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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR
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April 7, 2016

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro:

Intellectual property is an important component of the U.S. economy, and the United States is an acknowledged globe leader in its creation. American innovation is an important source of employment and is a keystone to our economic strength and competitiveness. The theft of intellectual property is a serious matter, as it stifles innovation, slows economic growth, and weakens the competitiveness of U.S. employers, threatening American jobs. The illegal importation and distribution of counterfeit and pirated goods not only poses an increasing cost of the United States economy, but threatens the health and safety for consumers and federal procurement. A broad range of products are subject to being counterfeited or pirated, from luxury goods and brand name apparel to computer software and digital media to food, toys, and medicines. Governments and businesses, small and large, have cited expansion of IP crimes and an increasing use of internet websites and express mail facilities to distribute pirated and counterfeit goods imported from overseas.

Protection and enforcement of intellectual property rights is a national priority. The Department of Homeland Security's Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) are responsible for leading intellectual property enforcement at the U.S. border. CBP is the primary federal agency to target and examine suspicious shipments, seizing infringing goods and assessing penalties against importers when warranted. ICE is responsible for investigating intellectual property violations involving the illegal production, smuggling, and distribution of counterfeit merchandise and pirated works. Because of the cross-cutting nature of intellectual property enforcement, CBP and ICE often work with other government agencies and private sector stakeholders, leveraging CBP's Centers of Excellence and Expertise, the IPR Center, and public-private partnerships such as the National Cyber-Forensics and Training Alliance (NCFTA).

GAO last reported on CBP and ICE efforts to enforce intellectual property rights at the border in 2008, noting that CBP could use data more systematically to better understand and improve border its enforcement activities. In 2016, Congress passed the Trade Facilitation and Trade Enforcement Act (PL 114-125), which reauthorizes CBP and puts tools in place to facilitate the efficient movement of legitimate trade and travel, while strengthening trade enforcement at the border. This act, among other things, established the Commercial Targeting Division and National Targeting and Analysis Groups, what are responsible for the development and conduct

of commercial risk assessment targeting with respect to cargo destined for the United States. Accordingly, we request that GAO undertake a series of studies that examine the current efforts of CBP and ICE to enforce intellectual property rights at the border and include an appropriate investigative component and related techniques.

Key Questions

1. What steps has CBP taken to improve its efforts to target, detect, and seize IP infringing goods and effectively assess penalties, including the implementation of Sec. 111 of the Trade Facilitation and Trade Enforcement Act of 2015 (PL 114-125)?
2. What steps has ICE taken to improve its efforts to investigate the illegal production, smuggling, and distribution of imported counterfeit merchandise and pirated works?
3. To what extent do CBP and ICE coordinate intellectual property enforcement efforts with other federal agencies and private stakeholders?
4. To what extent do CBP and ICE use data analytics to enhance their ability to enforce intellectual property rights?
5. How do different modes of transportation affect the ability of IP infringing goods to enter the United States?
 - a. Does the type of carrier affect the admittance of IP infringing goods into the customs territory of the United States (e.g., USPS vs. Express Carriers)?
 - b. Does the Port of Entry affect the admittance of IP infringing goods into the customs territory of the United States (e.g., Northern POEs vs Southern POEs)?
6. What is the composition of the IP infringing goods that are imported into the United States (e.g., pharmaceuticals, consumer products, health and safety goods, etc.)?
 - a. What is the MSRP of the IP infringing goods entering the United States?
 - b. What is the street value of the IP infringing goods entering the United States?
 - c. What are the health and safety issues with IP infringing goods (e.g., recently seized hover boards that have explosive batteries, bad pharmaceuticals, CPSC issues, such as non-compliant baby cribs, etc.)?
7. What is the payment method used to procure IP infringing goods (e.g., money orders, PayPal, bitcoin, credit cards, etc.)?
 - a. Any evidence of where the money flows to (anecdotal evidence is sufficient)?
8. What e-commerce entities are used to procure IP infringing goods (e.g., legitimate sites such as Alibaba, dark web “sites”, websites that may be confusingly similar to legitimate sites, etc.)
 - a. What is the success rate of stopping IP infringing goods from these sites (anecdotal evidence is fine).
9. Please identify any laws that may be limiting the ability of CBP and ICE to identify, and prevent the entry of IP infringing goods.
 - a. Absent any changes in laws, please identify ways that CBP and ICE can take to improve their ability to identify, and prevent the entry of IP infringing goods.

If you have any questions concerning this request, please direct your staff to contact Chris Armstrong at (202) 225-4515.

Sincerely,

A handwritten signature in blue ink that reads "Orrin Hatch". The signature is written in a cursive style with a large initial "O".

Orrin G. Hatch
Chairman
Senate Committee on Finance