

Chairman Chabot and Ranking Member Velazquez, thank you for the opportunity to testify at this important hearing.

The U.S. Chamber of Commerce's Global Innovation Policy Center (GIPC) ([www.theglobalipcenter.com](http://www.theglobalipcenter.com)) is working around the world to champion intellectual property rights as vital to creating jobs, saving lives, advancing global economic growth, and generating breakthrough solutions to global challenges.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96 percent of Chamber member companies are small businesses with fewer than 100 employees, and many of the nation's largest companies are also active members. We are cognizant not only of the challenges facing smaller businesses but also of those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, the Chamber also represents major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance. The Chamber has membership in all 50 states.

As Members of this Committee know, small businesses employ more than half of all Americans, and the Chamber is proud to represent millions of these businesses. The U.S. Chamber launched its “Small Business Nation” campaign to help startups and small businesses succeed by promoting pro-growth policies and providing toolkits for entrepreneurs.

## **Introduction**

Intellectual property (IP), an umbrella term covering copyright, patent, trademark, and trade secrets, is often the secret sauce that gives a new, up-and-coming company its competitive edge. The loss of that edge, through theft or other appropriation, invites unfair competition that can devastate even a large company, much less a small one.

The critical importance of IP was recognized in the Constitution, where Article I, Section 8, Clause 8 provided that Congress shall have the power to:

“Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries....”

This elegant articulation set forth the fundamental policy approach that has undergirded America’s rise from a fledgling agrarian nation to the home of the Industrial Revolution to the largest economy in the world. The formula is straightforward: allow authors and inventors to own the intellectual property rights over their creations and innovation, and they will have an incentive to generate and distribute, to the benefit of all.

This formula is as true today as it has ever been. Independent film companies and record labels, startup software companies, and cutting edge biopharmaceutical innovators all require initial outlays of cash, in some cases a very large amount of cash. Any project carries the risk that it will fail or not become commercially successful. These types of efforts also have the added risk that even if they are successful, copycats may attempt to free ride on the costs of development and offer the product at an artificially low price. This is precisely the form of unfair competition that IP protections are designed to prevent. As Steve Jobs said, “From the earliest days at Apple, I realized that we thrived when we created intellectual property. If it weren’t protected, there’d be no incentive for us to make new software or product designs.”<sup>1</sup>

And it is worth noting that Apple, like so many small businesses, started with an idea and the creative genius of two young people working in their garage.

By allowing innovators and creators the opportunity to run a business on their talent and ingenuity, IP rights drive U.S. competitiveness and economic growth, and create high-quality American jobs. IP supports more than 45 million American jobs in 81 different industries. According to the Department of Commerce, IP-intensive industries make up more than half of all U.S. exports, or \$842 billion, and almost 40% of U.S. GDP.

For the past six years, GIPC has published its annual International IP Index. The Index provides a roadmap for countries to improve their IP systems and promote job growth, economic development, innovation, and creativity. As we look over the course of the report, we also see a clear pattern. Strong IP

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<sup>1</sup> As quoted in a biography by Walter Isaacson.

environments tend to enjoy greater levels of research and innovation output. As a top-scorer for its overall IP system, the United States has a competitive advantage over other countries. The Index also shows that keeping an IP system strong and effective requires monitoring and regularly updating policies, and that “doing nothing is a recipe for stagnation.”

### **IP and Small Business in the Digital Economy**

Every market requires equitable rules. An environment of overbearing regulation can strangle business growth, especially for small businesses with tightly limited resources. Just the same, a marketplace that has no rules invites abuse and theft, to the detriment of businesses and consumers alike. As former FED Chair Alan Greenspan once said, “Market economies require rule of law.”<sup>2</sup> A system of intellectual property protections is one of the reasonable rules that creates an environment of fairness and promotes innovation and job growth.

In addition to the IP laws and policies in place in various countries, free trade agreements (FTA’s) such as NAFTA can also provide protections of IP rights for small business owners, creators, and inventors.

The digital environment and the technology that accompanies it have greatly enhanced the ability of businesses to connect with customers far beyond the reach previously thought possible. They have provided new media for creative

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<sup>2</sup> Speech, Stanford Institute for Economic Policy Research Summit (2004)

expression and new tools for innovators. However, this technology can be a double-edged sword.

While thousands of small businesses now have the ability to compete in the global marketplace, due to the reach of the internet and other technological advances, they have also been exposed to unscrupulous criminals who seek to profit at their expense and at consumers' expense. It is critical that small businesses understand the tools for protecting their IP and how to use them.

## **Education**

Most small business owners are too busy trying to find a way to get their product into the marketplace or make payroll to think about IP as part of their original business plans. However, it is critically important that they understand how IP can help them succeed and which form of IP is most relevant to their type of business.

## **Copyright**

Copyright attaches to a creative work of authorship the instant it is fixed in a tangible medium of expression. Enforcement of copyright requires registration of the work with the Copyright Office. The process is simple and the fee is a relatively modest \$55. But for small business creators who create many works, that fee can add up quickly.

Of all the IP-intensive industries, copyright-intensive industries were among the first to be transformed by the digital economy. In the music context, the

Recording Industry Association of America has observed that, “Over the past two decades, digital, Internet, and mobile technologies have revolutionized the way we create, find and enjoy music...”<sup>3</sup>

Early on, Congress recognized the need for some basic rules to deter and prevent copyright piracy and enacted the Digital Millennium Copyright Act (DMCA). The DMCA has two main features. One is a set of prohibitions designed to prevent the hacking of copyrighted works. The other is immunity from monetary damages for internet service providers under certain circumstances, providing they comply with various conditions, including removing access to infringing works through their systems.

This notice and takedown system, along with the immunity from damages, has come under greater scrutiny in recent years. While small businesses need to know their rights, there is no silver bullet to stopping online piracy and counterfeiting.

## **Trademark and Trade Secret**

Even for an emerging small business owner, trademark registration can easily be obtained through the U.S. Patent and Trademark Office. While it is slightly more complex and expensive than a copyright registration, trademark registration is imperative to the protection of a new brand. It is also fairly simple, and can be accomplished with relatively little or no assistance from legal professionals.

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<sup>3</sup> RIAA, “Labels at Work – The Music Business in the Digital Age” (June, 2014)

Trademark is different in purpose from copyright and patent; it is designed to provide consumers with an indication of the source of a product, and it creates consumer confidence. Companies build brands that consumers trust and can hold accountable. Counterfeiters create cheap fakes that copy legitimate brands, an illicit business model built on deception.

Trade secrets are, by definition, not voluntarily disclosed. They retain their value only if they remain secret, and companies must take proactive steps to ensure these secrets are protected. Whether through hacking or industrial espionage, competitors steal these secrets to use them in competition with the victim.

The IP thieves in these contexts are among the worst actors IP-intensive industries are likely to face. The criminal networks behind these thefts take extensive measures to conceal their identity and locate themselves in countries with weak IP laws and/or enforcement.

In order to entice American consumers, criminals prey on customers who visit various online retail platforms. The cooperation of these online retail platforms through voluntary, business-to-business arrangements known as “voluntary agreements” is key to combatting the criminals in the online environment. GIPC has investigated IP issues in the online marketplace in detail and offers the following conclusions:

- Shopping on an illicit website can create vulnerabilities to malicious computer viruses. Even brief contact may expose consumers to prolonged risk of identity theft and other cybersecurity threats from criminal entities.

- While some platforms have begun working with the private sector to adopt swift takedown procedures and information sharing, more improvements are needed.
- Online retail platforms can continue to simplify processes for rights holders to register and request enforcement action; reduce timelines for takedowns; offer rating systems to the public to track seller history including IP violations; monitor high-risk sellers closely; suspend repeat offenders; and issue penalties for sellers of counterfeit goods.
- Recently, many online retail platforms have instituted brand registry programs to allow for a direct line of communication between the platform and the brand owner. However, these programs still present challenges to brands when they try to enforce their rights efficiently. When thousands of listings are suspected to be counterfeit on a single online retail platform, it is burdensome to individually enforce on each listing without a streamlined process.
- Online retail platforms can work to make important information available to consumers and rights holders alike. Platforms could offer details to consumers, such as seller information, seller history, seller reviews, and clear product photos and specs.
- Platforms could also offer information to brand owners, including listings that have been proactively and reactively removed, account information of sellers that have been suspended or banned from the platform, and the account information of repeat infringers. Automated tools, algorithms, and machine learning can be effectively used to proactively, and without many resources, address shortcomings in information sharing and prevent future bad actors from selling counterfeits on individual online retail platforms.

## **Patent**

Patents are obtained through an application to the U.S. Patent and Trademark Office. The wording of the claims can determine whether the patent is granted or not and, if granted, they define the scope of the patent. It is highly advisable



to seek professional legal counsel for a patent application, and the fees over the course of the life of the patent are thousands of dollars.

Digital tools are helping scientists in cutting edge fields like biopharmaceutical research to produce new and better treatments. These tools can cost upwards of \$2 billion to develop and bring to market, so patent protection and ancillary laws and regulations that provide for an adequate time of market exclusivity are critical to maintaining the innovation life cycle.

Computer hardware and software are also highly patent-intensive. While this has led to major litigation battles among industry giants, patent protection remains critical for small business. One need only to turn on an episode of “Shark Tank” to hear the prospective investors ask again and again, “Do you have a patent on that?”

Businesses of all sizes benefit from a strong patent system that is characterized not only by predictability and consistency, but also by enforceability, all of which lead to confidence in patents, deterrence of infringers, and enhanced levels of innovation by both small and large enterprises.

## **Conclusion**

As I have noted, the digital economy has created tremendous opportunities for small business owners to succeed, and is a source of economic growth and job creation that has transformed the ways companies conduct their business and consumers purchase goods.

IP can play a key role in helping small businesses succeed, both in the traditional marketplace and in the online ecosystem. To be successful, it is imperative that small business owners gain a fuller understanding of how IP relates to their specific business models and how they can protect themselves from those who would steal their products and customers.

I strongly urge small business owners to go to the IP sections of the Small Business Administration, U.S. Patent and Trademark Office, and U.S. Copyright Office websites for a wealth of information that may literally help determine whether these enterprises are destined to fail or become the next Apple or Nike.

I want to thank the Committee for this opportunity to testify and stand ready to answer any questions you may have.