 of the Tariff Act of 1930 is an important and necessary tool to help stop fakes from entering the United States. The in rem jurisdiction of the ITC is an invaluable tool for domestic businesses who cannot easily obtain jurisdiction over foreign counterfeit manufacturers. The exclusion orders that the ITC can grant in respect of counterfeit goods are a powerful remedy, particularly where general exclusion orders can be granted.

Belkin has in fact filed a section 337 action with the ITC; in 2015, we filed a complaint against counterfeit manufacturers exporting "Melkin"-branded copycat products to the United States, and we expect an exclusion order to be granted shortly. Accordingly, while there may have been some recent abuses of exclusion orders by patent trolls, we (as an operator) appreciate the utility of this enforcement action as a compliment to recourse to the courts.

*Question.* Congress has made protection of intellectual property rights a key component of our international trade strategy for many years. Ensuring that our international trading partners agree to strong enforcement provisions in our trade agreements is a vital element of this strategy.

During our hearing, I touched on the importance of making sure that our trading partners effectively implement their obligations before we allow an agreement to enter into force, but I think that even more can be done. Not only must we put strong rules into place, but we must work with our trading partners to make sure that adequate capacity building is available so that they can develop the technical expertise to stop fakes before they even cross U.S. borders.

Can you comment on whether you believe capacity building is an effective tool to stop fakes from entering our country and, if so, what type of capacity building is most effective?

Answer. Belkin actively works with partners around the globe to educate them about our products, our supply chain, and how to identify potentially counterfeit products. A combination of our local counsel and customs team members provide training to the CBP and their international equivalents. We attempt to target those ports where we have found, or believe may be, significant sources for the export or import of fakes. We also train our retail and distribution partners to identify fakes.

Belkin has recently made the decision to pilot a new packaging program which enables customs officials and warehouse staff to scan a product with a smartphone app to identify whether it is fake or genuine. We hope that this will make it even easier for our customs partners, and for customers, to be able to locate fake products.

Empowering customs officials to identify products also has the advantage of providing access to information about exporters and importers that will aid our supply chain investigations, and ultimately play a role in us finding, and shutting down, counterfeit manufacturers and sellers.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* Belkin has grown out of the digital revolution, including innovations in products that support the Internet architecture, and innovative services that will

mean we'll all be driving smart cars and living in smart houses before long. Belkin demonstrates how the United States is leading in these critical sectors for future growth. In addition, your testimony mentions the value of global e-commerce and its importance to Belkin and American job growth.

Can you talk about the benefits of e-commerce platforms from Belkin's perspective?

Answer. Online marketplaces have expanded Belkin's and our partners' opportunities to dramatically grow our market and open new markets for U.S. businesses, and reach billions of potential customers. These platforms have enabled countless small businesses to do the same.

According to a recent UPS report, online orders now surpass in-store purchases, with 51% of shoppers' purchases, excluding groceries, made online within the 3-month period prior to the report's publication. Consumers who are not buying online are likely to be researching products online before making a purchase, whether to locate product specifications, read product reviews or simply find the best prices.

In addition, distribution is really hard for hardware (hard goods) businesses; and, to that end, it is really hard to get shelf space for products in retail stores. Online platforms take the pain out of distribution and level the playing field for U.S. businesses, both large and small.

Virtually all of our retail store customers operate their own websites in addition to their physical stores. In fact, some of our largest customers are now exclusively online sellers, such as Amazon and Newegg. Our own <http://www.belkin.com/us/> websites are an important tool for not only selling products to customers, but also for educating them about who we are, what products we offer and how to communicate with us.

While online platforms allow for the risk of counterfeit proliferation by criminals worldwide, these online platforms, paradoxically, can provide Belkin with a powerful tool to combat counterfeit goods because technology increases transparency to identify fakes and facilitate take-downs—and helps us to deeply educate our customers about differences between genuine and fake products.

*Question.* In your testimony, you outline the many challenges that Belkin faces in combating counterfeit products. As you point out, counterfeits are not only poor quality, but can also pose a real safety hazard. You also mentioned the need to work with CBP and other parts of the government to ensure enforcement is as robust as possible. In the Trade Facilitation and Trade Enforcement Act that came out of this committee last year, and that was signed into law a few months ago, we gave CBP new tools to collaborate with the private sector, including the ability to share information about potentially infringing products with the rights holder.

Can you speak to the role that tools like this play in the effort to combat counterfeit products?

Answer. It is no secret that information is a valuable resource. We state, again and again, that all we desire is a "level playing field" on which to compete. Participants in the big business of counterfeit products prevent a level playing field. The new CBP tools enable us to identify relevant participants in the counterfeit supply chain, and use our private resources to pursue them. Belkin welcomes any tool that provides us with access to more information, and more transparency—getting Belkin and other U.S. businesses to a place where healthy competition creates the best outcomes for consumers.

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PREPARED STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON

In my view, there are two issues at hand today, and in many ways they're two sides of the same coin. The first is about how more small businesses are tapping foreign markets thanks to the digital economy and e-commerce platforms. The bottom line is that the Internet is the shipping lane of the 21st century, and every business in this country, in one way or another, is digital.

Take the example of Bike Friday, an Oregon company that makes folding bicycles. It might not always be bicycling season in Oregon, but it's always summertime somewhere. The Internet is an essential resource that enables Bike Friday to reach customers and process orders 24/7, regardless of time differences. It's the same story if you're in steel, in manufactured goods, in clean energy, or in apparel. Digital technology is a booster shot in the arm for exports at a time when 95 percent of the

world's customers live outside our borders. American businesses and their workers today aren't relying on listings in the yellow pages or waiting for new customers to walk through the door. Many of their storefronts are online, and they're always open.

That's one side of the coin. The other is the challenge represented by counterfeit goods. For the trade enforcers, it used to be a matter of identifying a shipping container filled with fake computer chips or tennis shoes. Although those shipping containers are still coming in, counterfeit goods are now also delivered in individual packages that go straight to the doorsteps of American consumers. So the challenge of rooting out counterfeits is a lot more difficult than it once was, and it poses a direct threat to American jobs and businesses.

This is a firsthand issue for a lot of Oregon businesses in various industries, from parts for autos and rail cars to high-tech semi-conductors. Take Leatherman Tools as an example. They are a proud Oregon employer that makes high-quality outdoor gear that gets a lot of use in my State's recreation economy. But if you place an order for a Leatherman Tools pocket knife from an unknown seller, there is a chance that you'll receive a cheap knockoff. The result is a disappointed consumer, and an Oregon manufacturer that has lost a sale. That's why buyer reviews of sellers on platforms like Amazon and eBay—and liability laws that enable those reviews—are so valuable to those seeking authentic merchandise.

So our policies have to take both of these issues into account: helping our workers and business to take advantage of digital shipping lanes and staying ahead of the online schemers who want sneak their counterfeit goods into our market and rip off jobs.

On a bipartisan basis, this committee took a major step forward earlier this year in the fight against counterfeiters by passing the toughest package of trade enforcement policies in decades. Thanks to that legislation, Customs and Border Protection now has more tools to sniff out illegal goods before they make it into the homes of American consumers, including by encouraging CBP to work with U.S. rights-holders on identifying potential counterfeits at the border.

And as the digital economy continues to transform our lives and reshape the way business is done, this committee will have more work to do. It's our job to understand how technology and policies empower America's innovators, producers, and sellers. It's also our job to understand how the trade cheats rip off Americans, and to respond accordingly. I want to thank our witnesses for joining the committee today, and I look forward to discussing how our digital economy fits into what I call "trade done right."

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## COMMUNICATIONS

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THE CENTER FOR FISCAL EQUITY  
14448 Parkvale Road  
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### Comments for the Record by Michael Bindner

Chairman Hatch and Ranking Member Wyden, thank you for the opportunity to submit our comments on this topic. As usual, our comments are based on our four-part tax reform plan, which is as follows:

- A Value Added Tax (VAT) to fund domestic military spending and domestic discretionary spending with a rate between 10% and 13%, which makes sure every American pays something.
- Personal income surtaxes on joint and widowed filers with net annual incomes of \$100,000 and single filers earning \$50,000 per year to fund net interest payments, debt retirement and overseas and strategic military spending and other international spending, with graduated rates between 5% and 25% in either 5% or 10% increments. Heirs would also pay taxes on distributions from estates, but not the assets themselves, with distributions from sales to a qualified ESOP continuing to be exempt.
- Employee contributions to Old-Age and Survivors Insurance (OASI) with a lower income cap, which allows for lower payment levels to wealthier retirees without making bend points more progressive.
- A VAT-like Net Business Receipts Tax (NBRT), essentially a subtraction VAT with additional tax expenditures for family support, health care and the private delivery of governmental services, to fund entitlement spending and replace income tax filing for most people (including people who file without paying), the corporate income tax, business tax filing through individual income taxes and the employer contribution to OASI, all payroll taxes for hospital insurance, disability insurance, unemployment insurance and survivors under age 60.

U.S. firms of all ownership types face many challenges due to the digital age. The most immediate of them is how sales taxes are collected across state lines. Technology is also the answer to that. Whatever the law is, it can be included in a simple digital application based on state of sale and/or state of origin. Of course, if a Value Added Tax is adopted federally with state participation, taxation will occur where the work occurs rather than at the sales destination, mooting the entire question. This would be true for our first bullet, a Value Added Tax and our fourth, the Net Business Receipts/Subtraction VAT.

There is a far more difficult question that business faces, one which tax policy can help. In the current information economy, there is pressure to hire the latest graduates who have the most recent programming training—even when older, more expensive, staff might be more productive overall, with better soft skills.

Older workers expect to be paid for their longevity and need to be paid for their larger families. The latter is harder to do, because firms that hire younger, childless workers can pay less money but offer a higher standard of living—at least in the short term. The free market in this instance is a failed market, because although larger families benefit society—both in terms of demand and for retirement savings, the incentives don't match up. In such cases, it is appropriate for the government to offer a Child Tax Credit that is even larger than the current credit. In our model, this would be paid as a wage as a credit against the NERT/Subtraction VAT. This shows that such a credit is not only for the poor, but could be a major part of middle class compensation.

The NERT/Subtraction VAT would fund the employer contribution to Social Security Old-Age and Survivors Insurance. We propose that the progressivity now found in the benefits calculation portion of the program be moved to the accumulation phase, with each worker receiving the same credit from the federal government, regardless of wage level. Further, a portion of that credit could be used to buy employer voting stock, or for cooperative firms, one share of voting stock and the remainder of preferred stock, preserving warm body voting. In either case, longevity compensation would be shifted to continued stock accumulation and dividend reinvestment or distribution, or a mix of the two. Suddenly, it makes no sense to fire workers who are still valuable because their direct expense is lower. Indeed, in a corporate model, the more experienced workers would be an asset and would vote their stock based on their experience level.

The employer contribution to Social Security OASI would remain a function of income, mostly because society would not tolerate rolling the entire program into the employer contribution, although that is also an option.

On the income tax front, one of the remaining deductions to the income and inheritance surtax would be sales of stock to a qualified ESOP. This could accelerate the movement to employee-ownership, with the longevity compensation scheme described above.

These solutions work in any firm, but they do the most good where the need for a new approach is most needed: the digital sector.

What is not needed are attempts to cut taxes on business or income to make capital more available. There is plenty of capital available now. It is not being used because demand is anemic. The last time we tried cutting capital gains tax rates to spur growth we got the tech bubble. People got capital for all sorts of projects for which there was no demand. Let us not repeat that mistake.

In the tech industry there exists the Computer-Aided Manufacturing—International Multi-Attribute Decision (MAD) Model. The first element of the model is the market. Not the stock market, but the product market. Questions of the cost of capital are buried in Return on Investment figures and are of little importance.

If a committee staffer joined a tech firm and tried to push investments because of low tax rates, he would be fired as an ideologue and sent packing back to the committee. If, however, he could promise more spending in the tech industry by the government—or even more money for social programs, then he would go far in industry. Of course, if he could get a \$15 minimum wage enacted (along with the measures suggested above), which would spur pent up demand by the working class, they might make him CEO.

Let's not make the same mistakes as the late 90s. Instead, give families what they need and business will succeed beyond our wildest dreams.

Thank you for this opportunity to share these ideas with the committee. As always, we are available to meet with members and staff or to provide direct testimony on any topic you wish.

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EBAY INC.  
1250 Eye Street, NW, Suite 1200  
Washington, DC 20005

#### **STATEMENT FOR THE RECORD OF BRIAN BIERON**

##### **Executive Director, Global Public Policy Lab**

Chairman Hatch, Ranking Member Wyden, and members of the committee, I would like to thank you for giving eBay Inc. the opportunity to submit a statement for the record on this important topic.

eBay Inc. is a global commerce leader including the Marketplace, StubHub and Classifieds platforms. Collectively, we connect buyers and sellers around the world, empowering people and creating opportunity through Connected Commerce. Founded in 1995 in San Jose, CA, eBay is one of the world's largest and most vibrant marketplaces for discovering great value and unique selection.

In 2015, eBay enabled \$82 billion of gross merchandise volume and today, 57% of our Marketplaces business is international. Our platforms enable hundreds of thousands of U.S. entrepreneurs, small businesses, as well as mid-size and large busi-

nesses, to reach customers around the world. We empower over 162 million buyers globally on our marketplaces with users in 190 countries. Our platform facilitates a new kind of a global trade that is truly beneficial for Main Street businesses across America.

eBay Inc. is an Internet and mobile technology-based business, but in the 21st century global economy, every business that operates internationally in any significant scale depends on access to, and transmission of, digital goods and services, including logistics, online services, distribution networks, finance and professional services. The Internet accounts for 21% of GDP growth in advanced economies and facilitates \$8 trillion each year in e-commerce. The United States is the unquestioned world leader in Internet-enabled business, innovation and entrepreneurship. But data moving across borders is not just an Internet industry phenomenon; it impacts every business, including manufacturers, agricultural businesses, and financial services providers. McKinsey reports that 75% of the impact of the Internet is being realized by traditional industry.<sup>1</sup> The U.S. International Trade Commission estimates that digital trade has already boosted U.S. gross domestic product by 3.4% to 4.8% through enhanced productivity and reduced international trade costs, and the effect on U.S. total employment ranged from no change to an increase of 2.4 million full-time equivalents.<sup>2</sup>

My team at eBay Inc. has spent the last 4 years conducting research on the growth of global trade by technology-enabled small businesses.<sup>3</sup> In April 2016, we released the United States Small Online Business Growth Report<sup>4</sup> which provides an in-depth look at trade and growth figures for eBay-enabled small businesses and entrepreneurs (annual sales of \$10K or more) in all 50 states as well as the District of Columbia. The report also provides a state-by-state snapshot of the counties with the most eBay-enabled small business activity per capita.

The report findings reveal that nearly every eBay-enabled small business in each state is an exporter, and that eBay-enabled small businesses as a whole have been experiencing sales growth rates that exceed their state economy averages. The research also shows that active eBay-enabled small businesses emerge from communities nationwide, rural and urban alike. These findings further bolster the argument that the technology-enabled platform commerce model, which significantly reduces the cost of doing business over distances, is a highly inclusive model of trade. For example, our research revealed that 97% of eBay-enabled small businesses in the United States export. This figure dwarfs the export activity of traditional U.S. businesses, which stands at approximately 1% nationwide. Additionally, nationwide, eBay-enabled small businesses that export reach an average of 18 foreign markets.

Alongside these impressive statistics, there are many excellent examples of small business success stories including:

- Mac Griffiths from South Jordan, UT, specializes in the sale of computer/networking equipment and software. Mac left his full-time job in 2002 to open an eBay store and today has an office and warehouse to run the business and store inventory. His company employs five people and exports 25% of its sales.
- Kyle Resnick lives in Portland, OR, and sells lamination equipment and supplies. His father, Russ, started Oregon Laminations Company in 1984 and Kyle helped expand the business online following the 2008 recession. His eBay store has allowed the business to grow and reach international markets and Kyle now exports 10% of his products.

This trade activity represents a new model of SME exporting that has emerged in parallel to the SME “Global Value Chain” model where small enterprises engage in trade as a component of a giant commercial enterprise. We have coined the term “Global Empowerment Network” to describe this new model by which small businesses are able to create a storefront presence online and compete directly in global markets through e-commerce platforms with vibrant customer bases. The Global Empowerment Network combines a set of services and conditions enabling SMEs to

<sup>1</sup>McKinsey Global Institute, “Internet Matters: The Net’s Sweeping Impact on Growth, Jobs, and Prosperity” (May 2011), available at: [http://www.mckinsey.com/insights/high\\_tech\\_telecoms\\_internet/internet\\_matters](http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters).

<sup>2</sup>U.S. International Trade Commission, “Digital Trade in the U.S. and Global Economies, Part 2,” available at: <http://www.usitc.gov/publications/332/pub4485.pdf>.

<sup>3</sup>The full range of research can be found here: <http://www.ebaymainstreet.com/lab>.

<sup>4</sup>Available at: <http://www.ebaymainstreet.com/policy-papers/us-small-online-business-growth-report>.

transcend borders, reach customers on a global scale, and facilitate business transactions.

There are four key building blocks that fuel the Global Empowerment Network: (1) Connectivity to the global Internet at lost cost and without gatekeepers; (2) Global platform-based marketing, marketplace, and payment services; (3) Efficient, modern, and “connected” package-level logistics and delivery services; and (4) Legal, regulatory, and public policy framework supporting direct SME-to-consumer global commerce.

The report also provides key recommendations for policy makers to drive even greater economic growth among small American businesses that use the Internet to export. These include:

- Increase low-value customs de minimis thresholds across the globe;
- Support the Trans-Pacific Partnership Agreement (TPP) and other efforts to modernize trade policy;
- Modernize postal systems to support small business digital trade;
- Promote the U.S. standard of intellectual property law in trade agreements;
- Ensure a free and open Internet;
- Explore flexible international regulatory cooperation solutions; and
- Provide coordinated export promotion assistance to Internet-enabled SMEs.

The kind of cross-border trade being done by these, and hundreds of thousands of other “micro-multinationals” spread across America, is growing rapidly. Research from Progressive Economy finds that low-value or “micro” U.S. exports increased by 103% between 2005 and 2010, more than twice the increase for all exports.<sup>5</sup> Moreover, the 2013 World Economic Forum (WEF) Enabling Trade report found that the use of technology platforms can reduce the burdens small businesses face when selling overseas, increasing cross-border small business sales by 60–80%.<sup>6</sup>

Of course, these unprecedented new Internet-enabled small business trade trends have created challenges for existing trade policy and enforcement mechanisms. As aptly identified by the committee, one challenge is the issue of counterfeit goods.

To be clear, counterfeits are not welcome on eBay. eBay’s success as a business depends on a climate of confidence and trust. Counterfeit products can have a negative impact on brand owners, retailers and eBay’s community of legitimate sellers who trade authentic goods on eBay every day. They also negatively impact the confidence and trust of many buyers. That is why we have spent close to 20 years building teams, policies and processes to protect buyers, sellers and third-party brand owners. Those efforts include:

- The Verified Rights Owner Program (VeRO) is used by more than 40,000 rights owners to quickly and easily report alleged intellectual property infringement, including counterfeits or copyright infringements.
- eBay’s Money Back Guarantee applies in the rare case the buyer believes that they have purchased a counterfeit item.
- eBay has dedicated teams focused on ensuring we have the right technology and policies in place to tackle problematic goods, which includes tools and solutions that help detect patterns of fraudulent activity.
- eBay’s Global Asset Protection team trains law enforcement and retail loss prevention officials about our services and how to partner with us to carry out investigations.

We are fully committed to identifying and eliminating counterfeit listings and continue to devote substantial human and technological resources, keeping sellers of counterfeit goods off our platform.

Finally, it is key to realize that when examining the challenges and opportunities for U.S. business in the digital age, our discussion is not merely about business or policy; it is about people. Globalization and trade are fundamental realities of the world in which we live. Unfortunately, a significant number of people have not yet been able to directly take part in the global marketplace because they own or work in businesses that have, traditionally, been too small or too remote. But now the Internet, and the global data-based businesses and platforms that underpin 21st-century commerce, are enabling small business and consumers, for the first time, to truly enjoy the benefits of direct participation in the global market.

<sup>5</sup> Gresser, Edward, “Lines of Light: Data Flows as a Trade Policy Concept” (2012).

<sup>6</sup> World Economic Forum, “Enabling Trade” (2013).



We sit at the dawn of a new era of globalization that is far more inclusive than the one that preceded it—a future where millions of small businesses from across the United States can participate in their local economy and also increase revenue through access to customers around the world. This is good economics because it means more growth and wealth, and it is good for society because it means a more inclusive future. We need to make the right policy choices to achieve this future.

Chairman Hatch, Ranking Member Wyden, and members of the committee, we respectfully submit this statement for the record and pledge to work with you to ensure that U.S. small businesses and consumers can realize the true benefits from the Internet.

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Chairman Hatch, Ranking Member Wyden, and members of the committee:

The International AntiCounterfeiting Coalition (“IACC”) is pleased to offer this written statement for the record on the issue of, “Challenges and Opportunities for U.S. Business in the Digital Age,” and we thank you for examining this important topic during your recent hearing. We are available at your convenience to discuss any questions you might have regarding these comments, or to otherwise provide clarification of our submission.

With a membership composed of approximately 250 corporations, trade associations, and professional firms, and founded over 35 years ago, the International AntiCounterfeiting Coalition is one of the world’s oldest and largest organizations representing exclusively the interests of companies concerned with trademark counterfeiting and the related theft of intellectual property. The members of the IACC represent a broad cross-section of industries, and include many of the world’s best-known companies in the apparel and luxury goods, automotive, software, tobacco, electronics, consumer goods, entertainment, pharmaceutical, and other product sectors. The IACC is committed to working with government and industry partners in the United States and abroad to strengthen IP protection and enforcement, and to raise awareness regarding the range of harms caused by counterfeiting and piracy.

The comments provided herein focus on challenges faced by intellectual property owners with regard to three main areas of concern, each relevant to the committee’s jurisdiction. The first of these is the evolution of sales and distribution models of counterfeit goods in the digital age, including the transition from a traditional multi-level distribution model associated with overseas production and “brick-and-mortar” retail sales to the increasingly prevalent direct-to-consumer e-commerce model. Next, we examine continuing challenges facing rights-holders in their efforts to work in a collaborative fashion with their public sector partners in enforcement, specifically with regard to the exchange of information regarding shipments of suspected counterfeits presented for entry at U.S. borders. Finally, we would like to draw attention to an ongoing program operated by CBP which, although well-intentioned, is viewed by the IACC as detrimental to rights-holders’ overall investigative and enforcement efforts.

#### **Evolving Distribution Models**

Historically, the distribution chains for counterfeit goods have largely mirrored those seen for legitimate commerce. Illicit imports have, until relatively recently, arrived to the U.S. market in large-scale shipments via container vessels. It should not be surprising then, that a pronounced shift away from this traditional distribution model has been seen in recent years, correlating with the explosive growth of online commerce. The proliferation of websites and online marketplaces offering counterfeit goods directly to consumers has drastically altered the landscape, presenting significant challenges, not only to rights-holders, but to law enforcement and Customs officials, legitimate service providers whose services are exploited to facilitate the illegal activity, and to consumers. With this submission, we wish to highlight some of these challenges, and the efforts to address them being brought to bear by both the private and public sectors.

As rights-holders and others have begun to analyze the online trafficking of counterfeit goods, a great deal of attention has been placed on the so-called “choke points”

in the online ecosystem. How do consumers find counterfeit goods online, and how do counterfeiters offer their illicit wares to consumers? How are the goods purchased and sold? What sort of infrastructure is essential to get the goods from the seller to the buyer? Each step in the distribution chain presents an opportunity for rights-holders and enforcement personnel to disrupt the counterfeiters' illegal businesses.

There are two primary ways in which consumers discover counterfeit goods online: search and advertising. Whether the consumers are actively seeking out counterfeit products, or as is often the case, simply seeking a deal on authentic goods, finding a site offering counterfeit products online is often as simple as going to one's preferred search engine and typing in the words, "cheap [insert brand name]." Counterfeiters often employ sophisticated search engine optimization strategies to ensure that their sites appear at, or near, the top of organic search results, and frequently invest in paid advertising that appears alongside organic results. Search providers, meanwhile, have typically been reluctant to engage in the wholesale removal or de-indexing of websites for a variety of reasons. And although direct links to infringing items or specific pages on a site may be removed, neutral search providers enjoy broad immunity from liability based on their inclusion in search results of sites dealing in illicit products. These reasons, coupled with the staggering number of sites online that offer counterfeit goods for sale, have greatly diminished the effectiveness (and rights-holders' reliance upon) notice and takedown procedures that have been a mainstay of online enforcement regimes for years.

Online sellers of counterfeits, just like legitimate online businesses, also rely on a variety of infrastructure providers, from domain registrars, Internet service providers, web hosting services, marketplace platforms, and others to maintain their presence online. Add into that mix the payment service providers, including credit card companies, and delivery services—whether express consignment or traditional mail providers—and there are a wide array of potential options available to rights-holders and enforcement agencies to bring pressure to bear on the counterfeiters. For several years now, the IACC has sought to actively engage with partners in these various sectors to develop effective and efficient ways to deter illicit online sales. Our RogueBlock®<sup>1</sup> and IACC MarketSafe®<sup>2</sup> programs offer examples of the positive impact that such collaboration can have.

The IACC launched its RogueBlock® program in January 2012, as a means to providing a streamlined, simplified procedure by which rights-holders could report online sellers of counterfeit or pirated goods directly to participating credit card and payment processing network partners. This effectively facilitated action against the merchant accounts associated with those sites, and diminished the ability of individuals to profit from their illicit sales. The program has seen great success, and significant expansion over the past 3 years, and has been viewed as a "win-win" for all of the parties involved. Rights-holders are able to provide timely, relevant intelligence, and in the process aid financial service providers in policing bad actors who seek to misuse legitimate commercial tools for illegitimate purposes.

Our goals upon commencing the RogueBlock program were: (1) to increase the cost of doing business for, and decrease profits to, the counterfeiters; (2) to shrink the universe of third-party acquiring banks willing to do business with rogue merchants; (3) to facilitate an efficient use of resources by both IP owners and our partners by sharing relevant data and avoiding the duplication of efforts; and (4) to disrupt and dismantle counterfeit networks. By any measure, we are achieving those goals. Equally important, the strong partnerships we've developed in the financial sector are enabling us to continue enhancing, expanding, and evolving to face new challenges in the online space. To date, our collaborative efforts with the payment sector have resulted in the termination of over 5,000 merchant accounts in connection with the illegal sale of counterfeit goods online. By conservative estimates, upwards of 200,000 websites have been deprived of the means to accept payment for their illegal products.

In a similar vein, the IACC has worked closely with the Alibaba Group to address the trafficking of counterfeit goods on two of the world's largest online marketplaces—Taobao and Tmall. Since that program began operating in 2014, we have succeeded in removing over 200,000 listings for counterfeit goods from those marketplaces, and more than 5,500 sellers of illicit goods have been permanently banned from the platforms. We recently announced the forthcoming expansion of the program, through which our system will be made available to rights-holders at no cost.

<sup>1</sup> <http://www.iacc.org/online-initiatives/rogueblock>.

<sup>2</sup> <http://www.iacc.org/online-initiatives/marketsafe>.

These existing programs target two of the previously mentioned choke points in the modern distribution chain—the online “storefront” where items are displayed to potential buyers, and the point of sale. We will continue to work with those partners, and with other industry sectors, to further impact this illicit trade. During the past year, we have had some positive discussions with the express shipping industry, which we believe can play a vital role in addressing these problems, and we’re hopeful that we will find similar success to that seen in our other partnerships.

#### **Information Disclosure and Exchange**

Historically, the owners of intellectual property rights have provided invaluable assistance to those CBP personnel tasked with the enforcement of IPR at our nation’s borders. This assistance has been necessitated by a number of factors, including the overall volume of imports passing through U.S. ports, the variety of goods presented to CBP for inspection, and more recently, the increasing ability of counterfeiters to manufacture near-perfect copies of products and packaging. These, and other factors, have contributed to the difficulty faced by CBP in determining whether those goods before them were genuine or counterfeit. Customs officials cannot, and should not, be expected to maintain, across countless brands and products, the expertise required to make such determinations with the level of efficiency and accuracy necessary to achieve the agency’s twin goals of trade facilitation and IPR enforcement. The recognition of that fact is what drove CBP’s and rights-holders’ traditional collaboration.

On April 7, 2000, U.S. Customs published Customs Directive 2310–008A<sup>3</sup> (hereafter, “the Directive”), advising personnel that the disclosure to rights-holders of certain information regarding shipments, prior to seizure of those goods, was impermissible, even when a disclosure was made for the limited purpose of obtaining assistance to determine whether the goods were genuine or counterfeit. Specifically, the Directive required CBP officers to “remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or other identifying marks,” prior to the release of any sample to a trademark holder. Though issued in 2000, by most reports, the Directive, and the procedures prescribed thereby, were not fully implemented until 2007–2008. The IACC, in fact, heard relatively few reports from rights-holders of any change in practice until 2006–2007. Once implemented however, the Directive posed a severe impediment to the public private cooperation that, previously, had been the norm.

The basis for CBP’s change in policy appears to be tied to an overly-formalistic reading of the relevant regulatory code sections related to the sharing of information regarding, and samples of, suspect shipments, and a similar, overly literal interpretation of the Trade Secrets Act (18 U.S.C. 1905 (“the Trade Secrets Act”). The apparent conflict, as seen by CBP, was between CBP officers’ authority to seek assistance by providing a physical sample, or a digital image of those goods, to a trademark owner from the date the goods were presented for inspection, and the timing authorized for the disclosure of other information related to the shipment.<sup>4</sup> While rights-holders typically incorporate a variety of technologies to assist in the authentication of their legitimate goods, CBP believed that, if those technologies or other information evident on the goods or their packaging revealed to the trademark owner any information that would otherwise only be made available post-seizure, then any such markings must be removed or redacted before providing the samples to the rights-holder. Likewise, if the provision of a sample, or photographic images of the goods in question, might reveal confidential or proprietary information purportedly belonging to the importer, then such a disclosure would violate the Trade Secrets Acts,<sup>5</sup> and in turn expose CBP officers to criminal prosecution.<sup>6</sup>

The IACC expects that the committee is intimately familiar with these issues, as they’ve been addressed by Congress twice during the past 5 years. It was first addressed by language included in Section 818(g)(1) of the National Defense Author-

<sup>3</sup>U.S. Customs and Border Protection—Customs Directive 2310–008A, <http://www.cbp.gov/sites/default/files/documents/2310-008a.pdf>.

<sup>4</sup>At that time, the relevant code section, 19 CFR 133.25(b), permitted the disclosure of: the date of importation, the port of entry, a description of the merchandise, the quantity involved, and the country of origin of the merchandise, from the time the goods were presented to Customs for inspection. However, 19 CFR 133.21(c), authorized the disclosure of the identity of the manufacturer, exporter, and importer, only after a seizure had been made.

<sup>5</sup>18 U.S.C. 1905.

<sup>6</sup>The Trade Secrets Act prohibits any disclosure, *not authorized by law*, of a broad range of information a government employee obtains or has access to in his or her official capacity.

ization Act of Fiscal Year 2012 (“NDAA”).<sup>7</sup> Despite that explicit authorization, CBP published an Interim Rule in April of 2012, creating what rights-holders viewed as an arduous and inefficient process requiring CBP personnel who were seeking assistance in determining whether or not goods were counterfeit, to first seek that assistance from the importer. As drafted, the Interim Rule included a procedure “intended to achieve the policy goals of the NDAA in a manner consistent with maintaining the flow of information to the government, fostering competition, keeping prices low, and maintaining consumer choice.” The rule required CBP to provide the importer of goods suspected of being counterfeit with an opportunity to demonstrate, within 7 days (exclusive of weekends and holidays) of the issuance of a notice of detention, that the goods in question did not bear a counterfeit mark. “Only absent such a demonstration by the importer will information, images, or samples be shared with the right-holder.” The IACC outlined its numerous concerns with the adoption of the Interim Rule in its submission to CBP and the Treasury Department, dated June 25, 2012.<sup>8</sup>

In September of 2015, over 3 years after the publication of the Interim Rule, CBP published a Federal Register Notice,<sup>9</sup> amending and finalizing the Interim Rule regarding the “Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border.” Among the most relevant changes embodied in the Final Rule, as adopted, were:

- The elimination of the optional 30-day extension period for detention of goods (19 CFR 133.21(b)(1));
- Acknowledgement of CBP’s authority to seek assistance from the owner of a mark at any time after the presentation of goods for examination (19 CFR 133.21(b)(2)(i)(A));
- Concurrent provision of limited importation information (19 CFR 133.21(b)(2)(i)(B)); and
- Disclosure/Provision of Redacted and Unredacted Photos or Samples (19 CFR 133.21(b)(3) and (b)(5)).

The Final Rule, as amended, though a significant improvement over the Interim Rule, remained substantially unchanged with regard to CBP’s position on the disclosure of unredacted images or samples to rights-holders. Under the adopted rule, such disclosure would only take place in the event that the importer either failed to respond in a timely manner, or provided CBP with insufficient proof that the goods in question are authentic. CBP maintained its authority to provide redacted samples or images of the merchandise and its packaging, at any time after it has been presented for examination.

CBP further maintained that its disclosure of unredacted photos or samples and the information provided to a mark owner under the regulation may be subject to the Trade Secrets Act, and that the information was provided only for the purpose of assisting CBP in determining whether the merchandise had a counterfeit mark. The IACC strenuously objected to CBP’s and Treasury’s interpretation of the Trade Secrets Act, and its purported prohibition on the agency’s sharing of information with rights-holders. While such disclosure might reasonably be said to be prohibited in the absence of statutory authorization, the NDAA expressly provided that authority.

The issue was revisited by Congress with the recent enactment of the Trade Facilitation and Trade Enforcement Act. Section 302 of that legislation superseded the provisions of the NDAA (which were subject to a sunset clause triggered by the Trade Facilitation bill’s enactment), and further clarified CBP’s authority to share information with affected trademark and copyright owners, again providing explicit statutory authority overriding the Trade Secrets Act’s general prohibition. It is also worth noting that the Trade Facilitation and Trade Enforcement Act provides no similar grant of authority or direction to share information with any other party,

<sup>7</sup>National Defense Authorization Act for Fiscal Year 2012, Section 818(g)(1), stating, “IN GENERAL.—If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act, and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the right holders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.”

<sup>8</sup>[http://www.iacc.org/downloads/key-issues/Submitted\\_Comments\\_re\\_Disclosure\\_of\\_Information\\_for\\_Certain\\_IPR\\_at\\_the\\_Border.pdf](http://www.iacc.org/downloads/key-issues/Submitted_Comments_re_Disclosure_of_Information_for_Certain_IPR_at_the_Border.pdf).

<sup>9</sup>Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border, 80 Fed. Reg. 56370 (September 18, 2015).

including the importer of the goods. We are currently awaiting further rulemaking actions by the Department of Homeland Security and the Department of Treasury to implement these provisions, and would encourage close oversight by the committee to ensure that the will of Congress is properly expressed in that implementation.

#### **CBP Pilot Program—Abandonment of Infringing Goods**

In the summer of 2015, the IACC became aware of a pilot program being operated by U.S. Customs and Border Protection in collaboration with the express shipping industry (the “Abandonment Program” or “Pilot Program”). The genesis of the Abandonment Program was a recommendation of CBP’s Commercial Operations Advisory Committee (COAC) Trade Enforcement and Revenue Collection Subcommittee.<sup>10</sup> Specifically, the COAC recommended that CBP collaborate “with its express consignment stakeholders to develop a simplified and mutually beneficial IPR enforcement process in the express consignment environment through which CBP would offer the importer and the U.S. consignee an abandonment option on detention notices for shipments detained by CBP on suspicion of trademark or copyright violations.” At the May 22, 2014 public meeting of the COAC, a status report was presented by the Office of Trade Relations Trade Enforcement and Revenue Collection Subcommittee, referencing the “Simplified Seizure Process” on May 15, 2014. That report highlighted provisions of the express carriers’ terms of agreement which permit the abandonment of suspect goods, and suggesting the voluntary process as a means of increasing CBP’s efficiency in handling small consignments, while “providing all parties of interest with their legal due process.”<sup>11</sup> Regrettably, as discussed herein, the development of this initiative took place with minimal input from rights-holders, and the program, as implemented, fails to take into account the interests and legal rights of intellectual property owners specifically provided for in the relevant statutory and regulatory provisions.

Under the Abandonment Program, CBP personnel working in express shipping facilities around the United States target shipments for suspected IP violations. If, upon inspection, the goods are believed to violate an IP right,<sup>12</sup> CBP provides notice of the suspected violation to the express shipping company (as the importer of record). The shipping company then forwards that notice to the ultimate consignee (*i.e.*, the individual to whom the package was to be delivered), and the ultimate consignee is given the option of abandoning the goods, or contesting that the importation of the goods violates an IP right. If CBP’s determination is contested, then Customs’ personnel follow the standard detention, seizure, and forfeiture process. If the consignee abandons the goods, or fails to respond to the notice, the goods are destroyed under Customs’ supervision, at the expense of the participating express shipping company. CBP has lauded the results of the Pilot Program, citing the cost and time savings involved in comparison with the formal detention and seizure process set forth in Customs’ regulations. And while rights-holders support the underlying goal of increasing CBP’s capacity to remove these harmful products from the supply chain, the IACC has expressed serious concerns with the way in which CBP is achieving this increased efficiency. Namely, the Abandonment Program foregoes the reporting requirements mandated under existing regulations, depriving affected rights-holders of valuable information that would traditionally be supplied via detention and seizure notices. Such information is vital to rights-holders (and in turn, to law enforcement) in developing the intelligence necessary to build criminal and civil cases. However, CBP has indicated that, pursuant to the Pilot Program, they’ve included no process whatsoever to retain the relevant information about the abandoned shipments—date of importation, port of entry, the registered marks involved, the quantity or value of the goods involved, etc.—or to report such data to the affected rights-holders. CBP’s determination that it is not required to provide notice to rights holders under the Pilot Program, as it is mandated to under the traditional model, is also greatly troubling—particularly in light of the above-discussed issues related to pre- and post-seizure disclosure of information. While the Abandonment

<sup>10</sup> FY 2013–FY 2015 COAC RECOMMENDATIONS, Term 13, Recommendation Number 13047, May 22, 2014. Available at: <http://www.cbp.gov/sites/default/files/documents/COAC%20Recommendations%2013th%20Term.pdf>.

<sup>11</sup> Office of Trade Relations Trade Enforcement and Revenue Collection Subcommittee Status Report, May 22, 2014. Available at: <http://www.cbp.gov/sites/default/files/documents/Trade%20Enforcement%20and%20Revenue%20Collection%20Subcommittee%20Status%20Report.pdf>.

<sup>12</sup> CBP has also established threshold requirements which a shipment must meet to qualify for the Abandonment Program. Among these are that the declared value of the goods must not exceed \$2500, the trademarks at issue must be recorded with CBP, and the goods must not fall into a restricted category (*e.g.*, the goods in question should not present a health and safety risk or a national security concern).

Program creates efficiencies by easing CBP's administrative burden, it does so by cutting off a key enforcement tool.

A final concern of the IACC is the way in which this program was initiated, and continues to operate. Outside of the COAC forum, we are aware of no public announcement of the program prior to its initiation, and no Federal Register notice or opportunity for public comment. Though it has consistently been characterized as a "pilot program," the Abandonment Program has continued uninterrupted for more than a year, and to our knowledge, CBP has no plans for concluding the program, or even suspending it, in order to conduct a formal analysis of its effectiveness. Accordingly, we would again ask the committee to monitor this issue, and provide oversight as appropriate.

On behalf of the IACC, I thank you for your consideration of these comments, and I would welcome the opportunity to discuss these matters further with the committee.

Respectfully submitted,

Travis D. Johnson  
Vice President—Legislative Affairs, Senior Counsel

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#### **Statement for the Record of Michael Beckerman, President and CEO**

Chairman Hatch, Ranking Member Wyden, and members of the Senate Finance Committee, thank you for the opportunity to provide a statement for the record on the "Challenges and Opportunities for U.S. Business in the Digital Age."

The Internet Association represents nearly 40 of the world's leading Internet companies.<sup>1</sup> Our mission is to foster innovation, promote economic growth, and empower people through the free and open Internet. As the voice of the world's leading Internet companies, our job is to ensure that all stakeholders understand the benefits the Internet brings to our economy. Internet platforms are a global driver of the innovation economy, with the Internet sector representing an estimated 6 percent of U.S. GDP in 2014, accounting for nearly 3 million American jobs. In addition to the economic contribution of the Internet industry, the Internet Association's member companies are transforming the way we do business at home and abroad by providing unprecedented growth opportunities for U.S. businesses and entrepreneurs.

Cross-border trade is no longer defined by shipping containers and freight lines. Buyers and sellers from around the globe are now connected instantaneously. Small businesses and entrepreneurs are harnessing the power of the Internet to reach new markets, connect with new customers, and increase their productivity. The Internet is also having a dramatic impact outside the Internet industry. A recent study found that more than 75 percent of the economic value created by the Internet is captured by companies in traditional industries, many of them small businesses.<sup>2</sup> Internet platforms are introducing international audiences to American musicians, writers, and directors through services like Spotify and Netflix, promoting small hospitality providers through TripAdvisor and Yelp, and are revolutionizing how entrepreneurs source materials and supply their customers through Amazon. Frictions in international marketing are also alleviated by platforms like eBay that make sellers' products fully searchable, and mediums like Facebook Live that give entrepreneurs the ability to showcase their products to a global audience in real time.

Internet platforms are vectors for growth for the rest of our economy. Businesses of all sizes are embracing Internet platforms to effectively and efficiently sell their goods and services. As Internet Association member companies continue to drive in-

<sup>1</sup>The Internet Association's members include Airbnb, Amazon, Coinbase, DoorDash, Dropbox, eBay, Etsy, Expedia, Facebook, FanDuel, Google, Groupon, Handy, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal, Pinterest, Practice Fusion, Rackspace, reddit, Salesforce.com, Snapchat, Spotify, SurveyMonkey, Ten-X, TransferWise, TripAdvisor, Turo, Twitter, Uber Technologies, Inc., Yahoo!, Yelp, Zenefits, and Zynga.

<sup>2</sup>McKinsey Global Institute, "Internet matters: The Net's sweeping impact on growth, jobs, and prosperity," May 2011 (<http://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>).

novation, our industry is creating, promoting, and disseminating platforms that encourage lawful access to information and content. While cooperation, enforcement, and education are helping minimize illegal activities, our members are taking the lead in proactively addressing intellectual property theft and the sale of counterfeit items through their platforms.

For example, more than 40,000 rights owners are able to quickly and easily report instances of alleged intellectual property infringement through eBay's Verified Rights Owner (VeRO) program. Reports of alleged intellectual property theft are promptly investigated and any unlawful activity can be reported to the eBay customer support team via links. Etsy is also making intellectual property infringement a priority. User-friendly tools allow rights holders to submit notices of intellectual property infringement and, upon receipt of the notice, Etsy's legal team personally reviews each case and directs sellers to educational resources available on their platform. Under Amazon's Anti-Counterfeiting Policy, sellers' accounts are suspended or terminated immediately for engaging in the sale of counterfeit goods. Amazon has the ability to destroy counterfeit inventory in fulfillment centers without reimbursement and can withhold any remittances or payments owed to the seller. Additionally, search engines like Google and Yahoo! continuously remove content from their services when rights holders or reporting organizations submit requests that infringing activities are occurring.

We welcome comments made by Bruce Foucart, Assistant Director, United States National Intellectual Property Rights Coordination Center, in his testimony that highlighted some of the "ways [they] are effectively working with online industry" to help minimize infringing activities and educate consumers on the risks of purchasing counterfeits. Our industry looks forward to continuing this meaningful partnership, but respectfully disagrees with Mr. Foucart's assessment that policy changes are needed to "hold [the Internet industry's] feet to the fire" in combating intellectual property theft. In the United States, rights holders and consumers already rely on a balanced and well-functioning system of intellectual property protections. The Internet Association believes efforts to combat theft are best directed toward ensuring U.S. trading partners are adopting policies that reflect our domestic approach.

As the Committee on Finance continues to evaluate opportunities and challenges for U.S. businesses, the Internet Association urges Congress and the executive branch to continue promoting innovation-friendly, balanced intellectual property protections through trade agreements. The United States Trade Representative has incorporated elements of the Digital Millennium Copyright Act into trade agreements since 2004 and, for the first time, the Trans-Pacific Partnership acknowledged the full balance of U.S. copyright law—requiring countries to adopt innovation-critical limitations and exceptions, as well as safe harbors, in order to protect the basic functionality of the Internet, social media, and online platforms. Encouraging U.S. trading partners to adopt and implement these critical protections in trade agreements will help provide important safeguards for rights holders, Internet platforms, and consumers alike.

Thank you again for the opportunity to provide comments on behalf of our member companies. The Internet Association looks forward to continuing to engage with you on these matters in the future.

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Submitted Testimony for the Record of Jim Brewster, CEO

Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for allowing me to share my experience with some of the challenges facing companies like Venus in the global marketplace during this ever increasing digital age.

My name is Jim Brewster, and I am the Chief Executive Officer of Venus Fashion, Inc. Venus is a true American success story that was started in the college dorm room of company founder, Daryle Scott. What began as a company manufacturing competition suits for body builders has grown into a highly successful company based in Jacksonville, FL that designs and manufactures swimwear and fashion clothing for women. Every order for the business flows into Jacksonville and every customer's order is shipped out of our Jacksonville warehouse and distribution center. In addition, Venus's marketing, swim design, call center and administrative of-

ices are located in Florida and we handle swim manufacturing via an affiliated company at the same location.

Venus is a catalog and Internet based company. The digital age has created outstanding opportunities for companies like ours as we are able to reach a much larger number of customers online. As proof of the opportunities created, over the past 7 years, the number of employees at Venus has grown from less than 200 to over 700 today to support the elevenfold increase in sales. As customers' purchasing habits continue to evolve to more reliance on shopping online, companies like ours are well-positioned to take advantage of this evolution.

However, our ability to fully realize these opportunities is threatened by a number of serious challenges facing Venus in the new digital age. In fact, these challenges are so severe they don't just threaten our ability to grow, they actually threaten the competitiveness and sustainability of Venus and likely all American clothing companies. If we do not address these issues, it will become increasingly difficult for companies like ours to have any presence in the United States.

Starting in 2014, Venus began to find our copyrighted photographs and copies of our products on Chinese websites and other digital advertising outlets. These Chinese companies steal the copyrighted photographs of some of our best selling products and advertise the "same" item at a deep discount to unsuspecting American consumers. In some cases the photographs are identical to those on the Venus website and in other cases these Chinese companies might take the extra step to crop-off the head of the model, photo-shop the product to a different color or simply mirror the photo. Online shoppers see the identical photograph for the similar product sold on the Venus website advertised for a fraction of the cost on Chinese websites like Twinkldeals and Rosegal, as well as in their social media feeds and search engines.

Since the pictures are the same, customers often believe they are purchasing the same product sold by Venus at a discount directly from a Chinese retailer. We regularly see posts on the Venus social media websites where customers comment about how you can buy the same swim suit or dress on one of these Chinese websites for significantly less than the price of the item on our Venus site. Along the same lines, a number of customers also express frustration after placing an order about seeing the "exact same product" being sold for a fraction of the cost on a different website.

The reality of the situation is that the only thing that is the same about the product is the picture the customer sees online. When the customer receives the item from the Chinese retailer, they are nothing like the pictures they saw in the online advertisement. The clothing items are usually made of inferior materials, cheaply stitched and often arrive in sizes so small they would barely fit a child. Customer service is non-existent and the American buyer has no option for returning the product or getting a refund. These false and misleading advertisements using our stolen images result in consumers receiving merchandise far below the quality they are expecting, pulling sales away from Venus and greatly damaging Venus's brand. Although these disappointed customers are unlikely to order from these Chinese companies again, many customers also vow never to buy from Venus again because they were misled to believe that Venus sells the same poor quality products. As a result of the stolen photos and deceptive advertising, our company misses out on both the initial transaction and any future transaction from an individual who was clearly interested in purchasing our products.

Venus has engaged in the long and drawn out process of protecting our intellectual property, but with very limited success. In February of 2014, Venus filed a complaint against the website *dressvenus.com*, who was infringing on both our trademarked name and our copyrighted photos. Twenty months after filing the complaint, a liable company was finally tracked down in China and Venus prevailed. The liable company, Tidebuy, was prohibited from using Venus marks in any avenue of commerce or social media. The *dressvenus.com* domain name and social media listings were transferred to Venus. It was a long, frustrating process, but we were pleased with the outcome. That is, until 6 months later when the website changed to *dressve.com* and Venus photos appeared all over the new site. Once again, Venus has to retain counsel and send a cease and desist letter. The site is presently down, but we continue to see "Dress Venus" on FaceBook and Pinterest feeds.

The experience has been similar when Venus has been successful in getting a stolen image removed from a website. Although the copyrighted image may be removed from a specific website, online shoppers continue to see a constant stream of the photo in deceptive advertisements on their social media feeds and search engines. For every image we are successful in getting taken down, countless new stolen im-



ages of our products appear in its place. It feels as though we are engaged in an endless game of “whack-a-mole” that we cannot win. In just the last few months, Venus has identified at least 25 different websites that used our copyrighted photography to sell poorly manufactured copies of Venus products.

Recent changes that increased the value of merchandise that can be shipped to the United States tax and duty free from \$200 to \$800 gives another advantage to Chinese sellers over companies like Venus. While the Trade Facilitation and Trade Enforcement Act approved by Congress and signed into law earlier this year provides tools to U.S. Customs and Border Protection to strengthen trade enforcement at the border, the new limits make it easier for online companies in China to ship their cheap clothing rip-offs directly to American homes. The same companies who steal our intellectual property are able to avoid paying taxes or duties on larger quantities of the goods they ship directly to American consumers.

To give you an idea of the type of advantage this creates, Venus imports many finished clothing items in bulk. At least 10 percent of the price of these clothing products can be directly attributed to the amount of duties and taxes we pay associated with these shipments. Our shipments are subject to taxes and duties and undergo rigorous screening at the border while our Chinese online competitors ship single packages to customers and avoid scrutiny and duties entirely. My Board of Directors regularly asks me why we choose to remain in Florida rather than relocate our distribution center to Mexico and ship directly to Venus customers from there. I remind them that Venus is a proud Florida company with immense loyalty to our company’s roots in the local Jacksonville community. However, as the playing field continues to slant against us, our competitiveness and sustainability is at stake and one day we could be forced to reevaluate our large presence in the United States.

I would like to thank the Committee for holding a hearing on this important subject and for giving me the opportunity to bring attention to the challenges facing companies like Venus in the digital age. I welcome the chance to work with you and other policy leaders to find solutions that will protect American consumers and allow American companies to compete on a level playing field.

