



Department of Justice

STATEMENT OF

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U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY
AND THE INTERNET
U.S. HOUSE OF REPRESENTATIVES**

FOR A HEARING ENTITLED

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Statement Before the House Judiciary Subcommittee on Courts, Intellectual
Property and the Internet
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Good afternoon and thank you for the opportunity to discuss criminal copyright enforcement with you here today.

Criminal enforcement of the copyright laws plays an essential role in preserving the rights of American authors, artists, and creators. By protecting authors' rights to their creative works, copyright protections encourage the creation of more works, and add to our nation's artistic, literary, and musical culture, and our body of scientific and technical knowledge. Although copyright law predates our country's founding and is rooted in our Constitution, in recent decades the volume and variety of copyrighted materials and their importance to our nation's economy has exploded. Today, copyrighted works—ranging from traditional printed books, music, and artwork to movies, computer software, and video games—make up a larger proportion of our national and global economy than ever before. This rise in economic significance has occurred in large part because of the explosive growth of communications technologies like the Internet. Just as these developments have enabled Americans to enjoy the benefits of their creativity and innovation, however, they have also enabled copyright pirates to operate on a larger scale and with greater impact on business and the public at large.

As you are aware, the Department has made the enforcement of intellectual property rights a priority, and in recent years we have undertaken several groundbreaking prosecutions to protect copyright holders here in the United States and creators around the world. For example, in January 2012, the Department unsealed charges against the members of a worldwide criminal organization, the Mega Conspiracy, who are alleged to have engaged in criminal copyright infringement and money laundering with an estimated harm in excess of \$500,000,000 and reported proceeds from their crimes in excess of \$175,000,000. Five defendants are currently facing extradition to the Eastern

District of Virginia to face charges of racketeering, copyright infringement, money laundering, and wire fraud.

Before the takedown, Megaupload.com was a tremendously popular commercial website that reproduced and distributed copies of unauthorized copyrighted content. The website boasted of more than one billion visits, over 150 million registered users, and 50 million daily visitors. In fact, use of Megaupload.com accounted for as much as four percent of the total traffic on the Internet. According to the indictment in the case, the operators of the site intentionally made available for downloading infringing material including the latest motion pictures, television programs, musical recordings, electronic books, video games, and other computer software. The case against the Mega Conspiracy is the largest case against an international copyright piracy organization ever brought by the Department, and it highlights our ongoing commitment to combating the international organized piracy groups that profit from the hard work of others.

But the conduct alleged in this case is not only an example of the Department's commitment; it is also an example of how technology, and specifically the Internet, has enabled copyright infringement and distribution on an unprecedented scale. While current law criminalizes many of the most serious infringements, technological advances and the increasingly international nature of intellectual property crime present new challenges to our enforcement efforts. Today, I would like to discuss how the Department is working to keep pace with these technological advances and the international scale of copyright infringement. And just as the Department must adapt to the ever-changing landscape, so must our laws. Therefore, I will also suggest some proposals to enhance the enforcement tools and resources available to the Department.

The Department's Track Record

The Department has successfully used the tools and resources provided by Congress to develop a robust enforcement program with many successful prosecutions. Here, I outline a sample of our recent successes in using criminal enforcement to vindicate our U.S.-held copyrights. These prosecutions are the result of careful coordination between the intellectual property experts in the Department's Computer

Crime and Intellectual Property Section (CCIPS), the over 260 Computer Hacking and Intellectual Property (CHIP) coordinators in U.S. Attorneys' Offices around the country, and the 25 CHIP Units housed in the judicial districts with the heaviest intellectual property and cybercrime load. The investigative expertise of the Federal Bureau of Investigation (FBI) and the Department of Homeland Security's U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) are critical to the identification and development of cases. I would also like to make note of the National Intellectual Property Rights Coordination Center, which has done tremendous work to share information and increase investigations among the 17 U.S. agencies and four international partners represented at the Center. These examples I describe below demonstrate that federal agents and prosecutors are committed to being as flexible and adaptive as the offenders we prosecute. But, they also highlight that we must remain vigilant for developing trends in criminal activity and technologies that skirt the edges of existing law:

- ***Members of Android Mobile Device App Piracy Group Plead Guilty.***

Earlier this year, in a case investigated by the FBI and prosecuted by CCIPS and the U.S. Attorney's Office for the Northern District of Georgia, three defendants pleaded guilty for their roles in a scheme to distribute more than one million copies of copyrighted Android mobile device "apps" without authorization, with a total retail value of more than \$700,000. From August 2010 to August 2012, the group conspired to reproduce and distribute more than one million copies of copyrighted apps through the Appbucket alternative online market without permission from the copyright owners of the apps. These represent the first U.S. charges and convictions for the distribution of counterfeit apps. Sentencing is scheduled for later this year.

- ***Chinese Citizen Sentenced to 12 Years in Prison for Cyber-Theft and Piracy of Over \$100 Million in Sensitive Software and Proprietary Data.***

In June 2013, Xiang Li, a resident of China was sentenced to 12 years in prison for selling online \$100 million worth of pirated, sensitive, industrial-grade software to more than 400 customers located in at least 28 states and over 60

foreign countries. The infringed software was owned by approximately 200 different American software manufacturers, ranging from large corporations to small businesses. Li sold to customers in embargoed countries in the Middle East and foreign government employees. He also sold to U.S. government employees and contractors, including the sale of over \$1.2 million in pirated software to a NASA electronics engineer who subsequently uploaded the pirated software to a NASA computer network for use in his private consulting business, and sales to a Kentucky-based government contractor that serviced U.S. and foreign military and law enforcement agencies. The contractor then used the pirated software to design components for Patriot missiles and the Army's Black Hawk helicopters. The NASA engineer and government contractor were separately prosecuted for copyright infringement as well. The case was investigated by HSI, and the Defense Criminal Investigative Service and NASA's Inspector General, and prosecuted by the U.S. Attorney's Office for the District of Delaware.

- ***Leaders of Internet Piracy Group "IMAGiNE" Sentenced for Criminal Copyright Conspiracy.***

The IMAGiNE group was a well-organized and technically savvy online piracy group that specialized in disseminating motion pictures only available in theaters or before their commercial release. Through a sophisticated infrastructure that included private FTP servers, IRC channels, and websites, IMAGiNE reproduced and distributed over the Internet tens of thousands of illegal copies of copyrighted works for more than two years. They targeted and released nearly every major movie released in the U.S. during this time period and were the first to upload numerous blockbuster motion pictures without authorization. The industry estimated that this release group was responsible for approximately 43 percent of the pirated pre-release movie content available on the Internet at that time. To date, five defendants have pleaded guilty and been sentenced to incarceration ranging from two to five years for their roles in the network. Additionally, the court ordered restitution to repay the more than \$400,000 invested by the Motion Picture Association of America in uncovering the scheme. This case was

investigated by HSI and prosecuted by CCIPS and the U.S. Attorney's Office for the Eastern District of Virginia.

- ***Operator of Delaware-Based Software Piracy Websites Sentenced to 58 Months for Copyright Infringement and Identity Theft.***

In January 2013, Jamie Lynn Snyder was sentenced to almost five years in prison and ordered to pay over \$1 million in restitution for selling over 24,000 copies of pirated software with an estimated retail value of more than \$5.9 million.

Between January 2008 and April 2010, Snyder sold infringing copies of software through her websites to thousands of customers, netting \$971,935 in illegal proceeds. She advertised approximately 400 software titles on the website. The infringed software was owned by at least 81 different software manufacturers, including Adobe, Apple, Autodesk and Microsoft. Snyder was also convicted of embezzling approximately \$40,000 from her employer, forging numerous checks payable to herself and to her creditors, and making unauthorized purchases of personal items on a company credit card. This case was investigated by the FBI and the Delaware State Police, and prosecuted by the U.S. Attorney's Office for the District of Delaware.

Copyright law must be updated to address advances in technology

As our record indicates, the Department has been successful in prosecuting a broad array of criminal copyright cases. But the creativity of copyright infringers and the technological changes that they exploit will likely only become more salient with time.

Throughout our nation's history, new technologies have dramatically changed how artists disseminate creative media and how audiences receive it. At the same time, technology has changed how individuals illegally copy and profit from works originally created by others. Congress has repeatedly been called upon to update our copyright law to account for new forms of intellectual piracy. A century ago, the player piano was making music available to new audiences, and manufacturers were enthusiastically producing piano rolls with songs composed by others. In 1908, the Supreme Court considered the legal status of player piano rolls for the first time and held that manufacturers of the rolls did not need to pay royalties to composers. Congress

responded in the Copyright Act of 1909 by creating the first compulsory license scheme for companies making mechanical reproductions of music.

Many decades later, but before the advent of widespread Internet use, large-scale copyright piracy generally required the making of physical copies of creative works, through photocopies, or on vinyl records, cassettes or VHS tapes and floppy discs. The time and expense of making these physical copies resulted in large-scale copyright pirates generally charging a fee. Perhaps unsurprisingly, criminal copyright penalties were therefore limited to for-profit piracy. The rise of personal computers and the Internet, however, made copying and distributing digital content virtually free. Congress responded by passing the No Electronic Theft Act (the “NET Act”) in 1997 to provide criminal penalties for piracy not conducted for profit in certain cases involving large-scale reproduction or distribution of copyrighted works.

Similarly, the early 2000s witnessed a growing problem when leaked copies of movies, music, and video games appeared online before these works were legitimately released. Recognizing the damaging impact that this type of “pre-release” piracy was having on many copyright owners, Congress enacted the Artists’ Rights and Theft Prevention Act of 2005 to provide enhanced penalties for those who distribute pre-release works online.

In short, throughout our history, copyright infringers have taken advantage of new technologies, and Congress has responded by updating the law to combat the new methods of infringement. CCIPS and other Department prosecutors remain vigilant about identifying challenges before they become obstacles, and we work in close coordination with our enforcement partners and in particular with the office of the Intellectual Property Enforcement Coordinator in the Executive Office of the President to develop policy and legislative proposals that will preserve our ability to enforce intellectual property rights in appropriate cases through criminal law. We look forward to working with the Committee to do the same.

A growing problem: Infringing Internet streaming

One new challenge confronting copyright owners and law enforcement authorities is the rise of Internet “streaming” as the dominant means of disseminating many types of copyrighted content online. Like the evolving technology discussed above, this activity also derives from advances in technology: in this case, the growth in availability of high-speed Internet to the average consumer. Several popular legitimate streaming services include those offered by Netflix, YouTube, Hulu, Pandora, and Spotify. At the same time, numerous pirate websites stream infringing content online. Research by private organizations indicates that the amount of bandwidth devoted to infringing video streaming grew by more than 470% between 2010 and 2012, even following the loss of Megaupload.com subsidiary and widely-used streaming host MegaVideo, which was taken offline during the takedown of the Mega Conspiracy.

The structure of existing copyright law does not favor prosecution of such illicit streaming sites. Criminal law currently provides felony penalties for infringements of two rights afforded under copyright law: reproduction and distribution of copyrighted works. Internet streaming, however, generally implicates a different right: the right to public performance, violations of which currently correspond only to misdemeanor charges. Consequently, in most cases, infringing streaming can be prosecuted only as a misdemeanor, even when sites are willfully streaming pirated content to large numbers of users, and turning huge profits through advertising revenue and subscriptions.

To deter pirate streaming websites from illegally profiting from others’ efforts and creativity, the Administration recommends that Congress amend the law to create a felony penalty for unauthorized Internet streaming.¹ Specifically, we recommend the creation of legislation to establish a felony charge for infringement through unauthorized public performances conducted for commercial advantage or private financial gain. Such a change could be accomplished without changing the structure of existing criminal copyright law. Although this change would not create a new category of criminal

¹ See *Administration’s White Paper on Intellectual Property Enforcement Legislative Recommendations*, March 2011. http://www.whitehouse.gov/sites/default/files/ip_white_paper.pdf

behavior—since such conduct is already deemed a misdemeanor crime—it would emphasize the seriousness of the threat that unauthorized streaming poses to legitimate copyright holders, clarify the scope of conduct deemed to be illegal in order to deter potential infringers, and provide the Department with an important tool to prosecute and deter illicit Internet streaming.

Any legislative amendment creating new penalties for infringement by streaming is likely to confront several key policy questions. For instance, it may invoke the question of whether to create a new offense for Internet streaming specifically, or increase penalties for public performances more generally; and the question whether changes in the business model of streaming-based infringement counsel corresponding changes in the way we set harm thresholds for felony penalties. We would welcome the opportunity to work with Congress to address these questions.

Internationalization of Copyright Infringement

Besides technological change, a second fundamental development in copyright infringement is the globalization of the market, both the legitimate market for creative works and the illegitimate market for pirated works. A quick browse through current Internet piracy sites makes abundantly clear that online intellectual property crime is a truly international phenomenon. We can download books, music, or movies almost anywhere due to the expansion of Internet commerce. However, a growing percentage of those downloads are pirated content. Individuals and groups around the world have found that there is profit to be made in distributing the expressions of others.

In addition to the Mega Conspiracy described above, we have seen The Pirate Bay start as a file sharing site for unauthorized copies of works in Sweden, expand to other countries, and even develop its own political party in Europe. The allofmp3.com website, operating from Russia, has made it easy for users to download pirated music. Each of these has been tremendously profitable at exploiting the works of others, and equally brazen about flouting domestic laws and international agreements intended to protect copyrights.

The Department, in coordination with other U.S. agencies, works to disrupt these illegal operations through prosecution, diplomatic and trade-based pressure, training and support for law enforcement in other countries, and public awareness and education about the harms of copyright piracy. Despite these efforts, however, the economic benefit often outweighs the risks for illegal distributors of these protected materials.

International Enforcement and the ICHIP Program

One way in which the Department has achieved success in combating international intellectual property crime is with its Intellectual Property Law Enforcement Coordinator (IPLEC) programs in Asia and Eastern Europe. A Department-funded IPLEC has operated in Southeast Asia from the U.S. Embassy in Bangkok, Thailand since 2006. Meanwhile, using anticrime funds provided by the State Department Bureau for International Narcotics and Law Enforcement Affairs (INL), the Justice Department operated an IPLEC from Sofia, Bulgaria from 2008 to 2011, and we will recommence our Eastern European presence in 2014 as we stand up a new INL-funded IPLEC at the U.S. Embassy in Bucharest, Romania. We expect the Bucharest IPLEC to be of particular help assisting the new authorities in Ukraine.

Over the years, the IPLECs have proven useful in coordinating INL-funded training and technical assistance to foreign law enforcement. This system has proven effective, as the IPLECs have coordinated delivery of hundreds of training sessions on intellectual property enforcement in support of broader U.S. government goals to reduce and eliminate “weak links” in global intellectual property enforcement. The program has realized numerous successes, including a Ukrainian police officer who, after receiving training, was able to use a dial-up Internet connection from his home computer to bring down the largest illegal file sharing service in his country. In Asia, an IPLEC spearheaded the creation of an Intellectual Property Crimes Enforcement Network involving law enforcement agencies in 17 countries that has resulted in greater regional coordination on intellectual property crime, the identification and training of cyber experts, and an increased dialogue with Chinese law enforcement to address the source of much of the counterfeit and pirated material distributed around the world.

To further the Department's work in this regard, and as reflected in the President's 2015 Budget, the Administration proposes expanding and making permanent this program through the creation of two new International Computer Hacking and Intellectual Property (ICHIP) Coordinator positions within the Criminal Division. These positions would result in the posting of highly-trained Justice Department prosecutors in U.S. Embassies in parts of the world that face high rates of intellectual property and cybercrime. The ICHIPs would provide an efficient and cost-effective way to support and coordinate U.S. investigations that have a foreign nexus, including the majority of online copyright piracy cases, and to train and assist foreign prosecutors, investigators, and judges in handling intellectual property and cyber matters.

The expanded reach of the proposed ICHIP Program would create a unified program to address issues such as Internet copyright piracy at the source. It would increase the operational capacity of the posted attorneys. And, it would permit the Department to address technical, procedural, and legal hurdles to effective intellectual property enforcement, both directly and in coordination with the authorities exercising jurisdiction over international intellectual property and cyber criminals. We are closely coordinating with INL so that these new positions could fully leverage existing training and technical assistance resources and seamlessly weave into the existing IPLEC activities.

Conclusion

The Department appreciates the time this Committee has devoted to the important matter of copyright protection, and I want to thank you in particular for the opportunity to raise the Department priorities I have described. We look forward to working with Congress to improve the law in this developing area.

I would be happy to take any questions you may have.