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Report to Congressional Committees

October 2010

INTELLECTUAL PROPERTY

Agencies Progress in Implementing Recent Legislation, but Enhancements Could Improve Future Plans

GAO-11-39

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GAO Highlights

Accountability • Integrity • Reliability

Highlights of GAO-11-39, a report to the congressional committees

Why GAO Did This Study

Intellectual property (IP) plays a significant role in the U.S. economy. Enforcing IP laws involves many U.S. agencies, making coordination essential. Under the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act), Congress required the U.S. Attorney General, through the Department of Justice (DOJ), to devote additional resources and undertake other specific IP efforts. The PRO-IP Act also created the position of the Intellectual Property Enforcement Coordinator (IPEC) to enhance interagency coordination. The act mandates that GAO provide Congress with a report on the efforts of DOJ and the IPEC.

This status report addresses DOJ and Office of the IPEC's efforts to implement the act. The report also compares the 2010 Joint Strategic Plan on Intellectual Property Enforcement to the content called for in the PRO-IP Act. GAO examined relevant documents, interviewed agency staff and officials, and compared agency actions and the 2010 strategic plan with the PRO-IP Act.

What GAO Recommends

GAO recommends that the IPEC, in consultation with the Interagency Intellectual Property Enforcement Advisory Committee, take steps to ensure that future joint strategic plans identify implementing departments and agencies for all priorities and related action items and establish resource estimates to carry out the plan's priorities.

View GAO-11-39 or key components.
For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

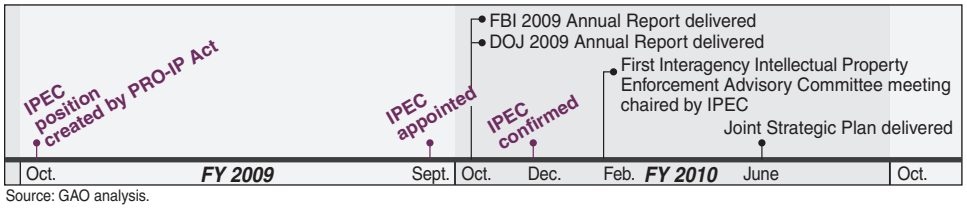
What GAO Found

Officials from DOJ and its Federal Bureau of Investigation (FBI) report that they have taken many actions called for in the PRO-IP Act. For example, the act calls for two assistant U.S. attorneys to be assigned to each Computer Hacking and Intellectual Property Crime (CHIP) Unit. DOJ has assigned 97 Assistant U.S. Attorneys to work with CHIP units, with all 25 CHIP units having two or more attorneys assigned. FBI officials also report creating agent positions in accordance with the act, adding 31 agent positions to IP enforcement in fiscal year 2009 and an additional 20 IP positions for 2010. However, FBI officials observed the increase in IP dedicated agent positions has not correspondingly increased agent-hour charges for IP investigations, noting delays in funding, hiring, training and deploying IP-dedicated agents.

Office of the IPEC staff report that they have taken steps to implement the PRO-IP Act. The office, located within the Office of Management and Budget, was recently established following the confirmation of the IPEC on December 4, 2009. The office includes the IPEC, an assistant, and four detailees from other federal agencies. Office of the IPEC staff report that the IPEC chaired the first meeting of the Interagency Intellectual Property Enforcement Advisory Committee on February 2, 2010. Moreover, the IPEC coordinated with other federal entities to deliver the 2010 Joint Strategic Plan on Intellectual Property Enforcement to Congress and the public on June 22, 2010, less than 7 months after the IPEC's confirmation. The purpose of the plan is to develop an interagency strategy to combat infringement of IP rights.

In general, the joint strategic plan addressed each content requirement listed in the PRO-IP Act, but two enhancements could help to improve future plans: identifying implementing entities for all action items related to the plan's priorities and establishing resource estimates. In accordance with the act, the plan includes analyses of the economic, health, and safety threats posed by violations of IP rights. The plan also provides a description of the priorities that will carry out the plan's objectives and the means to be employed to achieve these priorities. While the act calls for the plan to identify implementing departments and agencies for all priorities, it did not do so for about one third of the action items aligned to the priorities. In addition, the plan did not include estimates of the resources needed to fulfill the plan's priorities because data collection and analysis are still in progress.

Timeline of Key IPEC and DOJ Efforts Related to the PRO-IP Act



Source: GAO analysis.

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Abbreviations

BJA	Bureau of Justice Assistance
CCIPS	Computer Crime and Intellectual Property Section
CHIP	Computer Hacking and Intellectual Property
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
IP	intellectual property
IPEC	Intellectual Property Enforcement Coordinator
NIPLECC	National Intellectual Property Law Enforcement Coordination Council
OMB	Office of Management and Budget
PRO-IP Act	Prioritizing Resources and Organization for Intellectual Property Act of 2008
STOP	Strategy for Targeting Organized Piracy
USTR	U.S. Trade Representative

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

October 13, 2010

The Honorable Patrick J. Leahy
Chairman
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
The Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
House of Representatives

Intellectual property (IP) plays a significant role in the U.S. economy, and the United States is an acknowledged leader in its creation. IP is a category of legal rights that grants owners certain exclusive rights to intangible assets or products of the human intellect, such as inventions; literary and artistic works; and symbols, names, images, and design. The federal government grants IP protection through patents, copyrights, and trademarks, and takes enforcement actions that range from seizing IP-infringing goods to prosecuting alleged criminals. IP protection and enforcement efforts cut across a wide range of U.S. agencies, making coordination essential.

Under the Prioritizing Resources and Organization for Intellectual Property Act of 2008[1] (PRO-IP Act), Congress created the position of the Intellectual Property Enforcement Coordinator (IPEC) to serve within the Executive Office of the President. The act outlines the IPEC's duties and includes specific efforts to enhance interagency coordination, such as the development of a comprehensive joint strategic plan. The PRO-IP Act also required the U.S. Attorney General, through the Department of Justice (DOJ) and its Federal Bureau of Investigation (FBI), to devote additional resources to IP enforcement and to undertake other specific IP enforcement related efforts.

[1]P.L. 110-403.

The PRO-IP Act mandates that GAO provide Congress with a report on the efforts, activities, and actions of the U.S. Attorney General and the IPEC in achieving the goals and purposes of the act no later than 2 years after its enactment. Because the IPEC was not confirmed until December 2009 and some agencies have only recently undertaken required efforts, we agreed to provide a status report on efforts to implement the act. Specifically, this report addresses efforts undertaken by DOJ and the Office of the IPEC to implement requirements outlined in the act.[2] In addition, this report compares the 2010 Joint Strategic Plan on Intellectual Property Enforcement to content called for in the act.

To determine the status of the implementation of the requirements of the PRO-IP Act that are assigned to the IPEC, DOJ, and the FBI, we examined the act to identify the requirements assigned to each entity and met with staff from the Office of the IPEC and officials from DOJ and the FBI to discuss their implementation efforts. We requested that these entities provide us with a written description of the status of their efforts and describe any challenges they face relating to each requirement under the act. Because of time limitations, we did not independently verify all agency statements, but attributed these statements accordingly. We compared each entity's efforts to those called for in the act to determine the status of its implementation, and then met with agency staff and officials to clarify our observations. To compare the 2010 Joint Strategic Plan on Intellectual Property Enforcement to the content requirements detailed in the PRO-IP Act, we evaluated content from the plan against each content requirement from Title III, Section 303 (e) and (f) to determine whether each content requirement was addressed.

We conducted this performance audit from July 2010 to October 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For additional details regarding our scope and methodology, see appendix I.

[2]Title III and IV of the P.L. 110-403.

Background

The economic value of goods protected by copyrights, patents, and trademarks makes them attractive targets for criminal networks.[3] Criminal violations of IP rights have potential negative effects for U.S. innovation and investment, on the value and reputation of individual companies, and for consumers who are put at risk by substandard or dangerous products. Industry groups suggest that counterfeiting and piracy are on the rise and that a broader range of products—from auto parts to razor blades, medicines to infant formula—are subject to counterfeit production. The illicit nature of counterfeiting and piracy makes it extremely difficult to estimate the economic impact of IP infringements, but research for specific industries suggests that the problem is sizeable.[4]

Eight key federal agencies, as well as entities within them, undertake a wide range of activities in protecting IP rights. The agencies are the Departments of Commerce, State, Justice, Health and Human Services, and Homeland Security; the U.S. Trade Representative (USTR); the U.S. Copyright Office; and the U.S. International Trade Commission. In many cases, IP-related efforts represent a small part of the agencies' much broader missions.

DOJ's U.S. attorneys' offices, Criminal Division, and the FBI investigate and prosecute federal IP crimes. DOJ established the Computer Hacking and Intellectual Property (CHIP) program, which consists of specially-trained assistant U.S. attorneys to pursue IP cases. Each of the 93 U.S. attorneys offices throughout the country have assistant U.S. attorneys designated as CHIP coordinators, who are available to work on IP cases. In addition, DOJ has created CHIP units in 25 U.S. attorney's offices with histories of large IP case loads. DOJ's Computer Crime and Intellectual Property Section (CCIPS)—based in Washington, D.C.—consists of

[3]A copyright provides protection for literary and artistic works such as books, musical compositions, computer software, and cinematographic works (movies). A copyright is a property right in an original work of authorship that arises automatically upon creation of such a work and belongs, in the first instance, to the author. A patent protects an invention by giving the inventor the right to exclude others from making, using, or selling a new, useful, or nonobvious invention during a specific term. Trademarks are words, phrases, logos, or other graphic symbols used by manufacturers or merchants to identify their goods and distinguish them from others. Other types of intellectual property include trade secrets, industrial designs, and geographic indications. Geographic indications are names used to identify products with quality, reputation, or other characteristics attributable to the origin of the product.

[4]Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods. GAO-10-423 (Washington, D.C.: Apr. 12, 2010).

prosecutors devoted to enforcing computer crime and IP laws. CCIPS attorneys prosecute cases, assist prosecutors and other investigative agents in the field, and help develop and implement an overall criminal enforcement strategy. The FBI's Cyber Division oversees the bureau's IP enforcement efforts, though not all of its IP investigations are cyber-related.[5] FBI IP investigations are primarily conducted in 21 of the FBI's 56 field offices and the FBI's IP Rights Unit located at the National Intellectual Property Rights Coordination Center.[6]

Over the years, Congress and the administration have created interagency mechanisms to coordinate federal IP law enforcement efforts. In 1999, Congress created an interagency mechanism, called the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), to coordinate U.S. law enforcement efforts to protect and enforce IP rights in the United States and abroad.[7] Officials from seven federal entities were members of NIPLECC.[8] In October 2004, the President launched a separate initiative—the Strategy for Targeting Organized Piracy (STOP)—which included for the most part the same agencies as NIPLECC and was intended to target cross-border trade in tangible goods and strengthen U.S. government and industry IP enforcement actions. Congress later passed legislation in December 2004 to enhance NIPLECC's mandate and created the position of the Coordinator for International Intellectual Property Enforcement, located within the Department of Commerce, to head NIPLECC.[9] In November 2006 we reported that NIPLECC continued to face persistent difficulties, creating doubts about its ability to carry out its mandate.[10] We also noted that while STOP had brought attention and

[5]This division also investigates computer intrusions and child pornography.

[6]The National Intellectual Property Rights Coordination Center is the U.S. government's clearing house for investigations into counterfeiting and piracy. The National Intellectual Property Rights Center was created to promote sharing of information, resources and personnel between the U.S government agencies responsible for combating counterfeiting, piracy and related IP rights crime. The center is located in Arlington, VA.

[7]In September 1999, Congress authorized NIPLECC (P.L. 106-58).

[8]The council's membership included officials from: U.S. Customs and Border Protection; U.S. Immigration and Customs Enforcement; the Departments of Commerce, State, and Justice; the U.S. Patent and Trademark Office; and the Office of the U.S. Trade Representative. Department of Justice and the U.S. Patent and Trademark Office were co-chairs.

[9](P.L. 108-447).

[10]GAO, *Intellectual Property: Strategy for Targeting Organized Piracy (STOP) Requires Changes for Long-term Success*, GAO-07-74 (Washington, D.C.: Nov. 8, 2006).

energy to IP efforts within the U.S. government because of its executive office status, STOP had limited usefulness as a tool to prioritize, guide, implement, and monitor the combined efforts of multiple agencies. GAO has conducted a variety of assignments related to IP protection and enforcement over the last several years. A list of GAO reports and testimonies on IP protection since 2004 is included at the end of this report.

The PRO-IP Act enacted several changes intended to address weaknesses in prior coordinating structures. For example, the PRO-IP Act specifically required the new interagency advisory committee to prepare a joint strategic plan that addresses key elements of an effective national strategic plan, building in mechanisms for accountability and oversight. Also, the PRO-IP Act required the IPEC to submit the joint strategic plan to committees of Congress every third year after the development of the first strategic plan. In addition, the PRO-IP Act places leadership in the Executive Office of the President, within the Office of Management and Budget (OMB)—a status similar to that of STOP. The PRO-IP Act also repealed NIPLECC upon confirmation of the IPEC by the Senate.

DOJ and FBI Officials Report Taking Actions Called for by the PRO-IP Act

Officials from DOJ and the FBI report that they have taken actions called for in the PRO-IP Act. For example, consistent with efforts authorized by the act, DOJ officials reported that in fiscal 2009 the department awarded 10 grants, totaling approximately $2 million, to fund IP enforcement efforts. In addition, they reported that DOJ has assigned 97 assistant U.S. attorneys to work with CHIP units and that all CHIP units have two or more attorneys assigned as of August 2010. FBI officials also reported that they have created agent positions dedicated to investigating IP crimes, with 31 agent positions funded in fiscal year 2009 and an additional 20 agent positions funded in fiscal year 2010. FBI officials explained that delays in receiving funding for new agent positions and the time needed to hire, train, and deploy agents has meant that new agent positions have not immediately increased agent time spent on investigation. FBI officials also reported that IP-dedicated agents are sometimes used for other investigations but officials reported that they are monitoring IP staff usage and will take corrective action, if needed. DOJ officials reported that the U.S. Attorney General's Organized Crime Council Action Plan emphasizes IP crimes as part of an integrated approach to dealing with the multiple areas affected by organized crime. Finally, both DOJ and FBI officials have submitted reports to Congress on actions taken under the PRO-IP Act.

DOJ Awarded IP Grants to State and Local Law Enforcement Agencies

"The Office of Justice Programs of the Department of Justice may make grants to eligible State or local law enforcement entities, including law enforcement agencies of municipal governments and public educational institutions, for training, prevention, enforcement, and prosecution of intellectual property theft and infringement crimes..."

Source: Section 401(b), P.L. 110-403.

DOJ officials report that they have used the Intellectual Property Enforcement, Training, and Technical Assistance Program to fund eligible state and local IP efforts consistent with authority provided in the PRO-IP Act. For fiscal year 2009, the Office of Justice Programs' Bureau of Justice Assistance (BJA) awarded 10 grants—totaling $2,005,692—to support IP efforts. DOJ funded these fiscal year 2009 grants from the Economic, High-Tech, and Cyber Crime Prevention funds.[11] BJA awarded eight of these grants to state and local agencies to directly assist with IP prevention and enforcement efforts. For example, BJA awarded the city of Los Angeles $199,995 to support the city's anti-piracy unit. DOJ officials noted that it awarded grants to two national organizations to jointly develop and deliver an IP curriculum for presentation to federal, state, local, and tribal law enforcement and prosecutors at 10 regional locations. For information on recipients and grant amounts see table 1 below.

Table 1: Fiscal Year 2009, BJA Intellectual Property Enforcement, Training, and Technical Assistance Program Grants

Agency receiving grant	Description	Award amount
Virginia Office of the Attorney General	Support IP training and enforcement	$17,575
Bronx County District Attorney, NY	Target stores selling counterfeit goods	43,718
North Carolina Department of the Secretary of State	Purchase equipment to develop IP leads	44,485
Chesterfield County Police Department, VA	Investigate IP crimes connections	199,919
City of Los Angeles Police Department, CA	Support anti-piracy unit	199,995
Los Angeles County Sheriff's Department, CA	Enhance IP law enforcement	200,000
Mississippi Attorney General's Office	Enhance IP law enforcement	200,000
New York City Mayors Office	Hire additional IP investigators	200,000
National White Collar Crime Center (NW3C)	Partnership to develop IP curriculum	450,000
National Association of Attorneys General, D.C.	Partnership to develop IP curriculum	450,000
Total funding for 10 grantees		**$2,005,692**

Source: GAO analysis of BJA grant award announcement.

DOJ officials reported that BJA is currently reviewing applications from state and local law enforcement entities for $4 million in fiscal year 2010 funds[12] under the Intellectual Property Enforcement, Training, and

[11]Economic, High-Tech, and Cyber Crime Prevention grants were authorized under the Consolidated Appropriations Act, 2008 (P.L. 110-161).

[12]This program is authorized by the Omnibus Consolidated Appropriations Act, 2010 (P.L. 111-117)

Technical Assistance Program. DOJ intended to award all of these grants by September 30, 2010.

DOJ officials reported several challenges hampering their efforts to aid state and local law enforcement entities with their IP efforts. First, officials cited the lack of knowledge among state and local law enforcement and prosecutors about the importance of IP protection. Officials noted a broad misperception of IP as a "victimless" crime. Officials state that when cases cross jurisdictional lines, this lack of knowledge can lead partner police agencies not to take IP investigations as seriously as warranted. Further, this lack of knowledge can result in reluctance on the part of some prosecutors to file felony charges against suspects. Finally officials cited limited resources, competing priorities, and collateral duties that sometimes impede support for IP efforts at state and local levels.

FBI and DOJ Increased IP Staffing and Training

"Subject to the availability of appropriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to theft of intellectual property... ensure that there are at least 10 additional operational agents of the Federal Bureau of Investigation designated to support the Computer Crime and Intellectual Property Section [CCIPS] of the Criminal Division of the Department of Justice in the investigation and coordination of intellectual property crimes..."

Source: 402(a)(1), P.L. 110-403.

FBI officials reported increasing the number of FBI agents dedicated to investigating IP crimes in support of DOJ's CCIPS. FBI officials noted that their fiscal year 2009 appropriation[13] provided funding for at least five full-time FBI agents dedicated to working with DOJ's CCIPS. In consultation with CCIPS, FBI officials at headquarters created the Intellectual Property Rights Unit, locating it at the National Intellectual Property Rights Center in Virginia. As of May 2010, this FBI unit was staffed by six agents, consisting of three unit agents dedicated solely to investigating criminal IP crimes, two supervisory agents guiding unit agents and field office IP programs, and a supervisory agent unit chief. The three unit agents focus on investigating complex, multi-district cases, as well as on working cases with partner agencies. The Intellectual Property Rights Unit is also supported by two management program analysts, one staff operations specialist, and intelligence analyst support from the FBI Cyber Intelligence section. FBI officials also noted that the bureau had recently dedicated FBI agents in the field to IP enforcement and these agents also support CCIPS.

[13]Omnibus Appropriations Act, FY 2009 (P.L. No. 111-118)

"Subject to the availability of appropriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to theft of intellectual property… ensure that any Computer Hacking and Intellectual Property Crime [CHIP] Unit in the Department of Justice is supported by at least 1 agent of the Federal Bureau of Investigation (in addition to any agent supporting such unit as of the date of the enactment of this Act) to support such unit for the purpose of investigating or prosecuting intellectual property crimes..."

Source: 402(a)(2), P.L. 110-403.

All 25 CHIP units, according to FBI officials, are supported by at least one FBI agent. FBI officials reported that prior to fiscal 2009, although FBI agents worked IP cases, it did not have agents dedicated to IP enforcement and that the size of the FBI's IP enforcement effort was small relative to other efforts. FBI officials noted that fiscal year 2009 funding allowed it to create 31 IP-dedicated agent positions, and fiscal year 2010 funding allowed it to create an additional 20 IP-dedicated agent positions.[14] The increase in IP-dedicated agents resulted in 22 of 25 CHIP units having at least one assigned agent dedicated to IP investigations in fiscal year 2010. Specifically, 11 of the 22 CHIP units were each assigned one IP-dedicated agent and the remaining 11 CHIP units were assigned two to six IP-dedicated agents. FBI officials reported that they appointed a special agent to act as an IP coordinator for each of the 3 remaining CHIP units to directly support those units.

Although the FBI has added agents dedicated to IP enforcement, FBI officials reported that the number of "agent years" charged to IP investigations has not correspondingly increased. According to FBI officials, field IP investigations totaled 20.5 agent years in fiscal year 2008 even though there were no IP-dedicated agents in fiscal year 2008. Although the FBI had 46 dedicated IP field agent positions in August 2010, FBI officials reported for the first 10.5 months of fiscal year 2010 (through August 14, 2010), field agents charged only 26.2 agent years to IP investigations. However, FBI officials noted at the end of August 2010, there were 37 IP-dedicated field agents actively charging time to IP investigations.[15]

FBI officials noted several factors that contributed to the number of "agent years" charged to IP investigations not increasing correspondingly with the increase in IP-dedicated agent positions. First, FBI officials noted that delays in funding, hiring, training, and deploying new agent positions reduces the time available for new agents to perform IP investigations. FBI officials explained that the bureau received a fiscal year 2009

[14]In fiscal year 2010, the FBI reported a total of 51 agents dedicated to IP, of which 46 of these agents were assigned to 22 of DOJ's 25 CHIP units. The remaining 5 agents were assigned to the National Intellectual Property Rights Center to assist CCIPS. FBI officials noted that the placement of these IP-dedicated agents within the Intellectual Property Rights Unit and FBI field offices was coordinated with, and approved by, the Office of the Deputy Attorney General.

[15]FBI officials reported that the three agents in the Intellectual Property Rights Unit were also actively charging IP investigations at the end of August 2010.

supplemental appropriation in March 2009, which provided for 31 agent positions, including 26 field agent positions to work solely on IP investigations. FBI officials cited a 6 to 9 month lag in filling some of these positions including time to hire, train, and deploy agents to field offices. Similarly, FBI officials noted that the FBI received fiscal year 2010 funding for 20 additional IP-dedicated agent positions in December 2010, and again time for hiring, training, and deploying agents reduced the time available for IP investigations. Second, FBI officials acknowledged that although they have increased the number of agents dedicated to IP, field office supervisory agents sometimes use these agents for other non-IP related investigations. FBI officials reported that they are monitoring FBI field office usage of IP-dedicated agent time. Those offices found to have underutilized IP-dedicated staff at the end of fiscal year 2010 will be required to implement a strategy to improve IP staff utilization.

"Subject to the availability of appropriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to theft of intellectual property… ensure that all Computer Hacking and Intellectual Property Crime Units located at an office of a United States Attorney are assigned at least 2 Assistant United States Attorneys responsible for investigating and prosecuting computer hacking or intellectual property crimes…"

Source: Section 402(a)(3), P.L. 110-403.

DOJ officials reported that as of August 2010, there are two or more assistant U.S. attorneys assigned to all 25 CHIP units. Overall, DOJ assigned 97 assistant U.S. attorneys to work with the various CHIP units and is in the process of hiring and placing an additional 15 assistant U.S. attorneys. However, DOJ officials also noted that ordinary job turnover at individual offices occasionally makes it difficult to maintain two assistant U.S. attorneys at each CHIP unit.

"Subject to the availability of appropriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to theft of intellectual property… ensure the implementation of a regular and comprehensive training program..."

Source: Section 402(a)(4), P.L. 110-403.

FBI officials reported that the bureau's annual IP rights conference, scheduled every September, has become a comprehensive IP rights training program for IP-dedicated agents and others. For example, in 2009 the FBI conducted a 3-day training session for IP-dedicated agents as well as other field agents and intelligence analysts. Training topics included statutory authorities, DOJ enforcement efforts, major case initiatives, case studies, intelligence analysis for IP rights cases, federal partner efforts, and industry subject matter expert presentations.

FBI officials reported that the annual IP rights training for 2010 will include both a basic training course for newly placed agents and an advanced course for experienced agents. The three agents acting as IP coordinators will also receive this annual training to ensure adequate support for CHIP units.

FBI officials also noted that currently all new agents receive an overview of the laws governing IP violations during new agents training at the FBI academy. According to these officials, the FBI is in the process of developing an expanded IP curriculum for new agents. In addition, all agents on a cyber career track receive additional IP specialized training

during the 2-week post new agents training program. This training consists of an IP rights program overview, PRO-IP Act overview, case initiation and investigative techniques, guidance regarding the importance of interagency partnerships, and the benefits of industry coordination efforts.

DOJ's Plans Address Relationship between Organized Crime and IP Offenses

DOJ officials reported that the department has incorporated IP concerns into the U.S. Attorney General's Law Enforcement Strategy for Combating Organized Crime. The strategy establishes an investigation and prosecution framework and includes marshalling information and intelligence, and prioritizing and targeting organized crime threats.

> "Subject to the availability of appropriations to carry out this subsection…the Attorney General, through the United States Attorneys' Offices, the Computer Crime and Intellectual Property section, and the Organized Crime Racketeering section of the Department of Justice, and in consultation with the Federal Bureau of Investigation and other Federal law enforcement agencies, such as the Department of Homeland Security, shall create and implement a comprehensive, long range plan to investigate and prosecute international organized crime syndicates engaging in or supporting crimes relating to the theft of intellectual property."
>
> Source: Section 402(b), P.L. 110-403.

In addition, DOJ officials reported that the U.S. Attorney General's Organized Crime Council[16] Action Plan addresses the relationship between organized crime and IP offenses. The council identifies specific goals in its annual action plan, and has identified IP crimes as a priority since 2008. The 2010 action plan emphasizes IP crimes as part of an integrated approach to dealing with the multiple areas affected by organized crime and identifies the IP-specific goals for understanding criminal organizations engaged in IP violations and coordinating the substantial efforts law enforcement is making in both areas. The plan calls on DOJ to work with investigative agencies to focus efforts on known counterfeit product distribution networks with the goal of tracing the source of products back to countries where the goods are produced. The plan also calls for sharing information and cross-training to allow personnel to identify IP violations that involve organized crime.

The first annual DOJ PRO-IP report[17] detailed several approaches the department intended to deploy to integrate IP enforcement with the departments' overall international organized crime strategy. The plan calls for CCIPS to coordinate with the Organized Crime and Racketeering Section and other federal agencies through the International Organized Crime Intelligence Operations Center to develop and implement a mechanism to address intelligence gaps as they relate to IP, among other

[16]The U.S. Attorney General's Organized Crime Council was created by executive order in 1969 and directed the U.S. Attorney General to lead a government-wide response to organized crime. The council is chaired by the Deputy U.S. Attorney General and consists of the Assistant U.S. Attorney General for the Criminal Division and the leaders of nine participating federal law enforcement agencies.

[17]DOJ, *PRO-IP Act First Annual Report 2008-2009* (Oct. 13, 200).

items. The plan further noted that the CCIPS' Intellectual Property Rights Unit has detailed a senior attorney to provide legal advice and guidance and coordinate IP cases involving the judicial process and other prosecutorial activities. It also called for the CCIPS and other relevant participating federal agencies to contribute critical IP-related intelligence and case information.

DOJ officials noted that the department expects to see an increase in the number of IP cases developed from traditional organized crime investigations. Further, DOJ officials expected an increase in awareness of U.S. business and Department of State personnel about the role of organized criminal enterprises in IP offenses. Officials noted that integrating IP investigations with traditional organized crime investigations requires coordination between DOJ components that have not traditionally interacted on specific cases. Officials observe that close coordination between the work of investigators and prosecutors handling organized crime and IP crimes creates a much better position for those involved to identify connections between organized crimes and IP crimes.

DOJ and FBI Provide Annual IP Reports

"…annually…the Attorney General shall submit a report to Congress on actions taken to carry out this title. The initial report required under this subsection shall be submitted by May 1, 2009. All subsequent annual reports shall be submitted by May 1st of each fiscal year thereafter. The report required under this subsection may be submitted as part of the annual performance report of the Department of Justice…"

Source: Section 404(a), P.L. 110-403.

DOJ officials reported that the department submitted its report on actions taken to carry out Title IV of the PRO-IP Act to Congress on October 13, 2009. DOJ officials noted that the act provided two options for submitting the report—DOJ can submit the report by May 1 or as part of its annual performance report, which is filed annually in October. They further noted that there is no method to gather statistical data for the report outside the current fiscal year structure. DOJ officials reported that the department provided its first report in October 2009 (and separate from its annual performance report) and intends to submit the fiscal year 2010 report in early October 2010.

"The first report required to be submitted by the Attorney General under subsection (a) shall include a summary of the efforts, activities, and resources the Department of Justice has allocated in the 5 years prior to the date of enactment of this Act, as well as the 1-year period following such date of enactment, to the enforcement, investigation, and prosecution of intellectual property crimes..."

Source: Section 404(b), P.L. 110-403.

DOJ officials reported that the department's first report contained information on ongoing activities as well as historical data about the enforcement, investigation, and prosecution of IP crimes. Officials noted that the historical information largely duplicated information previously reported to Congress in the department's annual performance report and in reports from the National Intellectual Property Law Enforcement Coordination Council.

"… annually…the Director of the Federal Bureau of Investigation shall submit a report to Congress on actions taken to carry out this title. The initial report required under this subsection shall be submitted by May 1, 2009. All subsequent annual reports shall be submitted by May 1st of each fiscal year thereafter. The report required under this subsection may be submitted as part of the annual performance report of the Department of Justice…"

Source: Section 404(c), P.L. 110-403.

Separately, FBI officials reported that the bureau submitted its first required report on actions taken under Title IV of the PRO-IP Act in October 2009. Like DOJ, FBI officials noted that its October 2009 report was in line with the timing of DOJ's annual performance report.

"The first report required to be submitted by the Director of the Federal Bureau of Investigation under subsection (c) shall include a summary of the efforts, activities, and resources the Federal Bureau of Investigation has allocated in the 5 years prior to the date of enactment of this Act, as well as the 1-year period following such date of enactment to the enforcement, investigation, and prosecution of intellectual property crimes…"

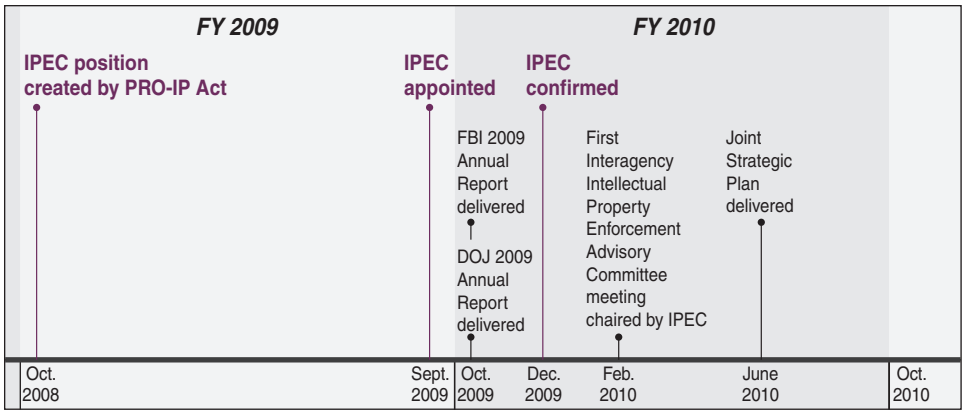
Source: 404(d), P.L. 110-403.

The October 2009 FBI report included a presentation of the number of different types of investigative accomplishments from fiscal year 2004 through fiscal year 2009. The report also presented discussions of PRO-IP Act funding, training for PRO-IP Act special agents, and efforts and activities in support of the FBI's IP rights program. FBI officials reported that they intend to submit their next annual report in October 2010.

Office of the IPEC Staff Report Taking Steps to Implement the PRO-IP Act

Office of the IPEC staff reported that the IPEC and the Interagency Intellectual Property Enforcement Advisory Committee have taken steps to implement the PRO-IP Act. For example, the Office of the IPEC was established following the appointment and confirmation of the IPEC. The office consists of the IPEC and four temporarily detailed employees with expertise in IP enforcement. In addition, staff reported that the IPEC has begun to carry out its duties required by the PRO-IP Act, such as facilitating the issuance of IP policy guidance and establishing and chairing the Interagency Intellectual Property Enforcement Advisory Committee. Moreover, the IPEC led members of the advisory committee in developing a joint strategic plan required by the PRO-IP Act. Because the IPEC was not confirmed until December 4, 2009, the 2010 joint strategic plan was delivered to Congress and the public on June 22, 2010, rather than October 13, 2009, as called for by the act.

Figure 1: Timeline of Key IPEC and DOJ Efforts Related to the PRO-IP Act



Source: GAO analysis.

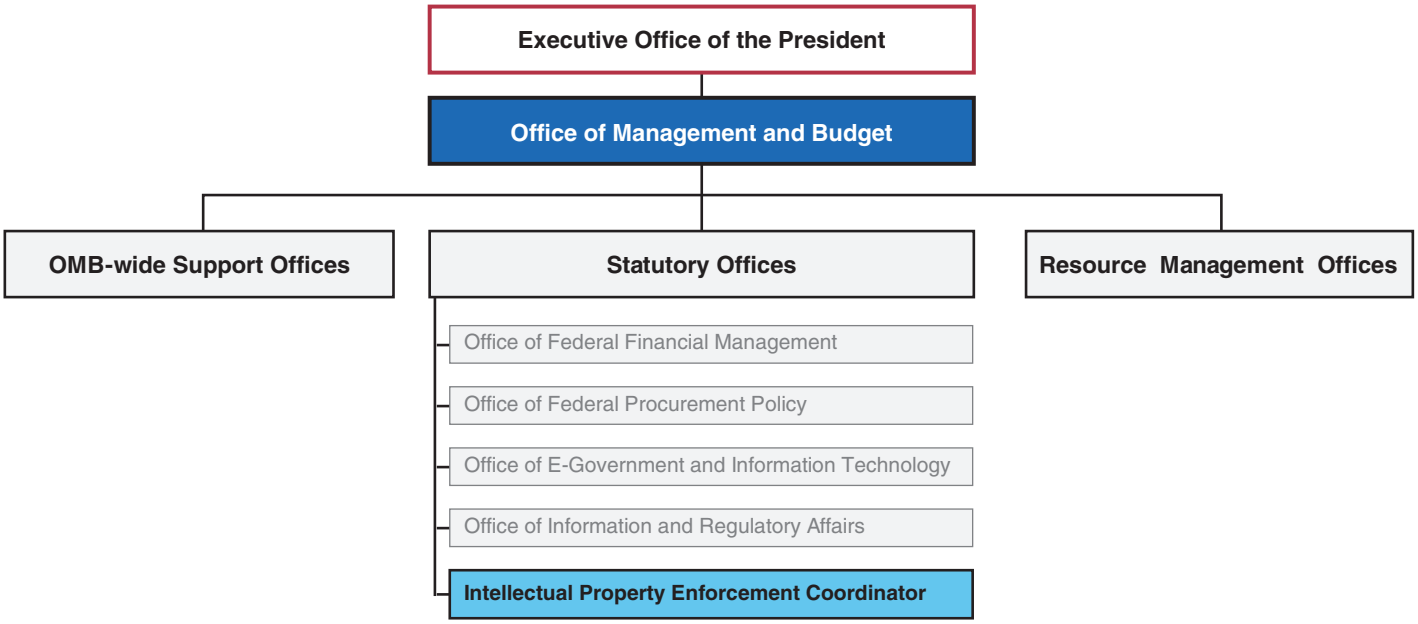
Office of the IPEC Established

> "The President shall appoint, by and with the advice and consent of the Senate, an Intellectual Property Enforcement Coordinator (in this title referred to as the 'IPEC') to serve within the Executive Office of the President…"
>
> Source: Section 301(a), P.L. 110-403.

On October 13, 2008, the PRO-IP Act created the position of the IPEC, placing it within OMB, in the Executive Office of the President (see fig. 2). The President nominated Victoria A. Espinel as the first IPEC on September 25, 2009, and the Senate confirmed Espinel on December 4, 2009. The Office of the IPEC has a relatively small but experienced staff. In addition to the IPEC, the office includes one assistant who is a permanent employee and four employees temporarily detailed from the U.S. Patent and Trademark Office; Department of Homeland Security's Office of Policy; DOJ's Civil Rights Division; and DOJ's U.S. Attorney's Office for the Central District of California, Cyber, and Intellectual Property Crimes

Section. Staff reported that the attorney detailed from the U.S. Patent and Trademark Office has experience handling all aspects of IP litigation. They also reported that the staff member detailed from the Department of Homeland Security has significant trade and IP related experience. In addition, both staff detailed from DOJ have criminal prosecutor experience, and one has experience as a CHIP unit attorney.

Figure 2: IPEC Located within OMB



Source: Office of Management and Budget organization chart.

IPEC Facilitating Issuance of IP Policy Guidance

"The IPEC shall…facilitate the issuance of policy guidance to departments and agencies on basic issues of policy and interpretation, to the extent necessary to assure the coordination of intellectual property enforcement policy and consistency with other law..."

Source: Section 301(b)(1)(D), P.L. 110-403.

Staff from the Office of the IPEC reported that the IPEC has begun to facilitate the issuance of policy guidance by coordinating discussions on IP enforcement policy issues. For example, the Office of the IPEC worked with the departments and agencies involved in the development of the 2010 Joint Strategic Plan on Intellectual Property Enforcement to resolve IP enforcement policy issues and to incorporate the administration's position on these issues into the plan. Staff reported that these discussions resulted in developing administration policies, which were reflected in several areas of the joint strategic plan, including the action item titled *Facilitating Cooperation to Reduce Intellectual Property Infringement*

Occurring Over the Internet. The IPEC has also provided guidance in public statements on a variety of IP enforcement issues.

Office of the IPEC staff noted that because the office is located within OMB, it has had the opportunity to review and shape policy guidance and other policy statements provided by the departments and agencies involved in IP enforcement. For example, the office routinely participates in discussions on IP related issues when such issues are under consideration within the OMB. Staff reported that the office provides policy input on the drafts of IP related materials under review, such as Federal Register notices, proposed rules, and memoranda. Further, the office has requested that federal agencies keep the office informed about all significant IP enforcement issues.

Interagency Advisory Committee Established and Chaired by the IPEC

"The IPEC shall…chair the interagency intellectual property enforcement advisory committee…"

"There is established an interagency intellectual property enforcement advisory committee composed of the IPEC, who shall chair the committee, and…Senate-confirmed representatives…of departments and agencies who are involved in intellectual property enforcement…"

"The advisory committee…shall develop the Joint Strategic Plan against counterfeiting and infringement..."

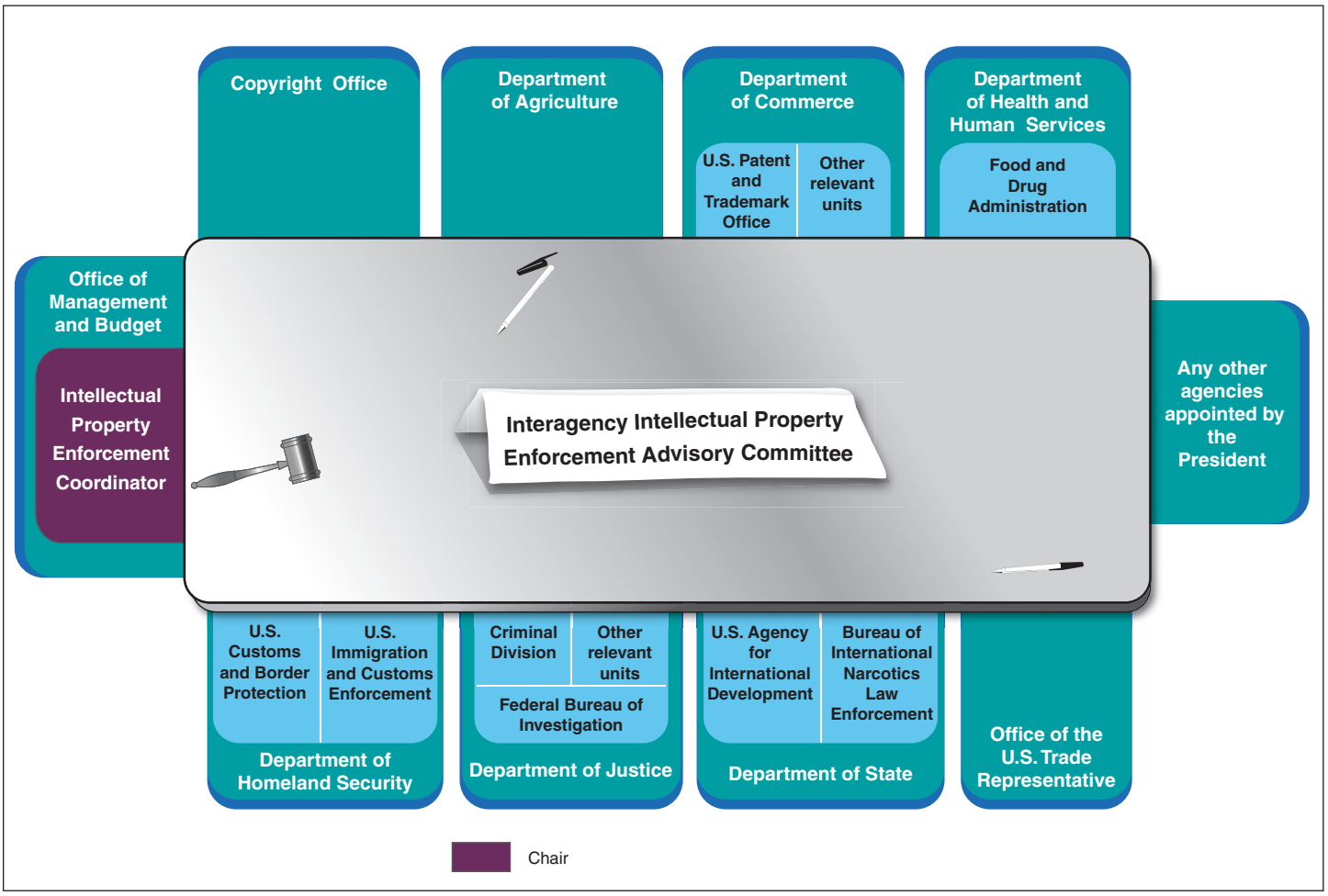
Source: Section 301(b)(1)(A) & Section 301(b)(3)(A) and (B), P.L. 110-403.

Office of the IPEC staff reported that the IPEC has convened and chaired two meetings of the Interagency Intellectual Property Enforcement Advisory Committee. Staff reported that the committee is currently composed of the IPEC and Senate-confirmed representatives of the departments and offices listed in the PRO-IP Act (see fig. 3).[18] They noted that two committee meetings, on February 2, 2010 and May 14, 2010, took place to discuss the formulation of the joint strategic plan. Staff also reported that the IPEC convened dozens of other meetings with agency officials from the member agencies to identify issues to be addressed in the strategy, to discuss recommendations for addressing each issue, and to develop plans for formulating and implementing each component of the joint strategic plan. Staff stated that committee members also participated

[18]The PRO-IP Act listed the following as the Senate-confirmed representatives of the departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies: (1) The Office of Management and Budget; (2) Relevant units within the Department of Justice, including the Federal Bureau of Investigation and the Criminal Division; (3) The United States Patent and Trademark Office and other relevant units of the Department of Commerce; (4) The Office of the United States Trade Representative; (5) The Department of State, the United States Agency for International Development, and the Bureau of International Narcotics Law Enforcement; (6) The Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement; (7) The Food and Drug Administration of the Department of Health and Human Services; (8) The Department of Agriculture; and (9) Any such other agencies as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and infringement. The act also listed the Register of Copyrights, or a senior representative of the United States Copyright Office appointed by the Register of Copyrights as a member of the advisory committee.

in weekly teleconferences, and individual committee members and their designees communicate regularly in person and by phone and e-mail.

Figure 3: Interagency Intellectual Property Enforcement Advisory Committee Members as Provided by the PRO-IP Act



Source: GAO analysis Pro-IP Act; Art Resources (clip art).

The IPEC Coordinated and Assisted with Developing and Implementing the Joint Strategic Plan

"The IPEC shall…coordinate the development of the Joint Strategic Plan against counterfeiting and infringement by the advisory committee…"

"During the development of the joint strategic plan, the IPEC shall…provide assistance to, and coordinate the meetings and efforts of, the appropriate officers and employees of departments and agencies represented on the advisory committee… who are involved in intellectual property enforcement..."

Source: Section 301(b)(1)(B) & Section 303(c)(1), P.L. 110-403.

Staff from the Office of the IPEC reported that the IPEC coordinated the development of the 2010 Joint Strategic Plan on Intellectual Property Enforcement and has begun assisting departments and agencies involved in implementing the plan. Staff reported that after the IPEC was confirmed, she brought the departments and agencies involved in IP enforcement together to draft the joint strategic plan. They said that, the IPEC, as the chair of the Interagency Intellectual Property Enforcement Advisory Committee, and the Office of the IPEC have actively coordinated the efforts of these departments, agencies, and White House offices to identify and prioritize IP enforcement issues, and then to develop action plans to address the issues. Staff reported that in addition to convening formal Interagency Intellectual Property Enforcement Advisory Committee meetings, the IPEC convened several dozen meetings and many other communications with participating agency officials.

"During the development of the joint strategic plan, the IPEC…may consult with private sector experts in intellectual property enforcement in furtherance of providing assistance to the members of the advisory committee…"

Source: Section 303(c)(2), P.L. 110-403.

Office of the IPEC staff reported that during the development of the joint strategic plan, they met with experts from various industry sectors to hear their views regarding the mechanisms of infringement and how illegal products are made, transported, and sold, as well as to collect information regarding the mechanisms for preventing infringement and its detection. Staff reported that they met with hundreds of companies, trade associations, and other organizations representing a diverse range of stakeholders[19] who shared their experience and expertise on IP enforcement issues. While the majority of these meetings took place in Washington, D.C., the IPEC also traveled around the country to hear from industries affected by IP infringement such as counterfeiting and piracy. The office also issued a Federal Register notice seeking comments from the public, including the private sector, on IP infringement and asking for its help in shaping the administration's strategy. Staff reported receiving more than 1,600 responses and reviewing each response.

[19]Office of the IPEC staff stated that the IPEC and staff met with many stakeholders including: pharmaceutical and medical device companies; software, hardware, and videogame makers; information technology companies; high technology companies, including those specializing in green technologies; biotech companies; photographers; book publishers; musicians; composers; publishers; songwriters; performers; recording studios; movie and television companies; unions; industrial manufactures; manufactures of automobile and aviation parts; cement companies; makers of consumer products; product safety certifiers; sports companies; the apparel industry; and makers of luxury goods.

"The IPEC shall…assist, at the request of the departments and agencies…in the implementation of the Joint Strategic Plan..."

Source: Section 301(b)(1)(C), P.L. 110-403.

Staff from the Office of the IPEC also reported that the administration has already begun the process of assisting departments and agencies with implementation of the joint strategic plan. Staff reported that before the plan was issued the office met with the agencies responsible for the subject matter covered by each of the action items to formulate a detailed plan for implementing each action item.

IPEC Reporting on IP Enforcement Programs

"The IPEC shall…report to the President and report to Congress, to the extent consistent with law, regarding domestic and international intellectual property enforcement programs…"

"The IPEC shall…report to Congress… on the implementation of the Joint Strategic Plan, and make recommendations, if any and as appropriate, to Congress for improvements in Federal intellectual property laws and enforcement efforts…"

"Not later than December 31 of each calendar year beginning in 2009, the IPEC shall submit a report on the activities of the advisory committee during the preceding fiscal year. The annual report shall be submitted to Congress, and disseminated to the people of the United States…"

Source: Section 301(b)(1)(E) and (F) & Section 304(a), P.L. 110-403.

The IPEC has reported to the President and Congress on the status of domestic and international IP enforcement programs through the 2010 joint strategic plan. Two sections in the plan provide descriptions of the domestic and international IP enforcement programs undertaken by the agencies with significant IP enforcement responsibilities.[20] Many of the action items listed in the plan also include a description of existing programs and recommend ways in which the U.S. government can improve its efforts under those programs. For example, one action item titled *Comprehensive Review of Existing Intellectual Property Laws to Determine Needed Legislative Changes* describes in detail the administration's plan to conduct an initial review of existing laws to identify any gaps in enforcement authorities.

Staff from the Office of the IPEC reported that the IPEC plans to submit the first annual report to Congress on the activities of the Interagency Intellectual Property Enforcement Advisory Committee, including the advisory committee's progress towards implementing the joint strategic plan, in December 2010. Staff noted that a December 2009 annual report was not submitted as required by the PRO-IP Act because the IPEC was not confirmed until December 4, 2009.

[20]These sections were titled "Agencies' Intellectual Property Enforcement Missions" and "Agencies' 2010 Major Intellectual Property Enforcement Activities to Date."

Agencies Carried Out Duties Related to the Development of the Joint Strategic Plan

"In the development and implementation of the joint strategic plan, the heads of the departments and agencies… shall…

"… designate personnel with expertise and experience in intellectual property enforcement matters to work with the IPEC and other members of the advisory committee…

"… share relevant department or agency information with the IPEC and other members of the advisory committee, including statistical information on the enforcement activities of the department or agency against counterfeiting or infringement, and plans for addressing the joint strategic plan, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with Department of Justice and other law enforcement protocols for handling such information."

Source: Section 303(d)(1) and (2), P.L. 110-403.

Staff from the Office of the IPEC reported that departments and agencies involved in IP enforcement worked collaboratively with the IPEC and carried out duties related to the development of the joint strategic plan, including designating personnel and sharing information.[21] The IPEC also worked with other offices within the White House, including the Office of Science and Technology Policy and the Domestic Policy Council, among others. Staff noted that at each stage of the development of the joint strategic plan, the designated personnel drew on their expertise to provide input on the ideas, recommendations, and drafts that the Office of the IPEC circulated among the departments and agencies. They also noted that the departments and agencies were forthcoming with agency information, including statistical information on their enforcement activities, to the extent that they were permitted to do so by law.

[21]Agencies working with the Office of the IPEC included: (1) OMB; (2) DOJ, including the FBI; (3) Department of Commerce, including International Trade Association and U.S. Patent and Trademark Office; (4) U.S. Trade Representative; (5) Department of State; (6) Department of Homeland Security, including Customs and Border Protection and Immigration and Customs Enforcement; (7) Department of Health and Human Services, including the Food and Drug Administration; (8) U.S. Department of Agriculture; and (9) the U.S. Copyright Office.

2010 Joint Strategic Plan on Intellectual Property Enforcement Delivered

"Not later than 12 months after the date of the enactment of this Act, and not later than December 31 of every third year thereafter, the IPEC shall submit the joint strategic plan to the Committee on the Judiciary and the Committee on Appropriations of the Senate, and to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives."

"The joint strategic plan shall be posted for public access on the website of the White House, and shall be disseminated to the public through such other means as the IPEC may identify."

Source: Section 303(b) and (g), P.L. 110-403.

The Office of the IPEC delivered the 2010 Joint Strategic Plan on Intellectual Property Enforcement to the Congress on June 22, 2010. The PRO-IP Act was enacted on October 13, 2008, and called for the first joint strategic plan to be delivered to Congress within 1 year. However, as previously mentioned, the IPEC was not confirmed until December 4, 2009, after the date the first joint strategic plan was due to Congress. The Office of the IPEC reported making the 2010 joint strategic plan available to the public by placing it on the White House Web site.[22]

2010 Joint Strategic Plan Generally Addressed PRO-IP Act Content Requirements, but Two Enhancements Could Improve Future Plans

In general, the 2010 Joint Strategic Plan on Intellectual Property Enforcement addressed each content requirement listed in the PRO-IP Act, but two enhancements could help to improve future plans: identifying implementing departments and agencies for all action items related to the priorities identified for carrying out the plan's objectives and establishing resource estimates necessary to fulfill those objectives. The purpose of the plan is to develop an interagency strategy to combat infringement of IP rights. Joint strategic plans are required every 3 years, and the first plan was released less than 7 months after the confirmation of the IPEC. This first plan included analysis by outside entities of the economic, health, and safety threats posed by violations of IP rights. The plan also provided a description of priorities (called "categories of focus") for carrying out the plan's objectives and a description of the means or "action items" to be employed to achieve these priorities. Additionally, the plan established five performance indicators for IP protection and enforcement and acknowledged that this initial list is subject to modification based on the U.S. government's experience collecting and analyzing indicators. While the act calls for the plan to identify implementing departments and agencies for all priorities, it did not identify implementing entities for all

[22]The 2010 Joint Strategic Plan on Intellectual Property Enforcement can be found at http://www.whitehouse.gov/omb/intellectualproperty/.

action items aligned to the priorities. For example, responsibilities for about a third of the action items were assigned to the U.S. government generally instead of to specific departments and agencies. In addition, the plan included a strategy for data collection and analysis needed to establish future resource estimates; however, it did not provide actual resource estimates needed to fulfill the priorities of the plan.

Threat Analysis of IP Rights Violations

"Each joint strategic plan shall include…

"…An analysis of the threat posed by violations of intellectual property rights, including the costs to the economy of the United States resulting from violations of intellectual property laws, and the threats to public health and safety created by counterfeiting and infringement…

"…Such other information as is necessary to convey the costs imposed on the United States economy by, and the threats to public health and safety created by, counterfeiting and infringement, and those steps that the Federal Government intends to take over the period covered by the succeeding joint strategic plan to reduce those costs and counter those threats."

Source: Section 303 (e)(5) and (8), P.L. 110-403.

The 2010 joint strategic plan included analysis by outside entities of the threat posed by violations of IP rights as called for under the PRO-IP Act. The IPEC issued a Federal Register notice in February 2010 to obtain public comments on the costs to the U.S. economy resulting from IP violations, and the threats to public health and safety created by infringement.[23] The IPEC received comments regarding costs to the U.S. economy resulting from infringement of IP rights, both direct and indirect, including impact on the creation or maintenance of jobs, and concerns that counterfeits are being found in products related to the nation's critical infrastructure, in defense technologies, and in life-saving medical equipment. The plan's appendix also included a summary of studies relevant to costs to the economy of the United States resulting from violations of IP laws, and the threats to public health and safety created by counterfeiting and infringement.[24]

[23]75 Fed. Reg. 8137 (Feb. 23, 2010).

[24]The plan states that the appendix is intended as a summary of submissions and studies and is not intended to be a U.S. government endorsement of any specific study, methodology, or data.

Requirements Related to Enhancing Efforts of Foreign Governments

"The joint strategic plan shall include programs to provide training and technical assistance to foreign governments for the purpose of enhancing the efforts of such governments to enforce laws against counterfeiting and infringement. With respect to such programs, the joint strategic plan shall…

"…seek to enhance the efficiency and consistency with which Federal resources are expended, and seek to minimize duplication, overlap, or inconsistency of efforts;

"…identify and give priority to those countries where programs of training and technical assistance can be carried out most effectively and with the greatest benefit to reducing counterfeit and infringing products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries;

"…in identifying [such priorities], be guided by the list of countries identified by the United States Trade Representative[in the Special 301 Process]; and

"…develop metrics to measure the effectiveness of the Federal Government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and infringement."

Source: Section 303(f)(1)-(4), P.L. 110-403.

The 2010 joint strategic plan addressed all of the PRO-IP Act requirements related to enhancing efforts of foreign governments. The plan discussed improving the effectiveness of U.S. personnel stationed overseas to combat IP infringement and coordination of international capacity building and training. The plan also explicitly stated that the federal government will "focus capacity building and training efforts in those countries in which intellectual property enforcement is a high priority and where those efforts can be most effective." Furthermore, the plan described how the list of countries identified by the USTR under the Special 301 process[25]—that is, those countries that deny adequate IP rights protection—will be utilized by an interagency process to work with foreign governments to improve their practices related to IP and market access. Finally, the plan called for metrics to measure the effectiveness of the federal government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and infringement. The plan stated that one of its goals is to "increase the number of criminal enforcement actions against IP infringers in foreign countries in general." The performance measures section of the plan also stated that "the IPEC, in coordination with [Department of State, Department of Commerce, U.S. Trade Representative] and other relevant agencies will report on changes in other countries in intellectual property protection."

[25]"Special 301" refers to certain provisions of the Trade Act of 1974, as amended by the 1988 Omnibus Trade and Competitiveness Act (P.L. 100-418), that require USTR to annually identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons who rely on intellectual property protection. USTR identifies these countries with substantial input from interested persons and in consultation with U.S. agencies, and publishes the results of its reviews in an annual report.

Description of Priorities and Means

"Each joint strategic plan shall include…

"…A description of the priorities identified for carrying out the objectives in the joint strategic plan, including activities of the Federal Government relating to intellectual property enforcement.

"…A description of the means to be employed to achieve the priorities, including the means for improving the efficiency and effectiveness of the Federal Government's enforcement efforts against counterfeiting and infringement."

Source: Section 303 (e)(1) and (2), P.L. 110-403.

In addition, the 2010 joint strategic plan described the priorities identified for carrying out the objectives[26] of the plan, as well as the means to be employed to achieve these priorities. Staff from the Office of the IPEC confirmed that the plan's "six categories of focus" represent the "priorities" called for in the act. Therefore, the plan's priorities for the federal government related to IP enforcement are: (1) leading by example, (2) increasing transparency, (3) ensuring efficiency and coordination, (4) enforcing IP rights internationally, (5) securing the United States' supply chain, and (6) building a data-driven government. The plan explicitly lays out 33 action items that the federal government plans to take under each of these six priorities. Staff from the Office of the IPEC also confirmed that the plan's "action items" provide information on the "means" to be employed to achieve the plan's priorities. For example, a description of a priority called "Securing Our Supply Chain" stated that "… the U.S. Government will work to secure supply chains to stem the flow of infringing products through law enforcement efforts and through enhanced cooperation with the private sector." There were eight action items under this priority, including *Mandated Use of Electronic Track and Trace for Pharmaceuticals and Medical Products* and *Increased Enforcement Efforts to Guard Against the Proliferation of Counterfeit Pharmaceuticals and Medical Devices*. (See app. III for a list of the plan's priorities and action items.)

[26]As stated in the PRO-IP Act, the plan's objectives included: (1) reducing counterfeit and infringing goods in the domestic and international supply chain; (2) identifying and addressing unjustified impediments to effective enforcement action activities involving sale of counterfeit or infringing goods; (3) ensuring that information is identified and shared among relevant departments and agencies; (4) disrupting and eliminating domestic and international counterfeiting and infringement networks; (5) strengthening the capacity of other countries to protect and enforce IP rights; (6) working with other countries to establish international standards and policies for the effective protection and enforcement of IP rights; and (7) protecting IP rights overseas.

Strategies for Ensuring Coordination Included

"Each joint strategic plan shall include… A strategy for ensuring coordination among the departments and agencies…which will facilitate oversight by the executive branch of, and accountability among, the departments and agencies responsible for carrying out the strategy."
Source: Section 303(e)(7), P.L. 110-403

The 2010 joint strategic plan included strategies for ensuring coordination among the departments and agencies responsible for carrying out the strategy. First, the plan identified the agencies that the IPEC worked with during the development of the plan: (1) OMB; (2) DOJ, including the FBI; (3) Department of Commerce, including International Trade Administration and U.S. Patent and Trademark Office; (4) USTR; (5) Department of State; (6) Department of Homeland Security, including Customs and Border Protection and Immigration and Customs Enforcement; (7) Department of Health and Human Services, including the Food and Drug Administration; (8) U.S. Department of Agriculture; and (9) the U.S. Copyright Office.[27]

The plan also included coordination strategies to be used during the implementation of the plan. For example, "Ensuring Efficiency and Coordination" was one of the plan's priorities and included the following action items: (1) *Coordination of National Law Enforcement Efforts to Avoid Duplication and Waste*; (2) *Coordination of Federal, State, and Local Law Enforcement*; (3) *Coordination of Training for State and Local Law Enforcement and Prosecutors*; (4) *Improve the Effectiveness of Personnel Stationed Overseas to Combat Intellectual Property Infringement*; (5) *Coordination of International Capacity Building and Training*; and (6) *Establishment of a Counterfeit Pharmaceutical Interagency Committee*. Furthermore, coordination strategies for implementing agencies were also included in the plan's other priorities. For instance, an action item under the plan's "Increasing Transparency" priority stated that "…USTR, in coordination with the IPEC, will initiate an interagency process to assess opportunities to further publicize and potentially expand on the [Notorious Markets][28] list in an effort to increase public awareness and guide related trade enforcement actions."

[27]The plan added that "the IPEC worked with other offices, including the Office of the Vice President, the Office of Science and Technology Policy, the Domestic Policy Council and the White House Counsel's Office."

[28]The 2009 Special 301 report features a "Notorious Markets List" that lists examples of marketplaces, including those on the Internet that have been the subject of enforcement action, or may merit further investigation for possible IP infringements, or both. The list represents a selective summary of information reviewed during the Special 301 process; it is not a finding of violations of law.

Initial List of Performance Measures Established

"Each joint strategic plan shall include…The performance measures to be used to monitor results under the joint strategic plan during the following year."
Source: Section 303(e)(4), P.L. 110-403.

The 2010 joint strategic plan established five performance indicators for IP protection and enforcement: (1) law enforcement actions, (2) seizures, (3) training and outreach, (4) increased IP protection in other countries, and (5) public perceptions of IP rights. The plan stated that measuring and reporting the effectiveness of the plan conveys to the public the impact of the federal government's work and helps the government to continue to expand effective enforcement activities and fix or curtail ineffective ones. The plan stated that the list of key performance indicators is "an initial list of key performance indicators for IP enforcement, primarily measuring government activities." The plan also stated that "as the U.S. Government as a whole gains experience collecting and analyzing these indicators, further modifications or additional measures may follow." The plan noted "that the goal—reduced infringement of IP rights—is difficult to accurately measure, in large part, because infringers, like other types of thieves, try to hide their actions." GAO's guidance[29] on performance measures within a national strategy recommends discussing the importance of implementing parties' establishing priorities, milestones, and performance measures to help ensure accountability. Moreover, GAO's guidance on key attributes of successful performance measures[30] recommends aligning performance measures with agency-wide goals or, in this case, the priorities of plan.

Implementing Entities Not Identified for all Action Items Aligned to Priorities

"Each joint strategic plan shall include… An identification of the departments and agencies that will be involved in implementing each priority..."
Source: Section 303(e)(6), P.L. 110-403.

Although most action items listed under the plan's priorities identified specific departments and agencies to be involved in their implementation, it was not done in all cases. Because each of the plan's priorities was comprised of multiple action items, the identification of implementing departments or agencies was made at the action item level.

In most cases, the actions items identified specific departments and agencies responsible for implementation of those items. For instance, an action item entitled *Establishment of a U.S. Government-Wide Working Group to Prevent U.S. Government Purchase of Counterfeit Products* stated,

[29]GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, GAO-04-408T (Washington, D.C.: Feb. 3, 2004).

[30]GAO, *Drug Control: DOD Needs to Improve Its Performance System to Better Manage and Oversee Its Counternarcotics Activities*, GAO-10-835 (Washington, D.C.: July 21, 2010).

The IPEC will convene this working group, whose members will include the National Security Council (NSC), Department of Defense (DOD)/Acquisition, Technology and Logistics (AT&L), National Aeronautics and Space Administration (NASA), General Services Administration (GSA), [Department of Commerce], Small Business Administration (SBA), [Department of Homeland Security], and other participants as may be identified by the IPEC.

The plan added, "The working group shall be led by the IPEC, the Administrators of GSA and Federal Procurement Policy, and the Undersecretary of Defense for AT&L at DOD."

However, 12 out of 33 action items assigned implementation to the U.S. government generally instead of to specific departments and agencies. For example, the action item *Improved Transparency in Intellectual Property Policy-Making and International Negotiations* stated that "the U.S. Government will enhance public engagement through online outreach, stakeholder outreach, congressional consultations and soliciting feedback through advisory committees, official comment mechanisms such as Federal Register notices, notices of proposed rulemaking and notices of inquiry."[31]

Staff from the Office of the IPEC stated that not all action items in the joint strategic plan identified departments and agencies because it was not appropriate to assign specific entities, but rather it was appropriate to assign the U.S. government. However, the action item *Improve the Effectiveness of Personnel Stationed Overseas to Combat Intellectual Property Infringement* is an example of an action item that was assigned to the U.S. government generally, but could have been assigned to specific departments and agencies. Two GAO reports[32] described the federal agencies that have personnel posted overseas who conduct activities related to IP enforcement and protection and their respective roles and responsibilities. This suggests that any or all of these specific departments and agencies could have been identified as entities to be involved in implementing this action item. GAO's guidance[33] on organizational roles,

[31]This action item was under the priority "Increasing Transparency."

[32]GAO, *Overseas U.S. Government Personnel Involved in Efforts to Protect and Enforce Intellectual Property Rights*, GAO-09-402R (Washington, D.C.: Feb. 26, 2009) and *Intellectual Property: Enhanced Planning by U.S. Personnel Overseas Could Strengthen Efforts*, GAO-09-863 (Washington, D.C.: Sept. 30, 2009).

[33]GAO-04-408T.

responsibilities, and coordination within a national strategy recommends identifying the specific federal departments, agencies, or offices involved and, where appropriate, the different sectors, such as state, local, private, or international sectors. By not assigning implementation of all action items to specific departments and agencies, the departments and agencies involved in IP enforcement cannot be held accountable for carrying out the plan's strategy.

Resource Estimates to Implement Plan Not Included

"Each joint strategic plan shall include… Estimates of the resources necessary to fulfill the priorities..."
Source: Section 303(e)(3), P.L. 110-403.

While the 2010 joint strategic plan included a strategy for data collection and analysis needed to establish resource estimates, the plan did not include actual estimates of the resources needed to fulfill the plan's priorities because data collection and analysis are still in progress. The plan stated, "In order to better track resource baselines and inform future resource allocations dedicated to IP enforcement, the IPEC will collect annually the amount of U.S. Government resources spent on IP enforcement personnel, technologies, programs and other efforts." The plan also stated that the IPEC has already begun collecting data for fiscal year 2010 through a budget data request, whereby agencies report the amount of resources they dedicated to human capital and programs, identified metrics used in measuring IP enforcement successes, and provided planned and estimated expenditures for future years. The plan asserted that the IPEC will continue coordinating the budget data request annually, and will request the same data and metrics to allow for cross and multi-year comparisons.

GAO's guidance[34] on how to develop a national strategy recommends that plans address what the strategy will cost, the sources and types of resources and investments needed, and where those resources and investments should be targeted. Furthermore, GAO's guidance suggests the inclusion of a discussion of the types of resources required, such as budgetary, human capital information, information technology, research and development, procurement of equipment, or contract services. Staff from the Office of the IPEC stated that because data collection and analysis on current federal resources spent on IP enforcement by these agencies are still in progress, the plan cannot yet estimate the resources needed. However, the plan and Office of the IPEC staff did not specify whether resource estimates would be established in time for the next joint strategic plan, nor did they specify whether these resource estimates

[34]GAO-04-408T.

would be aligned to the priorities of the plan. By including resource estimates needed to fulfill the priorities in future plans, the IPEC and departments and agencies involved in IP enforcement will be able to communicate to Congress about resources available to support the joint strategic plan and to work towards effective resource allocation.

Conclusions

The PRO-IP Act of 2008 recognized the importance of protecting and enforcing IP rights by providing for additional IP enforcement resources, requiring key agencies to report on their IP enforcement efforts and establishing the Office of the IPEC within the Office of the President to coordinate federal IP enforcement efforts. Although IP protection and enforcement is challenging and complex, DOJ, the FBI, and the Office of the IPEC have made progress in implementing provisions of the act, including increasing staff and enhancing training, reporting, and planning. The Office of the IPECs' development of the first joint strategic plan represents an important step to providing an integrated strategy to protecting and enforcing IP rights.

While the current joint strategic plan generally addresses all content requirements listed in the PRO-IP Act, two enhancements could help to improve future plans. Most significantly, the existing plan does not always assign implementation responsibility to specific departments or agencies for the action items that align with the plan's priorities. Accountability is a significant element in any plan and is a requirement of the PRO-IP Act. Agency accountability is impaired when specific assignments for priority action items are not assigned to the IPEC and departments and agencies involved. In addition, the plan addresses the need to develop resource estimates to fulfill the plan's priorities by describing initial steps being taken to collect information on resources from the various agencies. However, future plans would benefit from the inclusion of actual resource estimates that are aligned to priorities, which would help the IPEC and departments and agencies involved in IP enforcement communicate to Congress about resources available to support the joint strategic plan and work towards effective resource allocation. The IPEC and the Interagency Intellectual Property Enforcement Advisory Committee will have an opportunity to address these issues when it issues future joint strategic plans, which are required by the PRO-IP Act.

Recommendations for Executive Action

To meet the PRO-IP Act's content requirements related to the Joint Strategic Plan on Intellectual Property Enforcement and increase effectiveness and accountability, we recommend that the Intellectual Property Enforcement Coordinator, in consultation with the Interagency Intellectual Property Enforcement Advisory Committee, take the following actions when developing the 2013 plan and subsequent plans:

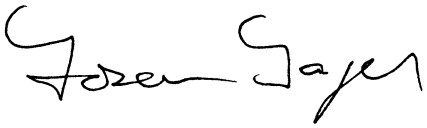
- assign implementation of all of the plan's priorities and related action items to specific departments and agencies; and
- provide estimates of the resources needed to carry out the priorities of the plan.

Agency Comments and Our Evaluation

We provided a draft of this report to the Acting Director of the Office of Management and Budget and the Assistant Attorney General for Administration, Department of Justice. Staff from the Office of Management and Budget, including from the Office of the Intellectual Property Enforcement Coordinator, provided oral comments in which they generally concurred with our findings and recommendations. They further stated that the joint strategic plan represents the administration's Interagency Intellectual Property Enforcement Advisory Committee's commitment to implement the action items and improve intellectual property enforcement efforts, as well as meet the requirements of the PRO-IP Act. They stated that in accordance with the act, the Office of the IPEC staff will report annually to the Congress on the progress made on implementing the strategic plan. OMB and DOJ provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to interested congressional committees, the U.S. Attorney General, OMB, and the IPEC. In addition, this report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staffs have any questions about this report, please contact me at (202) 512-4347 or yagerl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Individuals who made key contributions to this report are listed in appendix III.



Loren Yager
Director, International Affairs and Trade

Appendix I: Scope and Methodology

To determine the status of the implementation of the requirements of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) that are assigned to the Office of the Intellectual Property Enforcement Coordinator (IPEC), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI), we examined the PRO-IP Act to identify those requirements assigned to these offices and met staff and officials from these offices to discuss their implementation efforts. We requested that the IPEC, DOJ, and the FBI provide us with a written description of the status of their efforts and describe any challenges they faced related to implementing each requirement. Because of time limitations, we did not independently verify all agency statements, but attributed their statements accordingly. We compared each office's efforts to the requirements called for in the act to determine the status of their implementation and then met with staff from the Office of the IPEC, and officials from DOJ and the FBI to clarify our observations. We determined the data used in this report were sufficiently reliable for our purposes.

To compare the 2010 Joint Strategic Plan on Intellectual Property Enforcement to the content requirements detailed in the PRO-IP Act, we evaluated content from the plan against each content requirement listed in applicable provisions of the act to determine which content requirements were addressed. To determine whether the plan addressed the act's requirement to identify the departments and agencies that will be involved in implementing each priority, we reviewed each of the six priorities (also called "categories of focus") and the action items aligned to them. Because each priority was comprised of the multiple action items, the identification of the implementing agencies and departments were made at the action item level. For purposes of our analysis, we categorized the identification of implementing agencies for each of the plan's 33 action items as one of the following:

- *Specific.* Included in their description the identification of the specific departments and agencies responsible for implementing the action item.
- *Broad.* Did not include identification of the specific departments or agencies responsible for implementing the action item, but rather generally assigned implementation, for example, to the "Federal Government," "Federal Agencies," or "Federal law enforcement agencies."
- *Both.* Included both specific identification of the departments or agencies responsible for implementing the action item and generally assigned

implementation to the "Federal Government," "Federal Agencies," or "Federal law enforcement agencies."

- *Neither.* Did not include either specific identification of the departments or agencies responsible for implementing the action item and did not generally assign implementation to the "Federal Government," "Federal Agencies," or "Federal law enforcement agencies."

Appendix II: 2010 Joint Strategic Plan on Intellectual Property Enforcement Priorities and Related Action Items

Leading by Example
• Establishment of a U.S. government-wide working group to prevent U.S. Government purchase of counterfeit products
• Use of legal software by federal contractors
Increasing Transparency
• Improved transparency in intellectual property policy-making and international negotiations
• Increased information sharing with rightholders
• Communication with victims/rightholders
• Reporting on best practices of our trading partners
• Identify foreign pirate web sites as part of the Special 301 process
• Tracking and reporting of enforcement activities
• Sharing of exclusion order enforcement data
• Enhanced communications to strengthen Section 337 enforcement
Ensuring Efficiency and Coordination
• Coordination of national law enforcement efforts to avoid duplication and waste
• Coordination of federal, state, and local law enforcement
• Coordination of training for state and local law enforcement and prosecutors
• Improve the effectiveness of personnel stationed overseas to combat intellectual property infringement
• Coordination of international capacity building and training
• Establishment of a counterfeit pharmaceutical interagency committee
Enforcing Our Rights Internationally
• Combat foreign-based and foreign-controlled web sites that infringe american intellectual property rights
• Enhance foreign law enforcement cooperation
• Promote enforcement of U.S. intellectual property rights through trade policy tools
• Special 301 “action plans”
• Strengthen intellectual property enforcement through international organizations
Securing Our Supply Chain
• FDA notification requirement for counterfeit pharmaceuticals and other medical products
• Mandated use of electronic track and trace for pharmaceuticals and medical products
• Increased enforcement efforts to guard against the proliferation of counterfeit pharmaceuticals and medical devices
• Penalty relief for voluntary disclosure
• Penalize exporters of infringing goods
• Streamline bonding requirements for circumvention devices
• Facilitating cooperation to reduce intellectual property infringement occurring over the internet
• Establish and implement voluntary protocols to help reduce illegal internet pharmacies
Building a Data-Driven Government
• U.S. Government resources spent on intellectual property enforcement
• Assessing the economic impact of intellectual property-intensive industries
• Comprehensive review of existing intellectual property laws to determine needed legislative changes
• Supporting U.S. businesses in overseas markets

Source: 2010 Joint Strategic Plan on Intellectual Property Enforcement.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Loren Yager, (202) 512-4347 or yagerl@gao.gov

Staff Acknowledgments

In addition to the contact named above, Christine Broderick, Assistant Director; Martin DeAlteriis; Karen Deans; Timothy Fairbanks; Etana Finkler; Justine Lazaro; and Ernie Jackson made key contributions to this report.

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