

Written Testimony of
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On Behalf of
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The Role of Voluntary Agreements
in the U.S. Intellectual Property System

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Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet

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Chairman Coble, Vice Chairman Marino, Members of the Subcommittee:

Thank you for the opportunity to appear before you today. I am proud to be representing the International AntiCounterfeiting Coalition (“IACC”) and our partners from the financial industry. My testimony today will address our ongoing collaboration regarding the trafficking of counterfeit and pirated goods online.

With a membership composed of over 230 corporations, trade associations, and professional firms, and founded over 30 years ago, the International AntiCounterfeiting Coalition is one of the world’s oldest and largest organizations representing exclusively the interests of companies concerned with trademark counterfeiting and the related theft of intellectual property. The members of the IACC represent a broad cross-section of industries, and include many of the world’s best-known companies in the apparel and luxury goods, automotive, software, tobacco, electronics, consumer goods, entertainment, pharmaceutical, and other product sectors. The IACC is committed to working with government and industry partners in the United States and abroad to strengthen IP protection and enforcement, and to raise awareness regarding the range of harms caused by counterfeiting and piracy.

Our current financial industry partners include: MasterCard, Visa International, Visa Europe, PayPal, American Express, Discover / PULSE / Diners Club, MoneyGram, and Western Union. In addition, there are currently thirty-three rights-holder participants from a variety of product sectors, including apparel, footwear, and luxury goods, electronics, automotive, tobacco, pharmaceutical, business and entertainment software, and consumer products.

Background

While legitimate retailers increasingly leverage the Internet as a platform for sale and distribution of their goods to consumers, the same is true of counterfeiters. Where such illicit activity was once confined to brick-and-mortar shops, the Internet's maturation as a commercial platform has created new opportunities for sales and advertising of illegal goods, as well as an ever-widening pool of potential customers. According to data provided by MarkMonitor, in the past decade, there have been approximately 2 billion new Internet users, representing a 425% growth since 2000. In 2010, 1 in 4 consumers reported that they had used the Internet for shopping. It is anticipated that the number of Internet users, and accordingly, the number of Internet shoppers, will only continue to grow in the coming years.

As the Committee is well aware, the shift to online distribution has raised a variety of practical difficulties for those seeking to enforce their rights against individuals who are able to operate with relative anonymity, and beyond the jurisdiction of U.S. courts or law enforcement. The proliferation of this illicit trade online poses a threat to consumers' confidence in the legitimacy of the Internet as a commercial platform. As such, addressing these problems is in everyone's interest, and is the responsibility of all of the players in the e-commerce ecosystem. Consumers expect, and deserve, the honest cooperation of all of the parties involved in the online market. That point of view has driven our partnership with the financial industry, and informed the development of our ongoing collaboration.

Voluntary Collaborative Efforts Between the IACC and Financial Industry

In January 2012, the IACC launched its Payment Processor Program in partnership with some of the world's largest multinational brands and leading financial companies. This launch followed the establishment of a set of best practices, facilitated by the Administration's Intellectual Property Enforcement Coordinator, Victoria Espinel. The program was developed with the recognition that e-commerce involves a number of

natural choke-points that can be effectively targeted to combat illegal activities. The program is, in layman's terms, a "follow-the-money approach" that seeks to diminish the ability of criminal counterfeiters to process online payments, thereby decreasing the profitability of their illicit businesses.

The main objective of the Payment Processor Program is to provide a streamlined, simplified procedure that allows rights-holders to report online sellers of counterfeit or pirated goods directly to financial companies in a more time- and cost-efficient manner, thereby facilitating action against the corresponding merchant accounts and diminishing the ability of such sellers to profit from their illicit sales. To implement this program, the IACC has developed an access-controlled portal system to facilitate the flow of information between and among participating rights-holders, the IACC, the National Intellectual Property Rights Coordination Center (the "IPR Center"), and financial partners, utilizing a master IACC portal as the clearinghouse for such information. The portal system contains analytical tools, as well as a reporting mechanism that provides disposition results and statistical data to the reporting rights-holders.

Our program is dependent on the financial partners' policies, which prohibit merchants from using financial services for illegal transactions. Merchants that sell counterfeit goods violate those policies, and as such, subject themselves to remedial action, including termination of their merchant accounts. Because those policies apply to merchants regardless of their jurisdiction, the program has global reach.

Evaluating Effectiveness

At its inception, the IACC and its partners identified several goals for the IACC Payment Processor Program. These include: increasing the cost of doing business for, and decreasing the profits to, the counterfeiters; shrinking the universe of third-party acquiring banks willing to do business with known, high-risk merchants; facilitating an efficient use of resources by both rights-holders and our financial partners – for

example, by providing a standardized format for reports and deduplicating multiple reports by more than one rights-holder; and disrupting and dismantling counterfeit networks by developing deeper intelligence on those networks' methods of operating.

In the context of these goals, the IACC Payment Processor Program has proven to be a resounding success since its launch in 2012. To date, participants in the program have referred nearly 7,500 websites for investigation, resulting in the identification of over 26,000 payment channels, and the termination of over 2,100 individual counterfeiters' merchant accounts. Because counterfeiters frequently use a single merchant account to accept payments for multiple sites, the number of affected sites is likely significantly higher. In addition to such data, the collaboration between the IACC and its partners in the program has resulted in several opportunities to provide training to banks and others around the world on relevant issues.

While there remain obvious challenges to quantifying the impact of this program on the overall availability of counterfeit and pirated goods for sale online, there is significant anecdotal evidence that online sales of such illicit products are becoming more difficult. Further, the program has created a growing pool of empirical data that may be leveraged by both the public and private sectors to more effectively target their efforts in terms of traditional enforcement and to develop appropriate policy responses to such trafficking. For example, since the launch of our program, we've seen a number of trends including: a shift away from the use of traditional credit card payment systems to alternate payment methods, and in some cases to the use of virtual currencies; the misuse of anti-fraud measures in an attempt to thwart legitimate investigations by law enforcement and private industry; and a shift from the use of individual merchant accounts to reliance on illegitimate and sophisticated payment service providers who provide full-service infrastructure for illegal sales and promise "bullet-proof processing."

It is our hope that this paves the way for further cross-industry collaboration. The success of the program proves that when rights-holders and others work side-by-side to ensure a safe and trusted marketplace, everyone wins.

For a more in-depth discussion of the IACC Payment Processor Program, including a review of the first year statistics and an evaluation of the successes and challenges of the program to date, see

<http://www.gacg.org/Content/Upload/MemberNewsDocs/October%202012%20Report%20to%20IPEC%20-%20FINAL.pdf>.