

**GAO**

**Testimony**

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Committee on Oversight and Government  
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**INTELLECTUAL  
PROPERTY**

**Enhancements to  
Coordinating U.S.  
Enforcement Efforts**

Statement of Loren Yager, Director  
International Affairs and Trade



**GAO**

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Madam Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to appear again before the Committee to discuss our work on U.S. efforts to protect intellectual property (IP) rights. We appreciate the opportunity to contribute to the record that this Committee has established on IP protection. As you know, IP is an important component of the U.S. economy. U.S. government efforts to protect and enforce IP rights domestically and overseas are crucial to safeguarding innovation and preventing significant losses to U.S. industry and IP rights owners as well as addressing health and safety risks resulting from the trade in counterfeit and pirated goods.

This hearing is timely, as Congress recently overhauled the U.S. structure for coordinating IP protection. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) created a new interagency IP enforcement advisory committee and authorized the President to appoint an Intellectual Property Enforcement Coordinator (IPEC) position within the Executive Office of the President to chair the new committee.<sup>1</sup> In September 2009, the President submitted his nomination to the Senate for confirmation and, in November 2009, the Senate Judiciary Committee favorably reported the President's nominee to the full Senate for confirmation.

In my statement today, I will address two topics on IP protection and enforcement in anticipation of some of the challenges ahead in implementing the PRO-IP Act: (1) lessons learned from past efforts to coordinate IP protection and enforcement and (2) observations on a recent initiative to place IP attachés overseas to promote and protect IP rights, based on our field work at four posts in three case study countries.

My remarks are based on a variety of assignments that GAO has conducted over the past 3 years on the international and domestic efforts undertaken by U.S. agencies to coordinate their efforts to address IP theft and piracy

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<sup>1</sup>PL 110-403, Title III.

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issues.<sup>2</sup> Most recently, we conducted field work in March 2009 at four posts in three countries: Beijing and Guangzhou, China; New Delhi, India; and Bangkok, Thailand. We have made several recommendations over the course of our work, with which the recipient agencies generally agreed. We conducted our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The PRO-IP Act of 2008 eliminates the old structure for coordinating IP efforts and creates a new interagency advisory committee composed of eight federal entities. The responsibility of the IPEC, among other things, is to lead the committee in the development of a joint strategic plan to reduce counterfeiting and other types of IP infringement, and to assist in the implementation of the joint strategic plan when requested by the advisory committee members.

As we have reported in our prior work on IP protection, multiple federal agencies undertake a wide range of activities that fall under three categories: policy initiatives, training and technical assistance, and law enforcement.

- U.S. international trade policy initiatives to increase IP protection and enforcement are primarily led by the Office of the U.S. Trade Representative (USTR), in coordination with the Departments of State and Commerce, U.S. Patent and Trademark Office (USPTO), and Copyright Office, among other agencies.
- Key training and technical assistance activities are undertaken by the Departments of Commerce, Homeland Security, Justice, and State; the

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<sup>2</sup>GAO, *Intellectual Property: Enhanced Planning by U.S. Personnel Overseas Could Strengthen Efforts*, [GAO-09-863](#) (Washington, D.C.: Sept. 30, 2009); GAO, *Overseas U.S. Government Personnel Involved In Efforts to Protect and Enforce Intellectual Property Rights*, [GAO-09-402R](#) (Washington, D.C.: Feb. 26, 2009); GAO, *Intellectual Property: Federal Enforcement Has Generally Increased, but Assessing Performance Could Strengthen Law Enforcement Efforts*, [GAO-08-157](#) (Washington, D.C.: Mar. 11, 2008); GAO, *Intellectual Property: Strategy Targeting Organized Piracy (STOP) Requires Changes for Long-term Success*, [GAO-07-74](#) (Washington D.C.: Nov. 8, 2006).

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Federal Bureau of Investigation (FBI); USPTO; and the Copyright Office.

- A smaller number of agencies and their entities are involved in investigating IP violations and enforcing U.S. IP laws. Working in an environment where counterterrorism is the central priority, the Department of Justice, including the FBI, and the Department of Homeland Security take actions that include engaging in multicountry investigations and seizures of goods that violate IP rights. The Food and Drug Administration (FDA) also investigates IP violations for FDA-regulated products as part of its mission to assure consumer safety.

In many cases, IP enforcement is generally a small part of the agencies' much broader missions; however, federal agencies are placing new emphasis on IP protection and enforcement. In particular, USPTO recently established eight IP attaché positions overseas that have IP protection and enforcement as their primary mission.<sup>3</sup> The IP attachés work on a range of IP activities in coordination with other federal agencies, U.S. industry, and foreign counterparts.

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## U.S. IP Coordinating Structure and Strategy Lacked Strong Leadership and Permanence

The PRO-IP Act of 2008 enacted several changes that address weaknesses that we described with the prior IP coordinating structure. The prior structure was initiated under two different authorities and lacked clear leadership and permanence, hampering its effectiveness and long-term viability. In 1999, Congress created the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) as a mechanism to coordinate U.S. efforts in the United States and overseas. In 2004, the Bush Administration announced the Strategy Targeting Organized Piracy (STOP), which included a similar group of U.S. agencies under a Presidential Initiative.

In our reporting, we described how NIPLECC had struggled to define its purpose and retained an image of inactivity within the private sector.<sup>4</sup> In a

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<sup>3</sup>USPTO's first IP attaché was posted in Beijing, China, in 2004. During 2006 and 2007, USPTO added a second attaché position in Beijing and an attaché position in Guangzhou, China, and expanded the program to five other countries: Egypt, Thailand, Russia, Brazil, and India. Since then, the Egypt position has been eliminated and a new position in Doha, Qatar, is in the planning stages.

<sup>4</sup>GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, [GAO-04-912](#) (Washington, D.C.: Sept. 8, 2004); and [GAO-07-74](#).

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report undertaken for this Committee in 2004, we noted that NIPLECC had little discernible impact and had not undertaken any independent activities since it was created, according to interviews with agency officials and its own reports. Congress subsequently made enhancements to NIPLECC in December 2004 to strengthen its role,<sup>5</sup> but we reported to this Committee in 2006 that it continued to have leadership problems.

In contrast, the presidential initiative called STOP had a positive image compared to NIPLECC, but lacked permanence, since there was no assurance that its authority and influence would continue in successive administrations. Unlike NIPLECC, STOP from its beginning was characterized by a high level of active coordination and visibility. Many agency officials said that STOP has increased attention to IP issues within their agencies and the private sector, as well as abroad, and attributed that to the fact that STOP came out of the White House, thereby lending it more authority and influence.

STOP was also a first step toward an integrated strategy to protect and enforce U.S. IP rights. However, we found that STOP's potential as a national strategy was limited because it did not fully address important characteristics of an effective strategy. For example, its performance measures lacked targets to assess how well the activities were being implemented. In addition, the strategy lacked a risk management framework and a discussion of current or future costs—important elements to effectively balance the threats from counterfeit products with the resources available. Although STOP identified organizational roles and responsibilities with respect to individual agencies' STOP activities, it did not specify who would provide oversight and accountability among the agencies carrying out the strategy.

While its impact will depend on its implementation, the PRO-IP Act of 2008 enacted several changes that address weaknesses we found in the prior coordinating structure. For example, the PRO-IP Act specifically requires the new interagency advisory committee to prepare a joint strategic plan

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

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that addresses key elements of an effective national strategic plan, building in mechanisms for accountability and oversight. Also, the PRO-IP Act requires the IPEC to submit the joint strategic plan to Committees of Congress every third year after the development of the first strategic plan. In contrast, STOP, a presidential initiative, has not been updated since September 2007, affirming doubts about its long-term viability. In addition, the PRO-IP Act places leadership in the Executive Office of the President—a status similar to that of STOP—in contrast with NIPLECC, whose leadership resided within the Department of Commerce. In September 2009, the administration announced that the IPEC would be located within the Office of Management and Budget. The PRO-IP Act repeals NIPLECC upon confirmation of the IPEC by the Senate. Currently, there is no IP Coordinator or NIPLECC staff. In addition, the most recent NIPLECC annual report was published in January 2008.<sup>6</sup>

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## Facing Significant Challenges Overseas, USPTO IP Attachés Have Adopted Practices to Enhance Collaboration

An additional theme of the PRO-IP Act is the emphasis on federal efforts to strengthen the capacity of foreign governments to protect and enforce IP rights. In September 2009, we reported that the USPTO IP attachés were generally effective in collaborating with other agencies at the four posts we visited, primarily by adopting practices, such as acting as effective focal points, establishing working groups and leveraging resources through joint activities.<sup>7</sup> At one post, the IP attaché had worked with other agencies to develop a joint work plan for the post.

U.S. government officials in our three case study countries face a range of challenges in their efforts to promote the protection and enforcement of IP rights. The U.S. government has identified weak enforcement as a key IP issue in the three case study countries; however, weaknesses also persist in their IP laws and regulations. The U.S. government describes enforcement of existing IP laws and regulations and adjudication of suspected infringements as limited and inconsistent, and penalties are not typically sufficient to serve as an effective deterrent. Several factors contribute to this limited and inconsistent enforcement, including flawed enforcement procedures; a lack of technical skills and knowledge of IP among police, prosecutors, and judges; a lack of resources dedicated to IP

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<sup>6</sup>In fiscal year 2009, NIPLECC received an appropriation of \$1 million under the Department of Commerce Patent and Trademark Office budget. The Department of Commerce stated that no budget request was made for fiscal year 2010.

<sup>7</sup>See [GAO-09-863](#).

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enforcement efforts; and the absence of broad-based domestic support for strong IP enforcement.

We found that the USPTO IP attachés have adopted several practices that enhanced collaboration on federal IP efforts overseas, such as

- **Acting as effective focal points:** Agreement on agency roles and responsibilities of the IP attachés, particularly vis-à-vis the State economic section and post leadership, while challenging, was achieved in most posts. Prior to the creation of the IP attaché position at the four posts, State economic officers had primary responsibility for IP; now, they are the most involved in IP issues after the IP attachés. IP attachés also imparted their subject matter expertise, which enhanced their effectiveness as focal points. In addition, IP attachés have the advantage of working full time on IP, influencing agency officials at the posts to increase attention to IP issues despite other competing demands. Several agency officials from all four posts said that they had multiple responsibilities required by their broad portfolios, and some officials in some posts said they spent relatively little time on IP.
- **Establishing IP working groups:** The IP attachés played a key role in creating inter-agency IP working groups at the embassies in New Delhi and Beijing soon after their arrival. Several agency officials at these posts said that the working groups provided several benefits, such as increasing awareness of IP issues and trends, exchanging information on respective IP activities, and increasing coordination on training and other activities. The importance of the IP working group and the role of the attaché in Beijing was demonstrated when the working group became inactive after the attaché left the post in August 2008 and the position became vacant. Two agency officials at the post said that, without these meetings, there was less focus on IP at the post and that it was more difficult to ensure that the embassy spoke with one voice on IP.
- **Leveraging resources through joint activities:** The IP attachés complemented the efforts of other agencies to enhance IP protection and enforcement at all four posts by leveraging resources through joint IP activities. For example, the IP attachés helped the Department of Commerce's Foreign Commercial Service efforts to assist and encourage individuals to do business in the country by providing advice on how to avoid IP problems and answering IP-related questions.

Economic officers in two posts provided several examples of IP attachés' expertise enhancing the officers' relationship with host country officials.

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For instance, the economic officer in New Delhi said that the IP attaché had used his expertise to build rapport with the host government on IP issues and complement the economic officer's diplomacy with details on potential solutions. A public affairs officer in Guangzhou said that the IP attaché had met with stakeholders such as academics, students, and industry groups on IP that provided the public affairs officer new contacts for his work.

- **Developing joint strategies:** The IP attaché in New Delhi led an effort to develop a joint strategy in the form of an interagency IP work plan. The plan established specific IP objectives and helped agencies at the working level identify and implement IP activities that address the key issues identified by the United States. For example, the work plan listed the implementation of an optical disk law and a meaningful system for protecting undisclosed data against unfair commercial use as key goals. In addition, the plan identified day-to-day activities, such as meetings that the post intended to hold with various Indian ministries, outreach it planned to perform with the private sector, IP training it planned to provide, and data it planned to collect to bolster the U.S. position on certain IP issues.<sup>8</sup> In general, we found that other existing post-level guidance was too high-level and did not guide agencies' day-to-day efforts to reach IP goals.

Joint strategies can help agencies maintain focus on IP given numerous competing issues and periodic changes in key IP personnel at the posts. Some agency officials noted that the long-term nature of many IP efforts—such as implementing optical disk laws, developing public outreach to convince consumers of the importance of IP rights, or building the relationships with foreign law enforcement officials necessary to conduct joint IP investigations—require sustained and focused attention over time. In the absence of such sustained attention, the impacts of U.S. efforts can be diminished. For instance, one official noted that he had observed a cycle in which the post would exert pressure on the host country's police to more aggressively enforce IP laws, and enforcement would increase; however, after a time, pressure would ease and previous enforcement levels would return. In our 2009 report, we recommended that the Secretary of State direct post leadership to work with USPTO IP attachés in countries with such attachés to develop annual IP interagency post

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<sup>8</sup>As the plan had been in place for a relatively short period of time when we conducted our field work in New Delhi, in March 2009, the IP Working Group had not yet assessed progress that had been made.



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work plans with input from relevant agencies. The Department of State and USPTO agreed with our recommendation.

While our observations on USPTO's IP attachés overseas are largely positive, our prior work has also demonstrated that the long-term success of operations abroad requires attention to human capital planning. In particular, we observed that other agencies attempting to establish a presence abroad had to make additional efforts to ensure that they could recruit and retain sufficient personnel with the technical and cultural expertise that is important in those posts. These considerations may be important as USPTO makes decisions about the scale and permanence of this program.

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## Concluding Observations

Madam Chairwoman, thank you for the opportunity to appear before the Committee to summarize our work on IP protection. GAO has performed a number of studies on both domestic and international efforts to protect IP since my last testimony on this subject before this Committee in 2004. As I have noted in my statement, we believe that the PRO-IP Act enacted last year has taken a number of positive steps to clarify the structure of IP agency coordination, and Congress has also tasked the coordinator to provide information we believe will be useful in oversight of U.S. agency efforts. Our most recent report also suggests that efforts such as those of the USPTO to place specialist attachés abroad has had a positive impact in the posts we visited because of their expertise and focus on this issue. Notwithstanding these positive developments, our work suggests that IP enforcement will continue to be a daunting task and that the U.S. agencies still need to demonstrate that they can collaborate effectively over the long term to help address these challenges.

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## GAO Contacts and Staff Acknowledgments

Should you have any questions about this testimony, please contact Loren Yager at (202) 512-4347, or [yagerl@gao.gov](mailto:yagerl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this statement include Christine Broderick (Assistant Director), Jeremy Latimer, Catherine Gelb, Nina Pfeiffer, and Ryan Vaughan.

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