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# Statement of the U.S. Chamber of Commerce

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**ON:** Hearing: "Oversight of Intellectual Property Law Enforcement Efforts"

**TO:** Senate Committee on the Judiciary

**DATE:** June 21, 2011

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

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

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

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

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

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

**Statement submitted by the U.S. Chamber of Commerce  
Senate Committee on the Judiciary  
Hearing on: "Oversight of Intellectual Property Law Enforcement Efforts"  
Wednesday, June 22, 2011**

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The U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC) commends the Senate Committee on the Judiciary for holding this important hearing, and we thank the Senate Judiciary Committee for working on a bipartisan basis to support intellectual property (IP) issues at home and abroad. The GIPC, representing a broad spectrum of IP-intensive companies, is dedicated to protecting and promoting the creativity and innovation that serve as key engines of job creation, economic growth, and global development in the 21st Century.

IP-based industries account for more than \$7.7 trillion of the U.S. gross domestic output, drive 60 percent of U.S. exports, and employ more than 19 million Americans. The global IP system is designed to spur creativity and innovation, and promote the spread of knowledge by protecting creators' and inventors' rights. This time-proven system also helps provide assurance to consumers that the products they use are authentic, safe, and effective. Further, sound IP policies and the enforcement of IP rights in the United States and abroad are essential to advancing U.S. and global economic recovery, driving America's competitiveness and export growth, and creating high-quality, high-paying American jobs.

America's innovative economy faces growing threats from counterfeiting and piracy networks that operate both online and in the traditional marketplace. In addition, some foreign governments and their allies are seeking to weaken IP rights and undermine patent, trademark, and copyright protections around the world. Today, America's business sectors invest heavily in measures to prevent and investigate IP theft. But, the private sector can only do so much. Congress and the Administration must also be committed to implementing sound IP policies and sustaining strong IP enforcement efforts in the United States and abroad. The GIPC appreciates Congress and the Obama Administration's efforts to protect U.S. intellectual property and looks forward to continuing to work to foster job creation and economic recovery in our most innovative and creative industries by addressing some of the biggest challenges to effective IP protection. The GIPC would like to point to some notable accomplishments of the Administration's on-going efforts to protect IP.

The Intellectual Property Enforcement Coordinator (IPEC) is central to the enforcement efforts of the Administration, and the GIPC believes that since her Senate confirmation in late 2009, Ms. Victoria Espinel has demonstrated a strong commitment to advancing measures that will result in more effective enforcement of IP rights. When she testified before Congress in March, Ms. Espinel proposed 20 legislative recommendations aimed at improving IP enforcement. The IPEC's office also brought forth a strategy to fight counterfeit drugs, an issue championed by Vice President Biden, to rid these deadly products from the online marketplace. Ms. Espinel has crafted a proactive and comprehensive strategy to fight against criminal networks and others who seek to steal Americans' IP. The IPEC's office has made tremendous progress despite having limited resources, staff, and budget. We're hopeful the accomplishments outlined in Ms. Espinel's testimony will prove to the Committee that these programs are working and will succeed in the future only with the requisite resources.

Immigration and Customs Enforcement (ICE) under the leadership of Director John Morton and Assistant Deputy Director Erik Barnett, have increased efforts to stop online IP theft through its “Operation In Our Sites” initiative. Operation In Our Sites has led to the seizure of more than 130 rogue websites—websites used to sell or provide access to counterfeit and pirated products. While some of these sites have reappeared, interestingly, many more, after seeing that U.S. law enforcement is serious about combating this threat, have left the marketplace before ICE and the Department of Justice have had the opportunity to shut them down. The GIPC applauds the ongoing work of ICE and extends full support on behalf of the business community in recognition of their efforts.

The Administration has made tremendous progress in fighting IP theft; however, if America is to continue to lead the world in innovation and creativity, it is imperative that the Administration and Congress continue to make intellectual property protection a top priority. The GIPC remains committed to working with Congress and the Administration to accomplish the following priorities during the coming year:

**Combat Rogue Websites**—New online technologies and high-speed Internet access greatly benefit the global economy and enable consumer access to a growing range of goods and services. However, rogue websites garner 53 billion visits a year. These websites offer illegal copies and streams of copyrighted content, and sell dangerously defective products which not only pose a risk to consumer health and safety, but severely undermine sectors of our economy that have historically provided secure, high-paying jobs. In May, the Chairman Leahy, along with Ranking Member Grassley, Senator Hatch, and a bi-partisan group of co-sponsors introduced S. 968, the PROTECT IP Act, which the Committee subsequently reported by voice vote. The GIPC strongly supports this measure aimed at cutting foreign rogue websites off from the U.S. marketplace and looks forward to working with congressional leadership to support the enactment of legislation that will effectively deal with this growing problem. We also look forward to working with the Administration to secure its support for this much needed legislation.

**Provide Deterrent Penalties for Online Theft**—The theft of content online is incredibly lucrative. Accordingly, the penalties must be high in order to deter this activity. Currently, it can be a crime to infringe copyright through the unauthorized streaming of copyrighted works. But the penalty may only be for a misdemeanor. Congress should clarify, as S. 978 would, that streaming that already meets the definition of criminal copyright infringement can be punishable as a felony. We agree with the sponsors of the bill, who have indicated it is their intent that the legislation focus on criminal activity and that it should not subject legitimate business disputes to felony prosecutions.

**Support the Advancement of Trade Agreements with Modern Day IP Provisions**—With more than 95 percent of the world’s customers living outside of the United States, it is essential that Congress advance the conclusion and implementation of trade agreements with strong IP provisions that protect America’s creations and innovations. The GIPC urges Congress to approve swiftly the pending trade agreements with Korea, Colombia and Panama. In 2011, Congress and the Administration must make it a top priority to support inclusion of the highest

IP standards in the Trans-Pacific Partnership Agreement (TPP). It is essential to America's continued competitiveness and export growth that the U.S. ensures the TPP includes modern IP provisions that are at least as ambitious as those contained in the recently finalized U.S.-Korea Free Trade Agreement (KORUS) agreement.

**Expand Government Resources Dedicated to Enforce IP rights, Starting with the IPEC—**The GIPC urges Congress to expand the dedicated resources for IP enforcement activities while crafting appropriations legislation for FY12. Congress should ensure that the IPEC has the requisite resources and dedicated staff to successfully carry out her duties as outlined in the PRO-IP Act and the National IP Strategy. The GIPC also urges Congress to enact legislation that expands the current IP attaché program into additional countries to enhance IP assistance to U.S. businesses operating abroad.

**Work with Congress on Legislation to Strengthen IP Protection and Enforcement—**The GIPC believes the Administration should work with Congress to enact legislation that enables the federal government to better protect Americans' IP rights domestically and abroad. In the 111th Congress, S. 1631, the "Customs Facilitation and Trade Enforcement Reauthorization Act of 2009," was introduced with important provisions to improve the capability of U.S. Customs and Border Protection (CBP) and Immigration Customs Enforcement (ICE) to prevent counterfeit goods from entering the United States. The GIPC strongly supports this legislation and looks forward to continuing to work with the Administration, Congress and interested stakeholders to enact a similar bill into law in 2011.

The GIPC is also eager to work with Congress to enact legislation to improve the U.S. Trade Representative's "Special 301" process by enhancing the tools available to the Administration to engage more effectively with nations that fail to respect or enforce the rights of America's innovators and/or live up to their international IP obligations. This legislation should require an action plan for Priority Watch List countries that includes clear benchmarks to measure performance, and meaningful consequences for nations that fail to perform.

## **Conclusion**

The Obama administration can point to a series of accomplishments in support of IP enforcement. The challenges facing America and the world today make Congress' continued support for IP rights—and the swift passage of legislation to protect and promote IP at home and abroad—essential. The GIPC believes Congress, the Administration, the business community, labor, and other stakeholders can work collaboratively to safeguard and create jobs, while protecting consumer health and safety, by protecting the rights of America's inventors, artists, and entrepreneurs. The GIPC remains eager to work with Congress to offer the business community's perspective, expertise, and assistance on these issues.