

**Statement**  
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**before the**  
**House Committee on Oversight and Government Reform**  
**Subcommittee on Management, Organization and Procurement**

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Madam Chairwoman, Ranking Member Bilbray, my name is Stanford K. McCoy, and I am the Assistant United States Trade Representative for Intellectual Property and Innovation. Thank you for providing this opportunity to speak to you today about some of the U.S. Government's work to strengthen protection and enforcement of intellectual property rights (IPR) around the world, the role of the Office of the U.S. Trade Representative (USTR), and some of the key tools of U.S. trade policy, including the "Special 301" process.

The mission of the USTR, broadly stated, is to help Americans grow their farms, build their businesses, and support their families through trade. In 2008, exports generated nearly two trillion dollars in income for American workers, farmers, ranchers, manufacturers, and producers. That's about one in every eight dollars Americans earned last year. Manufacturing exports alone supported six million American jobs. Millions more high-quality jobs depend in part, or entirely, upon trade in services. And jobs supported by exports pay as much as 18 percent above the national average.

One of the factors that makes American exporters and investors competitive across so many sectors of the global economy is the value we add to our products and services through innovation and creativity. That added value comes from the genius of American workers and entrepreneurs in businesses large and small, and it represents a significant comparative advantage for the United States in the global economy. Intellectual property rights are critical to securing that comparative advantage, and thus to securing the jobs of workers in America's innovative and creative industries.

President Obama has laid out an innovation strategy that focuses on critical areas where sensible, balanced government policies can lay the foundation for innovation that leads to quality jobs and shared prosperity. Significantly, part of that innovation strategy is to ensure that intellectual property is protected in foreign markets.

Intellectual property assets may be intangible, but protecting those assets abroad yields tangible benefits. For instance, according to industry reports, copyright-intensive industries, including some in your district Madam Chairwoman, make significant contributions to U.S. employment and GDP. IP protection is also an engine for growing small and medium-sized businesses, many of which depend on intangible assets like inventions and brands to gain a foothold in the marketplace.

Madam Chairwoman, I want to emphasize that the importance of intellectual property protection is by no means a narrow one. Enforcement of intellectual property rights is essential to America's strength in diverse export sectors such as movies, music, software, pharmaceuticals, agricultural chemicals, and medical devices. And an intellectual property system consisting of appropriate and enforceable rights, as well as appropriate limitations and exceptions, is also critical to America's strength across a wide range of other sectors as well, including innovation in the manufacturing sector.

I want to take a minute to paint a picture of what that means for real American businesses and workers. Recently, I traveled to Illinois to meet with employees of Illinois Tool Works Inc., a diversified global manufacturer of advanced industrial technology that serves customers around the world. ITW is headquartered in Glenview. It operates in 52 different countries and employs about 60,000 people. The team at ITW stressed that innovation is at the heart of their business strategy, and IP protection and enforcement is one of the keys to its success. They count on a reliable international infrastructure of sound intellectual property laws, and they depend on effective systems for enforcing those laws.

Providing leadership in the creation and maintenance of the infrastructure of rules to support American exports and investments is a critical part of the work of the Office of the United States Trade Representative. We are doing everything we can to support the jobs that flow from trade and the workers who hold them, and that means stepping up our trade enforcement efforts. President Obama and Ambassador Kirk believe that on a level playing field, Americans can compete in any sector – from manufacturing to services to agriculture. Just enforcing the rules on the books can win our workers and companies the benefits of trading as fully, fairly, and freely as our agreements allow.

### **Special 301**

One of the best ways we guarantee America's trade rights is by consistently monitoring our partners' trade practices. If they know we are holding a magnifying glass up to their actions, they'll be less likely to break the rules.

One of our biggest and strongest magnifying glasses is the one that we use to examine protection and enforcement of intellectual property rights and market access for persons who rely on IP rights. I am referring, of course, to the tool the U.S. Congress created for USTR in the Omnibus Trade and Competitiveness Act of 1988, commonly known as the Special 301 Report.

We use the Special 301 report to scour the globe for copycats and counterfeiters, people who steal America's greatest strength: the intellectual property that flows from the ideas of the American people. Imitation may be the sincerest form of flattery, but as Ambassador Kirk likes to say: "piracy isn't flattery – it's theft."

That theft lets foreign companies market pirated and counterfeit goods that costs U.S. manufacturers, software companies, movie and music producers, and other creative and innovative enterprises billions of dollars, these illegitimate goods also expose US consumers and those around the world to products that can pose threats to public health and safety and damage

the environment. So, we call out countries that provide safe havens for the theft of American intellectual property.

Madam Chairwoman, this year marks the twentieth anniversary of the first Special 301 report, issued in 1989. The occasion presents us with an opportunity to look back and draw lessons from the past 20 years, and also to look ahead.

When Congress enacted the Special 301 provisions in 1988, the international legal infrastructure for the protection of the rights of U.S. creators and innovators was not yet well developed. The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) did not exist. And significant U.S. trading partners, such as China, Korea and Taiwan, had major gaps in their laws on the books to protect intellectual property rights.

Just as significantly, when Congress enacted the Special 301 provisions in 1988, few of us would have had the foresight to imagine routinely using the internet to buy goods and services, downloading movies and music, putting ringtones on cellphones, building brands and markets around web addresses, or even watching movies on DVD players. Along with the unquestionable benefits of these innovations have come enormous new challenges in the scope and sophistication of copyright piracy, trademark counterfeiting, and other forms of infringement of intellectual property rights. Technology was only one of several factors that contributed to what author Moises Naim has described as an “explosion of illicit trade” – including trade in counterfeit and pirated goods – in the 1990s.

As intellectual property has become more complex and sophisticated and its protection and enforcement problems more prevalent over the past two decades, the Special 301 process has expanded in scope and breadth to match it. In last year’s report for example, USTR examined IPR protection and enforcement in 77 countries, 46 of which were listed in either the Priority Watch List or the Watch List, or were designated for special monitoring pursuant to the statute (section 306 monitoring). The report reviewed current trends in IPR protection and enforcement, including internet and digital piracy; trends in counterfeiting; intellectual property and health policy; implementation of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement); and it included a section listing “notorious markets”, both physical and virtual, that have been associated with illicit trade in counterfeit and pirated merchandise.

How and why does this report work? Every year, USTR obtains information from wide variety of sources, including affected stakeholders, foreign governments, Members of Congress and their staffs, and interagency discussions. These close consultations begin in January and culminate around the end of April. At that time, we publish the report and note which countries are on the Priority Watch List, the Watch List, or other categories, and provide country reports for each country, carefully noting lapses in IPR protection and enforcement.

Special 301 works largely because the report’s rankings shine a light on IP protection and enforcement. In turn, that sends a message to the world, including potential investors, about the trading partner’s level of commitment to IPR protection. Indeed, one of the functions of the

report is to help inform businesses, including small businesses, about shortcomings in foreign IP systems that may enable counterfeiters to take advantage of U.S. exporters by selling false copies of their product. . Even apart from the threat of trade sanctions, the Special 301 report is a matter of concern for trading partners that value their trade relationship with the United States.

The Special 301 process also affords an opportunity to give credit where it is due. For example, we improve countries' Special 301 standing when they implement important improvements in IPR protection and enforcement.

A good example of both of these situations is the Republic of Korea. As I noted earlier, when the Special 301 report was first created the United States had grave concerns about the IP protection and enforcement in Korea. As the child of a U.S. Air Force officer I spent my high school years in Korea, and I can tell you from personal experience that there was no shortage of pirated audiocassettes, knock-off Nike sneakers, Ralph Lauren shirts, and other trademark and copyright infringing products being sold . Throughout each successive Special 301 report, Korea was always mentioned, usually on the Watch List, and sometimes even on the Priority Watch List. But this April, Ambassador Kirk removed Korea from all lists in the report. His decision not only reflected significant reforms undertaken in the past year. It also reflected the turnaround Korea achieved over many years. Of course, street piracy remains a challenge, joined by newer challenges like Internet piracy. Significantly, however, the Government of Korea has demonstrated a strong commitment to meeting these challenges, which is reflected, for example, in the strong IP chapter that is part of the KORUS FTA and is achieving results in this area. We credit our partners in the Government of Korea for bringing about that change, and urge them to sustain their commitment to adequate and effective protection and enforcement of intellectual property rights.

Korea's actions represent the latest of a series of improvements in the Asia-Pacific region that have been encouraged and recognized through the Special 301 process. For example, we have seen similar turnarounds in Hong Kong, Singapore, and Taiwan. And progress has not been limited to a single region. In Europe, in the Americas, in the Middle East and across Asia, the Special 301 process has played a significant role in fostering positive changes.

Another recent example of success involved cable piracy in the Bahamas. Faced with an impending preference program review and the possibility of being placed on the 301 list again the Bahamas finally enacted and implemented a law that should ensure that American movie and television creators don't have to compete with unauthorized transmissions of their own shows. That law went into effect on October 1. While this is seemingly a small example, in a small market, it illustrates how ensuring respect for intellectual property and implementing trade commitments can actually open markets for U.S. creativity- and innovation-intensive industries around the world.

We hope to see this trend continue and spread. It is vital that trading partners such as China, Russia, and other countries on the Priority Watch List and Watch List meet the objectives set by Congress by providing adequate and effective protection and enforcement for intellectual property, and market access for persons who rely on IPR protection. And it is critical that countries like Canada and Spain step up and confront the challenges of Internet piracy. The

failure to effectively do so has landed those valued trading partners on the Priority Watch List and Watch List, respectively.

### **Other IP initiatives/tools**

Even as we recognize successes, we need to also recognize that these and other markets, most notably China, still present significant challenges to the protection and enforcement of intellectual property rights. China is by far the world's leading exporter of knockoff products, and its domestic markets for IP-intensive products such as software, music, and films have been decimated by inadequate respect for IP rights. Madame Chairwoman, let me say it just as plainly as Ambassador Kirk has done: China must do more to protect U.S. intellectual property rights.

With China, we are making use of every available tool to achieve progress on IP issues. That includes the Special 301 report, but it also includes bilateral dialogues and, when appropriate, WTO dispute settlement.

I want to show you how those tools work together, so let me take a minute to talk about exactly what we're doing and how we're doing it. We begin each year by reviewing China's policies in order to prepare the Special 301 report. And this coming year we will also be conducting a provincial review, to assess progress on IPR issues in several key provinces and independent municipalities of China.

We also use the Joint Commission on Commerce and Trade (the "JCCT"), a long-standing bilateral dialogue, to obtain commitments from the Chinese Government to improve their IPR regime. For instance, in 2006 we obtained commitments that only legitimate software would be used on Government computers. This year's JCCT meeting took place last week, and the Chinese Government made commitments to: impose maximum administrative penalties on Internet infringers and has begun a four month campaign to clamp down on Internet piracy; strengthening protection of copyright-protected academic and medical journals in state run libraries and academic institutions; and committed to work closely with the United States to resolve U.S. concerns about a new Ministry of Culture circular relating to online music distribution that is creating serious problems for the U.S. music industry

Finally, in appropriate cases, where bilateral dialogue has not resolved our concerns, we have taken the further step of filing for dispute settlement before the World Trade Organization (WTO) dispute settlement. So far we have initiated two disputes that relate to our IPR concerns, and have obtained important decisions from the WTO that reaffirm the need for China to respect its WTO commitments.

For example, in March of this year, the WTO ruled that China's denial of copyright protection to works that do not meet China's content review standards was impermissible under the TRIPS Agreement. In addition, the WTO ruled that China's customs rules cannot allow seized counterfeit goods to be publicly auctioned after only removing the infringing trademark. There was a third claim concerning China's thresholds for criminal prosecution and conviction of counterfeiting and piracy on which the United States prevailed on the interpretation of the important legal standards in the Enforcement articles of the TRIPS Agreement, including the

finding that criminal enforcement measures for counterfeiting and piracy must reflect and respond to the realities of the commercial marketplace. However, the panel found that it needed additional evidence before it could determine whether China's criminal thresholds in fact are too high. China has committed to make the necessary changes to their laws to implement the WTO's findings by next March, and we are staying in close touch during this process.

This past August, USTR also won a significant victory in another WTO case I mentioned, although I should note that the Chinese are currently appealing the decision. The WTO found that major Chinese restrictions on the importation and distribution of copyright-intensive products such as theatrical films, DVDs, music, books and journals are inconsistent with China's WTO obligations. The WTO panel called on China to come into compliance with its obligations to allow U.S. companies to import these products into China and to eliminate the discriminatory requirements faced by imported products and their U.S. distributors in China. This case is an important component of our IPR strategy in China: promoting adequate and effective protection and enforcement of IPRs that will get pirated copies off the shelves, and ensuring market access that will put legitimate copies on the shelves in their place. WTO-inconsistent market access restrictions in China fuel the demand for pirate products by create a drought of legitimate ones. In turn, that creates opportunities for pirates to fill the void for Chinese consumers hungry for U.S. movies, music and books.

For countries that are not WTO members, we can use the process of WTO accession to press for needed changes, as we have done with Russia. Specifically, we are pressing Russia for full implementation of a November 2006 bilateral agreement reached in the context of Russia's ongoing WTO accession negotiations. Similarly with Ukraine, we are maximizing the WTO accession process and the pressure of trade sanctions imposed under Special 301 to bring about much needed changes. Those efforts have contributed to significant improvements in IPR protection and enforcement over the course of a few years.

## **ACTA**

In addition to reporting and engaging bilaterally on other countries' deficiencies in enforcing intellectual property rights, USTR is also providing essential leadership to strengthen international norms for the enforcement of IPR. A key USTR initiative in this area, the Anti-Counterfeiting Trade Agreement, or ACTA, aims to strengthen legal frameworks, to bridge the gap between laws on the books and strong enforcement on the ground, and to foster ongoing cooperation among the ACTA participants.

In this effort, we are partnering with a group of key trading partners who together represent more than 50 percent of global merchandise trade. Those partners include Australia, Canada, the European Union and its 27 member states, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, and Switzerland.

When it is finalized, the ACTA is intended to help governments around the world more effectively combat the proliferation of counterfeit and pirated goods. Doing so will support sustainable global development, protect American consumers, and undermine organized crime.

We have had five negotiating rounds to date. At the latest ACTA negotiations in Seoul, Korea, negotiators from my team joined colleagues from other trading partners in discussing tools to combat internet piracy.

In keeping with the Administration's goals on transparency, we are looking at new approaches to keep the public well informed about our progress in these negotiations, and to ensure that they have meaningful opportunities to give input into the negotiating process. We won endorsement of the importance of meaningful public input from all of the participants at the Seoul Round in of the ACTA negotiations in November. We will continue working with our ACTA negotiating partners to meet these objectives. Our goal is to complete the negotiations next year, and once finished, it is our hope that more countries will aspire to join this leadership agreement, and we will thereby encourage greater respect and enforcement of IPR globally.

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In closing, Madam Chairwoman, I would like to reiterate why Ambassador Kirk and his team at USTR go through these efforts – in other words, why ensuring intellectual property rights are protected and enforced is important to us and the economy. Whether it's airplanes or movies, software or state-of-the-art manufacturing equipment, one of our key comparative advantages in the global marketplace is the ability of our large and small enterprises and their workers to occupy the leading edge of the market. It is our innovation and creativity that keeps us there, and the ability to secure the fruits of that innovation and creativity that helps to secure our place in the global economy.