

Questions for the Record from Rep. Darrell Issa for Mr. Ball
Hearing on “Intellectual Property: Enforcement Activities by the Executive Branch”
May 7, 2024

1. How many referrals did HSI make to DOJ for prosecutions of criminal IP violations in FY23, how does that compare to the previous two fiscal years, and what factors drove any significant changes over that time?

Response: Homeland Security Investigations (HSI) referred 119 criminal intellectual property (IP) rights violations cases to the U.S. Department of Justice (DOJ) in Fiscal Year (FY) 2023. 116 cases were referred to DOJ in FY 2022, and 138 cases were referred to DOJ in FY 2021. Referral cases may involve multiple subjects, individuals, businesses, seizures, and financial accounts. This does not indicate a significant change and instead reflects normal annual fluctuations over time.

Do you expect referrals to increase or decrease in FY24 compared to FY23?

Response: HSI expects a similar or increased number of criminal IP violation referrals to DOJ in FY 2024 as compared to previous years. In FY 2023, the National Intellectual Property Rights Coordination Center (IPR Center) received enhanced appropriations that enabled HSI to transform two successful programs into standalone units: the Government Supply Chain Investigations Unit and the Wildlife and Environmental Crimes Unit. These units enable the IPR Center to pursue additional leads and initiate additional cases. However, because investigations take time to turn into referrals for prosecution, cases initiated by HSI in FY 2024 may not be reflected in HSI’s FY 2024 referral statistics. Additionally, in May 2023, HSI implemented an updated, comprehensive evaluation process to identify the most impactful leads, incorporating DOJ priorities and guidelines for prosecution. HSI is now better enabled to align leads received by HSI field offices with those most likely to meet the threshold for prosecution by DOJ.

2. How many referrals or case leads did HSI receive from rights holders in FY23, was this an increase or decrease from FY22, and what percentage of these referrals led to investigations being opened?

Response: The IPR Center received 1,929 leads from rights holders in FY 2023, a decrease from the 2,547 leads received from holders in FY 2022. These figures do not include leads sent directly to HSI field offices. HSI field offices track IP lead intake statistics, but do not have a code to track leads from rights holders specifically. HSI tracks the origin of individual investigations and tracks the percentage of submitted leads that turn into referrals to DOJ for further investigations in aggregate. HSI does not capture statistics that would enable us to provide the percentage of leads originating from rights holders that result in investigations. The IPR Center is currently developing a new website that will include a secure portal for rights holders to submit leads, which will enable HSI to better track these leads from initial receipt to case closing, providing more precise statistics in the future.

3. HSI reporting indicates a decrease of more than 50 percent in the number of IP Theft and Commercial Fraud investigations opened between FY22 and FY23. What is driving this decrease, and do you expect the number of such investigations opened to increase or decrease in FY24 compared to FY22 and FY23?

Response: Between FY 2020 and FY 2022, there was an increase in the number of cases initiated because of COVID-19 disruptions resulting in individuals and organizations seeking to exploit and profit from the COVID-19 pandemic. In response, HSI launched Operation Stolen Promise to address the significant increase in IP rights cases related to counterfeit personal protective equipment, medicine, and other COVID-related products. FY 2022 is an outlier for cases initiated because of an influx of COVID-19-related IP cases. In FY 2023, HSI saw a decline in COVID-19-related IP and commercial fraud cases. HSI is currently focusing resources on cases which are more likely to result in indictments, convictions, and seizures. Despite the lower number of cases between FY 2022 and FY 2023, the number of indictments, convictions, and seizures increased. Rather than focusing on the number of cases initiated, HSI seeks to perform large-scale investigations and makes additional efforts to link together cases to yield more impactful results. One example of this is an HSI New York case made public in November 2023. DOJ described the case as the “largest-ever counterfeit goods seizure,” consisting of luxury goods with an estimated manufacturer’s suggested retail price of more than \$1 billion. The seizure is anticipated to be reflected in HSI FY 2024 statistics. Given FY 2022 is an outlier for cases initiated because of COVID-19 and HSI’s focus on high-impact, more complex cases, the number of cases initiated in FY 2024 likely will not meet or exceed FY 2022. However, HSI anticipates an increase in the number of cases initiated in FY 2024 compared to FY 2023. One key reason for this estimation is the implementation of the updated, comprehensive process for evaluating leads. Leads move through this evaluation process and receive a score based on information in the lead, government and proprietary database checks, and assessments performed by Criminal Analysts. This process enables HSI to identify the most impactful leads and those most likely to align with DOJ’s threshold for prosecution. Additionally, HSI anticipates an increase in FY 2024 cases initiated compared to FY 2023 because of the creation of the new Government Supply Chain Investigations Unit (GSCIU). The IPR Center utilized FY 2023 enhancement funding and FY 2024 sustainment funding to stand up the GSCIU, which focuses on maintaining the United States government’s supply chain integrity and preventing the introduction of counterfeit goods. Since its inception in summer 2023, the GSCIU has partnered with more than a dozen entities and launched four operations addressing: counterfeit components within the U.S. Department of Defense supply chain; preventing counterfeit weapons and small arms components from entering the United States government’s supply chain; third-party vendors attempting to distribute counterfeit products into the United States government’s supply chain; and proactively preventing counterfeit and substandard medical products from entering the Veterans Administration supply chain. HSI anticipates the results of the new unit to yield statistical results in FY 2024 and beyond.

4. When DOJ fails to act on a referral, what happens to the case?

Response: The IPR Center utilizes a comprehensive evaluation process to review leads. Leads are researched and assessed based on viability and impact to public health and safety, national security, and the U.S. economy. All leads are archived and indexed. Leads that do not meet the threshold for investigation are saved, and the information may be utilized in the future if new information is discovered. When a referral is not accepted by DOJ, HSI is able to pursue other avenues, including:

- Prosecution at the state and local levels;
- Working with U.S. Customs and Border Protection and other regulatory agencies to pursue civil and administrative remedies; and
- Conducting non-traditional investigative disruptions.

Non-traditional investigative disruption includes actions conducted by or on behalf of HSI that disrupt the illegal activities of criminal actors and organizations other than through arrests, indictments, convictions, and seizures. Non-traditional investigative disruptions may be performed by preventing illegal imports, serving cease and desist notices, blocking or terminating financial transactions, and the revocation of licenses.

5. Over the past three fiscal years, do you believe that generally the number of criminal IP violations being committed in your jurisdiction increased or decreased, and by how much (regardless of whether they were investigated, referred, or prosecuted)?

Response: HSI does not have a national intelligence estimate for the number of criminal IP violations over the last three fiscal years. HSI has observed an increase in reports of IP theft; however, this increase could be attributed to an increase in the number of partnerships and information sharing agreements at the IPR Center. This uptick could also be attributed to increased awareness of IP theft within private industry and the United States public following widespread reporting on counterfeit goods during the COVID-19 pandemic. Criminal methods for counterfeiting and IP theft are ever evolving. HSI works to stay ahead of these evolving trends by working closely with our domestic and international law enforcement, industry, and government partners.

6. What impact has the border crisis had on HSI's resources for pursuing IP Theft and Commercial Fraud investigations?

Response: HSI special agents have been deployed to support the U.S. Department of Homeland Security's (DHS) Southwest Border (SWB) response. HSI special agents also support criminal investigations related to the SWB, including working with HSI field offices along the SWB on global trade investigations. HSI has not seen a change in resources available to pursue IP theft and commercial fraud investigations due to efforts at the SWB. Additionally, HSI has not observed a significant flow of stolen IP or counterfeits through the SWB. The majority of IP theft-related items and counterfeits enter the United States through de minimis packages.

7. How does HSI determine which IP theft cases are worth the expenditure of resources required for opening and conducting an investigation?

Response: HSI and the IPR Center utilize a comprehensive evaluation process to identify the most impactful leads. This evaluation process is informed by consultation with federal law enforcement agencies, best practices for evidence collection, and DOJ priorities and guidelines for prosecution. Each of the IPR Center's more than 30,000 annual leads moves through this evaluation process and receives a score based on information in the lead, government and proprietary database checks, and assessment by criminal analysts. The resulting score determines whether a lead is recommended for further investigation. Leads are assessed on parameters including:

- Criminal history;
- Prior import/export history;
- Prior seizure history;
- Financial analysis;
- Monetary loss;
- Victims;
- Health and safety;
- Civil litigation history;
- Strength of the evidence;
- Knowledge of criminality;
- Marketplace; and
- Special factors.

Leads that score in the range of high priority are referred to HSI field offices for investigation. This process enables HSI to identify the most impactful leads and those that are most likely to meet the threshold for prosecution by DOJ.

8. What IP criminal activities are the highest priority, what activities are the lowest priority, how are these priorities set, and what are the factors considered in setting those priorities?

Response: The IPR Center prioritizes leads that pose a threat to public health and safety, national security, and the U.S. economy. These priorities are set in coordination with HSI and DHS's strategic plans and priorities. As part of the IPR Center's comprehensive evaluation process, HSI Special Agents and Criminal Analysts prioritize cases with the following profiles:

- Ties to recognized criminal or terrorist organizations;
- Ties to known criminal schemes;
- National security concerns;
- Ties to licensed professionals/brokers;
- Emerging technology;
- Ties to persons in positions of public trust;

- Political or public corruption;
- Targeting elderly or vulnerable populations; and
- Alignment with federal goals and initiatives.

9. Does HSI have sufficient resources and authority to effectively enforce the IP laws in its purview and investigate IP crimes? If not, what resources or authorities does HSI need that it does not currently have?

Response: HSI enforces more than 400 federal criminal statutes, giving HSI broad legal authority to pursue criminal IP rights violation cases. Any future changes to statutory authority would be requested via DHS.

In FY 2023, the IPR Center received enhanced appropriations, which enabled HSI to expand its operations. The IPR Center used these appropriations to transform two successful programs into standalone units: the Government Supply Chain Investigations Unit and the Wildlife and Environmental Crimes Unit. FY 2024 sustainment funding will enable the IPR Center to sustain these new units. Continued funding would ensure the IPR Center maintains its operational capacity.

Questions for the Record from Rep. Ted Lieu for Mr. Ball
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1. Mr. Ball, your testimony highlights that “online piracy costs the U.S. economy an estimated \$29.2 billion in lost revenue.” These losses stem in part from large-scale illegal streaming services operated by entities outside the United States. These are entities not subject to U.S. law and law enforcement. What limitations do you face when combatting digital piracy, given the global nature of internet operations? Are there operators you are unable to reach because of jurisdictional limitations?

Response: The investigative focus of HSI is to disrupt and dismantle the source organizations stealing, broadcasting, and distributing pirated content. Trends in digital piracy point to the increased use of web-based software to illegally stream content and many illegal streaming organizations are based in foreign countries. Each digital piracy case is unique. Limitations can arise based on case specifics, technologies utilized, host country capabilities and resources, and local laws, as what is a violation of law in the United States may not be a violation of law in another country.

HSI works closely with DOJ’s international footprint and partner nation law enforcement counterparts. These international law enforcement partners include INTERPOL, Europol, and the City of London Police Intellectual Property Crime Unit. HSI’s footprint extends to more than 90 international offices in more than 50 countries and is the largest international presence within the Department of Homeland Security. HSI also works closely with DOJ’s International Computer Hacking and Intellectual Property (ICHIP) Program. Through the ICHIP Program, Attorney Advisors are placed in international locations to include São Paulo, Panama City, Bucharest, The Hague, Zagreb, Addis Ababa, Dar es Salaam, Hong Kong, Kuala Lumpur, and Bangkok. Additionally, there are two ICHIP global subject matter experts, one specializing in dark web and cryptocurrency and the other in internet-based fraud and public health. Two HSI Special Agents, referred to as ICHIP Agent Advisors, are located in Athens and Bangkok to support law enforcement partner capacity building. The Agent Advisors provide practical technical training and case-based mentoring focused on effectively interdicting, investigating, and prosecuting IP rights crime and related cybercrime to protect U.S. national and economic security from transnational threats, as well as deliver the technical skills and resources to targeted countries to interdict and investigate IP rights crimes and obtain and preserve evidence at trial. Law enforcement capacity building is a key priority of the program because it improves the ability of foreign partners to prevent, investigate, and prosecute IP crimes that pose a threat to economic security.