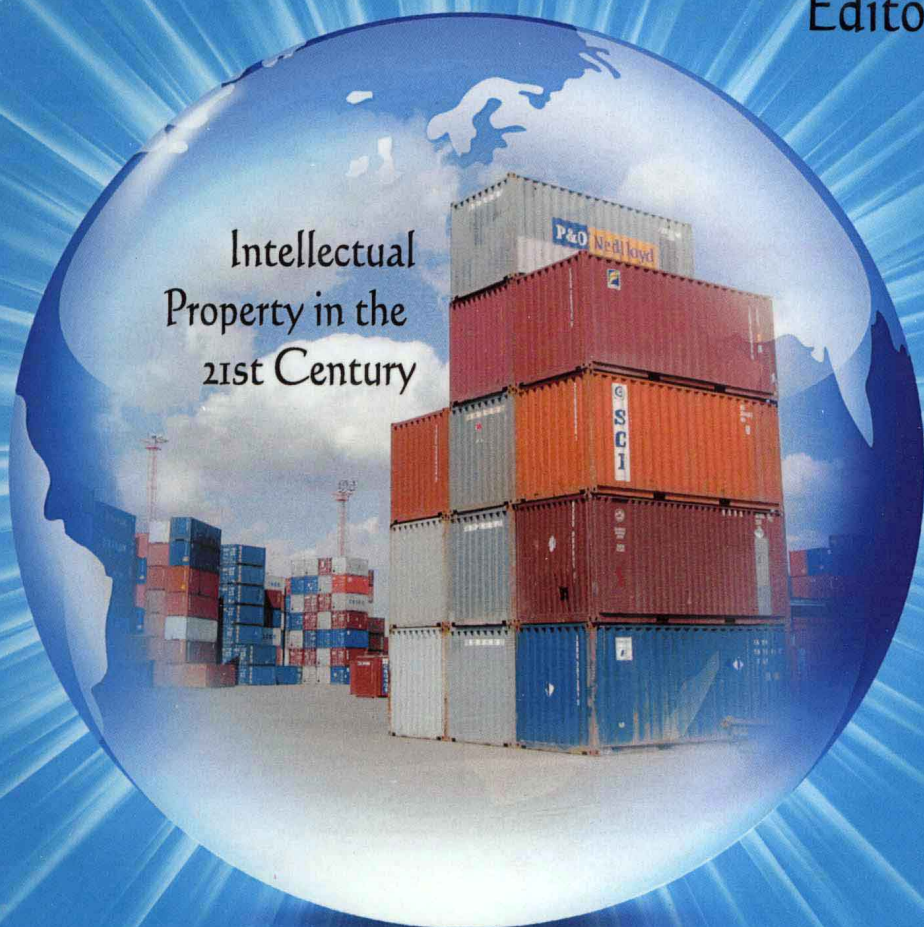


Intellectual Property Rights _____ and _____ International Trade

Alan W. Osling
Editor

Intellectual
Property in the
21st Century



NOVA

INTELLECTUAL PROPERTY IN THE 21ST CENTURY

INTELLECTUAL PROPERTY RIGHTS AND INTERNATIONAL TRADE

ALAN W. OSLING

EDITOR



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PREFACE

This book provides background on intellectual property rights (IPR) and discusses the role of U.S. international trade policy in enhancing IPR protection and enforcement abroad. IPR are legal rights granted by governments to encourage innovation or works and they may take the form of patents, trade secrets, copyrights, trademarks, or geographical indications. U.S. industries that rely on IPR contribute significantly to U.S. economic growth, employment, and trade with other countries. Counterfeiting and piracy in other countries may result in the loss of billions of dollars of revenue for U.S. firms as well as the loss of jobs.

Chapter 1 - The “Special 301” Report is an annual review of the global state of intellectual property rights (IPR) protection and enforcement, conducted by the Office of the United States Trade Representative (USTR) pursuant to Special 301 provisions of the Trade Act of 1974 (Trade Act). The 2008 Special 301 review process examined IPR protection and enforcement in 78 countries. Following extensive research and analysis, USTR designates 46 countries in this year’s Special 301 Report in the categories of Priority Watch List, Watch List, and/or Section 306 Monitoring status. This chapter reflects the Administration’s resolve to encourage and maintain effective IPR protection and enforcement worldwide.

The Special 301 designations and actions announced in this chapter are the result of close consultations with affected industry groups and other private sector representatives, foreign governments, Congressional leaders, and interagency coordination within the United States Government. This Administration is committed to using all available methods to resolve IPR-related issues and ensure that market access is fair and equitable for U.S. products of IPR-intensive industries.

The Administration’s top priorities this year continue to be addressing weak IPR protection and enforcement, particularly in China and Russia. Although this year’s Special 301 Report shows positive progress in many countries, rampant counterfeiting and piracy problems have continued to plague China and Russia, indicating a need for stronger IPR regimes and enforcement in those countries.

In addition to China and Russia, the Special 301 Report sets out significant concerns with respect to such trading partners as Argentina, Chile, India, Israel, Pakistan, Thailand, and Venezuela. In addition, the report notes that the United States will consider all options, including, but not limited to, initiation of dispute settlement consultations in cases where countries do not appear to have implemented fully their obligations under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In this year's review, USTR highlights the need for significantly improved enforcement against counterfeiting and piracy, Internet piracy, counterfeit pharmaceuticals, transshipment of pirated and counterfeit goods, requirements for authorized use of legal software by government ministries, proper implementation of the TRIPS Agreement by developed and developing country WTO members, and full implementation of TRIPS Agreement standards by new WTO members at the time of their accession.

Chapter 2 - The WTO Agreement on Trade-Related Intellectual Property (TRIPS) requires all 151 World Trade Organization (WTO) members to provide baseline protections, including 20-year patents for innovative pharmaceuticals. The Trade Act of 2002 granting Trade Promotion Authority (TPA) to the President outlined three negotiating objectives related to intellectual property (IP). The first two aim to strengthen IP rights and enforcement abroad. The third calls for respect of the WTO Doha Declaration on TRIPS and Public Health, which addresses access by developing countries to patented medicines, particularly in epidemic and emergency situations.

This chapter (1) describes the Declaration and its interpretation by the United States and other nations; (2) analyzes how USTR has balanced respect for the Doha Declaration with the other two IP objectives in negotiating free trade agreements; and (3) evaluates the extent of public health input by agencies and the private sector. We reviewed official WTO and U.S. government documents, interviewed U.S. and foreign government officials, and obtained private sector views.

Chapter 3 - This chapter provides background on intellectual property rights (IPR) and discusses the role of U.S. international trade policy in enhancing IPR protection and enforcement abroad. IPR are legal rights granted by governments to encourage innovation and creative output by ensuring that creators reap the benefits of their inventions or works and they may take the form of patents, trade secrets, copyrights, trademarks, or geographical indications. U.S. industries that rely on IPR contribute significantly to U.S. economic growth, employment, and trade with other countries. Counterfeiting and piracy in other countries may result in the loss of billions of dollars of revenue for U.S. firms as well as the loss of jobs. Responsibility for developing IPR policy, engaging in IPR-related international negotiations, and enforcing IPR laws cuts across several different U.S. Government agencies.

Promoting the enforcement of IPR is an important component of U.S. international trade policy. Since the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organization (WTO), trade policy has been used to enforce IPR abroad. The United States and several trading partners recently announced plans to pursue a multilateral anti-counterfeiting agreement that would surpass TRIPS Agreement commitments.

The United States also pursues international IPR support through regional and bilateral free trade agreements (FTAs), which often include IPR commitments by U.S. partners exceeding their TRIPS Agreement obligations. However, for the Peru, Panama, and Colombia FTAs, the Administration agreed to scale back some IPR requirements to bolster bipartisan support for the FTAs. Other trade policy tools also are available for U.S. efforts to advance international IPR. Pursuant to Section 182 of the Trade Act of 1974 as amended (P.L. 93-618), the Office of the U.S. Trade Representative (USTR) identifies countries providing inadequate IPR protection in its annual "Special 301" report. Section 337 of the amended Tariff Act of 1930 authorizes the U.S. International Trade Commission (ITC) to prohibit U.S. imports of infringing products. Additionally, under the Generalized System of Preferences

(GSP), the United States may consider a developing country's IPR policies and practices as a basis for offering preferential duty-free entry to certain products from the country, and can suspend GSP benefits if IPR protection is lacking.

IPR protection and enforcement bring up several key issues for Congress. A central issue is the appropriateness of FTAs as a vehicle for promoting IPR. Congress also faces the challenge of balancing the need for IPR protection and enforcement with the goals of the Doha Declaration on Public Health. Additionally, there has been concern about the effectiveness of the current U.S. IPR enforcement structure. In the 110th Congress, Legislation (P.L. 110-403) was enacted to establish a new structure to coordinate federal IPR enforcement activities.

Chapter 4 - In August 2003, the World Trade Organization (WTO) reached an agreement on the use of compulsory licenses by developing countries without manufacturing capacity to access life-sustaining medicines. This agreement was incorporated as an amendment to Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement on the eve of the Hong Kong Ministerial in December 2005. The issue of access to affordable medicines is one of great concern to developing countries whose health-care systems are often overwhelmed by HIV/AIDS and other infectious diseases. Some developing countries have viewed the TRIPS agreement as an impediment in their attempts to combat such public health emergencies by restricting drug availability and by transferring scarce resources from developing countries to developed country manufacturers. For the developing world, the issue of compulsory licenses is an important test as to whether the WTO can meet the development needs of its members, and conversely, whether the developing world can influence the actions of the world trading system.

Developed country pharmaceutical industries view the TRIPS agreement as essential to encourage innovation in the pharmaceutical sector by assuring international compensation for their intellectual property. Without such protection, industry claims it could not recoup the high costs of developing new medicines. Producers have unilaterally undertaken to reduce prices for certain HIV/AIDS medicines, but these efforts at differential pricing have not been systematic. The United States has been forceful in defending the interest of the U.S. pharmaceutical industry in the negotiations. In December 2002, the United States blocked a compromise on the compulsory licensing issue to which all other nations had agreed; however, it was also the first nation to ratify the December 2005 amendment.

In the 109th Congress, legislation was introduced (S. 3175, Leahy) to establish procedures to grant compulsory licenses for exporting patented pharmaceutical products to certain countries under the WTO Decision. This legislation was not acted upon in the 109th Congress, and has not been reintroduced in the 110th Congress.

The system of compulsory licensing may have a relatively modest effect on the availability of medicines in the developing world. Compulsory licenses have rarely been used by developing countries because many patent regimes did not protect pharmaceuticals before 2006. Countries providing patent protection to pharmaceuticals have used the threat of compulsory licensing as a method to negotiate lower drug prices. Although some countries have amended their national laws to allow compulsory licensing for pharmaceutical exports, there may be little economic incentive for a supplier to manufacture the product in the case of an LDC issuing a compulsory license. To date, only Rwanda has notified the WTO of its intention to use the WTO notification process to import HIV/AIDS medication from Canada.

Chapter 5 - This chapter discusses two potential roles the International Monetary Fund (IMF) may have in helping to resolve the current global financial crisis: (1) immediate crisis control through balance of payments lending to emerging market and less-developed countries and (2) increased surveillance of the global economy through better coordination with the international financial regulatory agencies.

The current global financial crisis, which began with the downturn of the U.S. subprime housing market in 2007, is testing the ability of the International Monetary Fund (IMF), in its role as the central international institution for oversight of the global monetary system. Though the IMF is unlikely to lend to the developed countries most affected by the crisis and must compete with other international financial institutions¹ as a source of ideas and global macroeconomic policy coordination, the spillover effects of the crisis on emerging and less-developed economies gives the IMF an opportunity to reassert its role in the international economy on two key dimensions of the global financial crisis: (1) immediate crisis management and (2) long-term systemic reform of the international financial system.

The role of the IMF has changed significantly since its founding in July 1944. Late in World War II, delegates from 44 nations gathered in Bretton Woods, New Hampshire to discuss the postwar recovery of Europe and create a set of international institutions to resolve many of the economic issues—such as protectionist trade policies and unstable exchange rates—that had ravaged the international economy between the two world wars. As the global financial system has evolved over the decades, so has the IMF. From 1946 to 1973, the main purpose of the IMF was to manage the fixed system of international exchange rates agreed on at Bretton Woods. The U.S. dollar was fixed to gold at \$35 per ounce and all other member countries' currencies were fixed to the dollar at different rates. The IMF monitored the macroeconomic and exchange rate policies of member countries and helped countries overcome balance of payments crises with short-term loans that helped bring currencies back in line with their determined value. This system came to an abrupt end in 1973 when the United States floated its currency and subsequently introduced the modern system of floating exchange rates. Over the past three decades, floating exchange rates and financial globalization have contributed to, in addition to substantial wealth and high levels of growth for many countries, an international economy marred by exchange rate volatility and semi-frequent financial crises. The IMF adapted to the end of the fixed-exchange rate system by becoming the lender of last resort for countries afflicted by such crises.

Current IMF operations and responsibilities can be grouped into three areas: surveillance, lending, and technical assistance. Surveillance involves monitoring economic and financial developments and providing policy advice to member countries. Lending entails the provision of financial resources under specified conditions to assist a country experiencing balance of payments difficulties. Technical assistance includes help on designing or improving the quality and effectiveness of domestic policy-making.

Chapter 6 - The United States is in the process of negotiating a number of trade agreements. In addition, the 110th Congress may also address the issue of trade promotion authority (TPA), which expired on July 1, 2007. These agreements range from bilateral trade agreements with countries that account for meager shares of U.S. trade to multilateral negotiations that could affect large numbers of U.S. workers and businesses. During this process, Congress likely will be presented with an array of data estimating the impact of trade agreements on the economy, or on a particular segment of the economy.

An important policy tool that can assist Congress in assessing the value and the impact of trade agreements is represented by sophisticated models of the economy that are capable of simulating changes in economic conditions. These models are particularly helpful in estimating the effects of trade liberalization in such sectors as agriculture and manufacturing where the barriers to trade are identifiable and subject to some quantifiable estimation. Barriers to trade in services, however, are proving to be more difficult to identify and, therefore, to quantify in an economic model. In addition, the models are highly sensitive to the assumptions that are used to establish the parameters of the model and they are hampered by a serious lack of comprehensive data in the services sector. Nevertheless, the models do provide insight into the magnitude of the economic effects that may occur across economic sectors as a result of trade liberalization. These insights are especially helpful in identifying sectors expected to experience the greatest adjustment costs and, therefore, where opposition to trade agreements is likely to occur.

This chapter examines the major features of economic models being used to estimate the effects of trade agreements. It assesses the strengths and weaknesses of the models as an aid in helping Congress evaluate the economic impact of trade agreements on the U.S. economy. In addition, this chapter identifies and assesses some of the assumptions used in the economic models and how these assumptions affect the data generated by the models. Finally, this chapter evaluates the implications for Congress of various options it may consider as it assesses trade agreements.

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Chapter 1

2008 SPECIAL 301 REPORT

Office of the United States Trade Representative

EXECUTIVE SUMMARY

Introduction

The “Special 301” Report is an annual review of the global state of intellectual property rights (IPR) protection and enforcement, conducted by the Office of the United States Trade Representative (USTR) pursuant to Special 301 provisions of the Trade Act of 1974 (Trade Act). The 2008 Special 301 review process examined IPR protection and enforcement in 78 countries. Following extensive research and analysis, USTR designates 46 countries in this year’s Special 301 Report in the categories of Priority Watch List, Watch List, and/or Section 306 Monitoring status. This chapter reflects the Administration’s resolve to encourage and maintain effective IPR protection and enforcement worldwide.

The Special 301 designations and actions announced in this chapter are the result of close consultations with affected industry groups and other private sector representatives, foreign governments, Congressional leaders, and interagency coordination within the United States Government. This Administration is committed to using all available methods to resolve IPR-related issues and ensure that market access is fair and equitable for U.S. products of IPR-intensive industries.

The Administration’s top priorities this year continue to be addressing weak IPR protection and enforcement, particularly in China and Russia. Although this year’s Special 301 Report shows positive progress in many countries, rampant counterfeiting and piracy problems have continued to plague China and Russia, indicating a need for stronger IPR regimes and enforcement in those countries.

In addition to China and Russia, the Special 301 Report sets out significant concerns with respect to such trading partners as Argentina, Chile, India, Israel, Pakistan, Thailand, and Venezuela. In addition, the report notes that the United States will consider all options, including, but not limited to, initiation of dispute settlement consultations in cases where

countries do not appear to have implemented fully their obligations under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In this year's review, USTR highlights the need for significantly improved enforcement against counterfeiting and piracy, Internet piracy, counterfeit pharmaceuticals, transshipment of pirated and counterfeit goods, requirements for authorized use of legal software by government ministries, proper implementation of the TRIPS Agreement by developed and developing country WTO members, and full implementation of TRIPS Agreement standards by new WTO members at the time of their accession.

Positive Developments

Several countries made significant positive progress on IPR protection and enforcement in 2007. For example, Russia has increased penalties for copyright crimes and stepped up action against unlicensed optical disc plants. China has made progress on implementation of measures to reduce end-user software piracy and agreed to strengthen enforcement against company name misuse. In Taiwan, prosecutions for business software piracy have increased, and Taiwan passed legislation making illegal and subjecting to civil and criminal liability services that intentionally facilitate peer-to-peer file sharing. Seizures of counterfeit pharmaceuticals have increased in Indonesia and Nigeria. India has approved initiating action for accession to the Madrid Protocol. China and Australia joined the two key World Intellectual Property Organization (WIPO) treaties for copyright protection. Malaysia launched a new intellectual property (IP) Court, consisting of 15 sessions courts and 6 high courts. Vietnam has taken actions to address the problem of signal piracy. The country sections of this chapter describe numerous other positive developments.

In 2007, the United States worked to strengthen IPR laws and enforcement around the globe. The three pending free trade agreements (FTAs) all contain world-class IPR provisions, and FTA partner countries such as the Dominican Republic and Oman overhauled their IPR laws as part of the FTA implementation process.

In addition, USTR is pleased to announce that the following countries are having their status improved in the Special 301 Report or are being removed entirely because of progress on IPR issues this past year:

- Belize is being removed from the Watch List due to improvements in IPR enforcement efforts following heightened engagement with the United States.
- Egypt is being moved from the Priority Watch List to the Watch List due to improvements in pharmaceutical IPR protection. The United States urges Egypt to make further improvements, however, in its IPR enforcement efforts and to further clarify its practices with respect to data protection.
- Lebanon is being moved from the Priority Watch List to the Watch List due to improvements in IPR enforcement efforts. Despite this progress, the United States urges Lebanon to pass long-awaited IPR amendments.

- Lithuania is being removed from the Watch List due to improvements in IPR enforcement and passage of IPR legislation following heightened engagement with the United States.
- Turkey is being moved from the Priority Watch List to the Watch List due to improvements in IPR protection. The United States encourages Turkey to make further improvements to its IPR protection and enforcement regimes.
- Ukraine is being moved from the Priority Watch List to the Watch List due to improvements in IPR protection following close engagement with the United States during WTO accession negotiations. The United States urges Ukraine to continue, however, to make improvements in IPR enforcement and to effectively implement its recently passed IPR laws.

The United States commends this positive progress by our trading partners. The United States will continue to work with these and other countries to achieve further improvements in IPR protection and enforcement during the coming year.

Free Trade Agreements and Implementation

The United States is committed to promoting strong intellectual property rights through a variety of mechanisms, including the negotiation of FTAs, which contain intellectual property chapters that establish strong protections for copyrights, patents, and trademarks, as well as rules for enforcement.

The United States is pleased to have worked together with many countries to strengthen IPR protection and enforcement through bilateral and multilateral FTAs. Agreements concluded in recent years include the Republic of Korea FTA (KORUS FTA), Panama Trade Promotion Agreement, Bahrain FTA, Oman FTA, the Peru Trade Promotion Agreement, the Colombia Trade Promotion Agreement, and the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) which covers Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. Each of these FTAs has resulted in commitments to strengthen IPR protection and enforcement in those countries. In regions such as the Middle East and Asia, the United States has used an increasing number of trade and investment framework agreement (TIFA) negotiations to enhance intellectual property protection and enforcement.

Following the conclusion of these agreements, the United States continues to work closely with our trading partners to ensure proper implementation of FTA obligations under domestic law and strengthen bilateral cooperation.

Generalized System of Preferences (GSP) Reviews

As another mechanism for promoting strong intellectual property regimes around the world, USTR reviews IPR practices in connection with the implementation of trade preference programs such as the Generalized System of Preferences (GSP). USTR will

continue to review IPR practices in Russia, Lebanon, and Uzbekistan under ongoing GSP reviews.

Anti-Counterfeiting Trade Agreement (ACTA)

On October 23, 2007, U.S. Trade Representative Susan C. Schwab announced that the United States will seek to negotiate an Anti-Counterfeiting Trade Agreement (ACTA). ACTA will bring together countries that recognize the critical importance of strong IPR enforcement for a prosperous economy. The ACTA is envisioned as a leadership effort among countries that will raise the international standard for IPR enforcement to address today's challenges of counterfeiting and piracy. ACTA will build upon the Administration's prior bilateral and regional cooperation successes.

STOP! Initiative

USTR is actively engaged in implementing the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. Announced in October 2004, STOP! brings together all the major players – the federal government, private sector, and trading partners – to take concerted action to crack down on piracy and counterfeiting. The initiative is part of an effort to enhance coordination among all relevant U.S. Government agencies and U.S. trading partners to tackle this global problem. As part of STOP!, USTR continues to advocate the adoption of best practices guidelines for IPR enforcement.

As part of this effort, USTR, in coordination with other agencies, is introducing new initiatives in multilateral fora to improve the global intellectual property environment that will aid in disrupting the operations of pirates and counterfeiters. In addition to the ACTA effort described above, key initiatives have gained endorsement and are undergoing implementation in the G-8, the U.S.-EU Summit, the Security and Prosperity Partnership (SPP) with Canada and Mexico, the Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC) forum.

Implementation of the U.S.-EU Action Strategy for IPR Enforcement has focused on addressing concerns in key countries such as China and Russia through closer coordination and information exchange, in addition to increasing customs cooperation and providing technical assistance to third countries. Through a bilateral working group, the two sides have established regular information exchanges on efforts to improve China's intellectual property climate, and have deepened their IPR-related cooperation in the context of Russia's WTO accession. The Parties have expanded this cooperative dynamic to other regions of the world including Southeast Asia and Latin America.

The Leaders of Canada, Mexico, and the United States launched the Security and Prosperity Partnership of North America (SPP) in 2005 to address issues related to economic competition resulting from shifting patterns of trade and investment worldwide. The governments subsequently established an Intellectual Property Working Group under the SPP. USTR, together with the Department of Commerce, jointly leads the U.S. delegation to the SPP IP Working Group. The SPP IP Working Group developed a trilateral Intellectual

Property Rights Action Plan, which leaders announced at the SPP Summit in Montebello, Canada, in August 2007. The Action Plan constitutes a strategy for governments and the private sector to combat piracy and counterfeiting in North America. The governments of Canada, Mexico, and the United States have agreed to take action in three areas: (1) detecting and deterring trade in counterfeit and pirated goods; (2) increasing consumer awareness of the adverse effects of counterfeiting and piracy; and (3) measuring the depth and scope of counterfeiting and piracy.

Through efforts by the United States, APEC endorsed the “Anti-Counterfeiting and Piracy Initiative” in 2005, which paved the way for the adoption of a number of U.S. led proposals. Some of these initiatives include Model Guidelines on reducing trade in counterfeit and pirated goods by protecting against unauthorized copies, preventing the sale of counterfeit goods over the Internet, raising public awareness on IP protection and enforcement efforts, and securing supply chains. Other initiatives include a paper on innovative techniques for IPR border enforcement and commitments made by the APEC leadership on combating signal theft, and addressing markets that knowingly sell counterfeit and pirated goods. The United States will continue to introduce initiatives that build on past accomplishments.

Global Scope of Counterfeiting and Piracy

The continuing growth of IPR theft and trade in fakes and pirated materials threatens innovative and creative economies worldwide. Counterfeiting has evolved in recent years from a localized industry concentrated on copying high-end designer goods to a sophisticated global business involving the mass production and sale of a vast array of fake goods, including items such as soaps, shampoos, razors, electronics, batteries, cigarettes, alcoholic beverages, sporting goods, automobile parts, motorcycles, medicines, and health care products, among others. Not only is there greater diversification in the types of goods that are being counterfeited, but industry reports a growing trend in the production of labels and components for these fake products. Exploiting free trade zones, counterfeiters are establishing a global trade in these items, shipping them separately to be assembled and distributed in another country.

Counterfeiting not only affects the profits of legitimate producers, but also impacts consumers who waste money and sometimes risk their safety by purchasing fake goods. It also damages the economies of the countries in which it occurs by decreasing tax revenue and deterring investment. Counterfeiters generally pay no taxes or duties, and they often disregard basic standards for worker health and safety, and product quality and performance. Piracy of copyrighted products in virtually all formats, as well as counterfeiting of trademarked goods, has grown rapidly because these criminal enterprises offer enormous profits and little risk. Counterfeiters and pirates require little up-front capital investment, and even if caught and charged with a crime, the penalties imposed on convictions in many countries are so low that they offer little or no deterrence.

Stronger and more effective criminal and border enforcement is required to stop the manufacture, import, export, transit, and distribution of pirated and counterfeit goods. Through bilateral consultations, FTAs, and international organizations, USTR is working to

maximize the deterrent effects of remedies, including stronger penalties and requirements for the seizure and destruction of pirated and counterfeit goods, and the equipment used in their production.

Counterfeit Pharmaceuticals

The manufacture and distribution of counterfeit pharmaceuticals is a growing problem that poses special concerns for consumer health and safety. The United States notes its concern with the proliferation of the manufacture of counterfeit pharmaceuticals in Brazil, China, India, Mexico, and Russia, and the sale and distribution of counterfeit pharmaceuticals in many countries. A significant contributing factor in this problem is the unauthorized use of bulk active pharmaceutical ingredients (APIs) to manufacture counterfeit pharmaceuticals. Countries must do more to provide their relevant agencies with the authority to regulate and enforce against the unauthorized use of APIs domestically and to ensure that they are not exported for unauthorized use abroad. Also, countries must do more to enforce vigilantly against the manufacture and distribution of counterfeit pharmaceuticals.

Consumer Safety

While counterfeit pharmaceuticals and medical devices pose the most obvious health and safety hazards to consumers, many industries are affected by counterfeit goods that can put consumers at risk. Substandard products in the automotive, chemical, wine and spirits, tobacco, food, and consumer goods/personal care product sectors could have considerable adverse effects on consumer health and safety. This issue is of particular concern in China and Russia, but also affects consumers in the United States. Weaknesses in the distribution and supply chains must be addressed in order to prevent injury to consumers who believe that they are purchasing or using a legitimate product.

Notorious Markets

Global piracy and counterfeiting continue to thrive, due in part to large marketplaces that deal in infringing goods. This year's Special 301 Report notes the following virtual and physical markets as examples of marketplaces that have been the subject of enforcement action, or may merit further investigation for possible IPR infringements, or both. The list represents a selective summary of information reviewed during the Special 301 process; it is not a finding of violations of law. The United States encourages the responsible authorities to step up efforts to combat piracy and counterfeiting in these and similar markets.

Virtual Markets

Allofmp3 (Russia). Industry reports that allofmp3 was formerly the world's largest server-based pirate music website. Although the site's commercial operations appear to have been disabled in 2007 and a criminal prosecution is pending, other Russian-based websites are reportedly continuing operations with similar infringing content.

Baidu (China). Industry has identified Baidu as the largest China-based “MP3 search engine” offering deep links to copyright-protected music files for unauthorized downloads or streaming. Baidu is the target of ongoing infringement actions.

Business-to-business (B2B) and business-to-consumer (B2C) websites (China). A large number of these Chinese websites, such as Alibaba and Taobao, have been cited by industry as offering infringing products to consumers and businesses. The Internet traders who use these online markets to offer counterfeit goods are difficult to investigate, and contribute to the growth of global counterfeiting.

PirateBay (Sweden). Industry reports that PirateBay is one of the world’s largest BitTorrent tracker sites and a major global conduit for the unauthorized exchange of copyright-protected film and music files. PirateBay was raided by Swedish police in 2006, and the government initiated the prosecution of four Swedes associated with the site in January 2008, but the site has continued to operate, reportedly relying on servers located outside of Sweden.

Physical Markets

Silk Street Market (Beijing, China). Industry has cited Beijing’s Silk Street Market as “perhaps the single biggest symbol of China’s IP enforcement problems.” In 2005, authorities began to pressure the landlords of Silk Street Market and other major retail and wholesale markets in Beijing to improve compliance with IPR laws. In 2006, right holders prevailed in several court actions related to the market, and executed a Memorandum of Understanding with the landlords in June 2006. A January 2007 industry survey of the market reportedly showed that counterfeiting has worsened, with apparent violations in 65 percent of all outlets. More recent industry reports indicate that counterfeiting at Silk Street Market remains at critical levels.

China Small Commodities Market (Yiwu, China). The China Small Commodities Market in Yiwu reportedly sells approximately 410,000 different items, mostly small consumer goods. Industry has cited the market as a center for wholesaling of infringing goods. Officials in Yiwu have met repeatedly with U.S. Government officials and stressed their work to improve IPR enforcement. Industry confirms that enforcement in Yiwu has improved. Continued improvement is needed, particularly in the area of criminal enforcement.

Gorbushka, Rubin Trade Center, and Tsaritsino Markets (Moscow, Russia). Industry representatives report that piracy problems persist in these markets, though the situation has improved at the Gorbushka and Rubin Trade Center.

Tri-Border Region (Paraguay, Argentina, and Brazil). The Tri-Border Region of Paraguay, Argentina, and Brazil has a longstanding reputation as a hotbed of piracy and counterfeiting of many products. The U.S. Government is funding a training project through which U.S. Department of Justice and U.S. Department of Homeland Security officials will train prosecutors, police, and customs officials from the Tri-Border Region to combat

intellectual property crime. Although Ciudad del Este remains the hub for pirate activities in Paraguay, industry reports that trade there has declined and that commercial concentrations are shifting to other cities. Through a revised Memorandum of Understanding between the United States and Paraguay on IPR enforcement, the United States will be encouraging Paraguay to increase enforcement action with respect to a number of specifically-identified markets in that country.

Tepito, Plaza Meave, Eje Central, Lomas Verdes, and Pericoapa Bazaar (Mexico City); Simitrio-La Cuchilla (Puebla, Mexico); San Juan de Dios (Guadalajara, Mexico); and Pulgas Mitras and La Ranita (Monterrey). An estimated 50,000 vendors sell IPR products in Mexico's ubiquitous, unregulated street markets. Past police raids on such markets have sometimes been met with violent resistance, requiring large contingents of security personnel.

Czech Border Markets (Czech Republic). Hundreds of open air market stalls are notorious for selling pirated and counterfeit products near the Czech border, including at the notorious Asia Dragon Bazaar in Cheb City. Many of these markets are highly organized, and even advertise on the Internet.

La Salada (Buenos Aires, Argentina). This is the largest of more than 40 large, well-established markets in Buenos Aires that have been cited as being heavily involved in the sale of counterfeit goods. An estimated 6,000 vendors sell to 20,000 customers daily. The market is reputed to be a haven for organized criminal gangs that operate from within it, resulting in little to no IPR enforcement.

Neighborhood of Quiapo (Manila, Philippines). Street stalls in this neighborhood are notorious for selling counterfeit and pirated merchandise. Other notorious markets in Manila include Binondo, Greenhills, Makati Cinema Square, and Metrowalk.

Harco Glodok (Jakarta, Indonesia). This is reported to be one of the largest markets for counterfeit and pirated goods in Indonesia, particularly well-known for pirated optical discs. Enforcement officials are reportedly reluctant to conduct regular enforcement actions because of the presence of organized criminal gangs.

Panthip Plaza, Mah Boon Krong (MBK) Center, Klong Thom, Patpong, and Sukhumvit Road (Bangkok, Thailand). These locations are notorious for openly selling pirated and counterfeit goods. They are all designated as "red zones" by Thai authorities, which indicates that they are places where infringing products are most readily available.

Destruction of Seized Counterfeit Goods and Manufacturing Equipment

The destruction of seized counterfeit goods, materials, and related manufacturing equipment is a reliable way to ensure that these goods do not wind up in the hands of consumers. Many countries resort to less effective, alternative measures, such as auctioning

off the goods and manufacturing equipment without the right holder's consent, or removing the trademarks on the goods and then reselling them. These methods do not effectively keep these goods out of the hands of consumers, and frequently put them back into the hands of counterfeiters. Industry reports highlight China, Egypt, the Philippines, Russia, Ukraine, and Uruguay as countries that do not sufficiently enable the destruction of goods or equipment.

In-Transit Goods

In-transit goods pose continuing IPR problems. "In-transit goods" means goods under "Customs transit" and "transshipped" goods as defined in the International Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention). These are goods that enter one customs territory but are intended for another destination. They pose a high risk for counterfeiting and piracy because customs procedures may be used to disguise the true country of origin of the goods or to enter goods into customs territories where border enforcement is known to be weak. In-transit goods are significant problems in Hong Kong, Paraguay, the Philippines, Ukraine, and Thailand, among others. In addition, U.S. industries report significant problems in free trade zones in Belize, Chile, Egypt, Paraguay, the Philippines, United Arab Emirates, and Vietnam, among others. The United States urges these countries to improve their IPR border enforcement systems.

Internet Piracy and the WIPO Internet Treaties

The increased availability of broadband Internet connections around the world has made the Internet an extremely efficient vehicle for disseminating pirated products. Internet piracy is a significant concern in a number of countries, including Canada, China, Sweden, Spain, and Russia, among others. In addition, unauthorized retransmission of live sports telecasts over the Internet is reportedly becoming an increasing problem internationally, particularly in China.

The United States is continuing to work with other governments, in consultation with U.S. copyright industries and other affected sectors, to develop strategies to address these global problems. An important first step was achieved in 1996 when WIPO concluded two copyright treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the "WIPO Internet Treaties"). Following their entry into force in 2002, these treaties have raised minimum standards of intellectual property protection around the world, particularly with regard to Internet-based delivery of copyrighted works. The WIPO Internet Treaties have clarified exclusive rights and prohibit the circumvention of certain technological measures that protect copyrighted works in on-line environments.

A growing number of countries are implementing the WIPO Internet Treaties to create a legal environment conducive to investment and growth in Internet-related businesses and technologies. As of April 2008, there are 64 members of the WCT and 62 members of the WPPT. China and Australia acceded to these treaties in 2007. Membership will rise significantly when the various EU Member States join. Other countries have implemented