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March 24, 2010

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Office of the Intellectual Property Enforcement Coordinator  
The Office of Management and Budget  
Executive Office of the President  
725 17th Street, NW  
Washington, DC 20503

The following is a submission from the Property Rights Alliance to the Intellectual Property Enforcement Coordinator at the Office of Management and Budget (OMB) in response to the request for written comments on the federal government's efforts against intellectual property infringement.

We thank the OMB, and specifically, Intellectual Property Enforcement Coordinator, Victoria Espinel for the invitation to make a submission regarding intellectual property infringement and its implications.

### **The Property Rights Alliance**

The Property Rights Alliance (PRA) is an advocacy organization dedicated to the protection of physical and intellectual property rights throughout the world. The PRA produces the annual International Property Rights Index, a comparative study that measures the significance of both physical and intellectual property rights and their protection for economic well-being. In order to incorporate and grasp the important aspects related to property rights protection, the Index focuses on three areas: Legal and Political Environment (LP), Physical Property Rights (PPR), and Intellectual Property Rights (IPR). The 2010 study analyses 125 countries around the globe, representing ninety-seven percent of world GDP. The PRA notes that in 2010 the United States was ranked as having the highest intellectual property rights protection of any nation surveyed, and commends the U.S. for its strong history of protecting intellectual property rights.<sup>1</sup>

### **Intellectual Property Rights**

The right to own and enjoy property is a fundamental part of rights of people and referred to as an extension of human rights. As such, the protection of property rights, both physical and intellectual, is critical to economic development, and is the most important guarantee of freedom. Creating and maintaining an environment where both forms of property are protected and legally enforceable contributes to economic growth and stability.

The United States' economy revolves significantly around businesses related to intellectual property, whether it is pharmaceuticals, movies, music, books, software or inventions and industrial designs. It is intellectual property that drives this economy to the tune of \$5-5.5 trillion<sup>2</sup>, accounting for half of all U.S.

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<sup>1</sup> Victoria Strokova. "International Property Rights Index," Property Rights Alliance, February 2010. Can be accessed: [www.internationalpropertyrightsindex.org](http://www.internationalpropertyrightsindex.org).

<sup>2</sup> Robert Shapiro and Kevin Hassett, "The Economic Value of Intellectual Property," USA For Innovation Report, October 2005.

exports, and employing nearly 18 million workers. These are high wage jobs that are ensured and protected due to IP protections that allow for stability in the industry.

Yet this vital industry continues to be under attack. This has drastic consequences for the U.S. economy. Counterfeiting and piracy puts an estimated \$250 billion dent in the economy<sup>3</sup>. In these continuing tough economic times, steps need to be taken to protect a critical, yet fragile industry.

### **Negotiation and Enforcement of IPR in Trade Agreements**

The rest of the world looks to the U.S. as a model for property rights protections and we should continue to require strong IP enforcement provisions as a key part of negotiating free trade agreements. Intellectual property rights can boost trade and foreign direct investment not only in the U.S. but in the developing world as well. As highlighted in the 2010 edition of the International Property Rights Index (IPRI), people in countries that protect their physical and intellectual property enjoy a GDP per capita up to eight times greater than those without legal protection.<sup>4</sup>

Weakening of IP rights not only is detrimental to the economy, but also puts the public's health and safety at risk. The US currently has one of the strongest and fastest growing biotech and pharmaceutical industries in the world. Drugs being researched and manufactured today have been proven effective against life threatening diseases like cancer, multiple sclerosis and diabetes due to reliable patent laws that encourage innovation. Yet, countries around the world, including key trading allies India, Brazil, and Thailand, continue to flout international patent rules by promoting the expropriation of patent rights through the use of compulsory licenses. This not only harms U.S. industry, which invests billions of dollars in research and development and provides hundreds of thousands of well paying, highly skilled jobs, but consumers as well. Countries with weak patent rules have been linked on many occasions with sub-standard or counterfeit products. According to the OECD, India is the number one source of counterfeit medicines, followed by Saudi Arabia and China. These potentially dangerous drugs are not only unsafe but have infiltrated the supply chain all over the world.

The United States cannot remain idle while governments continue to exploit the intellectual property of U.S. businesses. The United States needs to send a clear message to our trading partners that we are serious about protecting our creators and innovators and at the same time promoting prosperity around the world.

Additionally, PRA advocates for the completion and implementation of the Anti-Counterfeiting Trade Agreement. This pact will expand upon cooperation that has developed regionally and bilaterally within the past few years and set a new framework for international norms for stronger IP enforcement.

### **Combating Digital Piracy**

The U.S. copyright industry provides jobs to over 11 million Americans, or 8% of workers in the U.S.<sup>5</sup> Illegal downloading of copyrighted material is an easy and pervasive violation of property rights. Piracy severely hurts the music, entertainment, and publishing industries and it is essential that those responsible be held accountable for their actions.

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<sup>3</sup> Federal Bureau of Investigation, *U.S. Customs, FBI National Intellectual Property Rights Center Holds Industry Outreach Conference*, Press Release, (2002).

<sup>4</sup> Victoria Strokova. "International Property Rights Index," Property Rights Alliance, February 2010. Can be accessed: [www.internationalpropertyrightsindex.org](http://www.internationalpropertyrightsindex.org).

<sup>5</sup> Stephen Siwek, "Engines of Growth: Economic Contributions of the U.S. Intellectual Property Industries," Economists Incorporated. November 2005.

While government has a key role to play in combating IP theft through increased enforcement it also has a responsibility to not impede the efforts of companies to use technologies to protect their investments. Unfortunately, there are those that believe access to creative works should be free and efforts to put in place technologies that reduce digital piracy should be obstructed.

Policymakers should support anti-piracy innovation, including the development of new technological tools, such as digital rights management (DRM) and network management and encourage coordination within industry to take steps to fight digital piracy. All of this can be done while ensuring consumer privacy through the implementation of safeguards. These policy principles not only make online infringement more difficult but they also encourage new legal models that make it easier for consumers to access creative works.

### **Conclusion**

Americans work in a society where individual freedom, economic expansion and job creation depend on securing property rights. When creators and innovators face the risk of having their property effectively expropriated, nobody wins. The creator faces a disincentive to invest in their creative endeavors and society loses out on the opportunity to benefit from their works. Economic growth only occurs when property, in all forms, is respected AND protected.

Once again, thank you for the opportunity to comments on this important topic. I look forward to working with you. Please do not hesitate to contact me at [kzahourek@propertyrightsalliance.org](mailto:kzahourek@propertyrightsalliance.org).

Respectfully submitted

A handwritten signature in black ink that reads "Kelsey Zahourek". The signature is written in a cursive, flowing style.

Kelsey Zahourek  
Executive Director  
Property Rights Alliance