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Madam Chairwoman, Ranking Member Butterfield, thank you for holding this hearing today and inviting the Business Software Alliance[1] to testify. BSA is an association of the world's leading software and hardware companies. BSA members create the majority of the workplace productivity software in use in the US and around the world.

Software drives productivity and innovation in almost every economic sector, helping businesses of all sizes perform better in good times and bad. It makes our lives easier and more connected. It can educate, entertain and inspire. Our industry is dynamic, innovative, and a powerful engine for job creation and economic growth. It is also critically dependent on intellectual property protection. It is no accident that the software industry was born in this country. America's enthusiasm for technology, combined with its

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[1] *The Business Software Alliance (www.bsa.org) is the world's foremost advocate for the software industry, working in 80 countries to expand software markets and create conditions for innovation and growth. Governments and industry partners look to BSA for thoughtful approaches to key policy and legal issues, recognizing that software plays a critical role in driving economic and social progress in all nations. BSA's member companies invest billions of dollars a year in local economies, good jobs, and next-generation solutions that will help people around the world be more productive, connected, and secure. BSA members include Adobe, Apple, Autodesk, AVEVA, AVG, Bentley Systems, CA Technologies, Cadence, CNC/Mastercam, Corel, Dassault Systèmes SolidWorks Corporation, Dell, Intel, Intuit, Kaspersky Lab, McAfee, Microsoft, Minitab, PTC, Progress Software, Quark, Quest Software, Rosetta Stone, Siemens, Sybase, Symantec, and The MathWorks.*

effective and constitutionally rooted system of IP protection, served as the foundation for US leadership in this field.

Let me provide a little background about the industry: America's copyright industries lead the world, and the US software industry is by far the largest of these copyright industries. The software and related services sector employs almost 2 million people in the US in jobs that pay 195% of the national average.

The US has come through a harrowing economic crisis and is still struggling to return to pre-recession levels of employment. We believe our country's ability to create jobs depends in large part on our ability to export. We support the President's ambitious goal of doubling US exports of goods and services over five years. Computer software is a critical sector in expanding exports. US software exports contribute a $36 billion surplus to our nation's balance of trade. As much as 60 percent of revenues for the leading US software companies are generated from sales outside US borders.

The software industry sits at the center of a vibrant IT economy – a virtuous circle that is producing jobs and economic growth, spawning new enterprises, and bringing innovative technologies to consumers. One major problem stands in the way of increasing our exports and expanding this ecosystem: software theft. In 2009 alone, more than $51 billion worth of software was used illegally on PCs around the world.

In the US alone, one in five PC applications installed last year were unauthorized and unpaid-for – and we have the lowest software piracy rate in the world. Many of the world's fastest growing economies are plagued with massive illegal use of software. China, for example, has a PC software piracy rate of 79%. Russia has a software piracy rate

of 67%; India's rate is at 65% and Brazil's piracy rate is at 56%. Even Western European markets like France, with a 40% software piracy rate, are not immune to this problem.

The inescapable laws of arithmetic are working against us. Even as rates of software piracy have inched down in some of the fastest-growing markets, the magnitude of the piracy problem is rocketing up as more and more PCs are deployed. In China, where nearly as many PCs were sold to businesses in 2009 as in the US, the piracy rate went down by a single percentage point to 79%. At the same time, the commercial value of pirated software increased by 13 percent to a shocking $7.6 billion.

Most software theft occurs when an otherwise legitimate business makes illegitimate copies of software for its use. When repeated millions of times by businesses or consumers throughout the world, this conduct has a staggering cumulative effect.

Massive theft harms software companies, depriving them of revenue that could be invested in new products and services. The impact on the software industry in the US is particularly severe for the simple reason that the US is the leading player in the global software market. Sixty cents of every dollar spent on software worldwide inures to the benefit of US-based companies.

But the economic harm due to illegal software use overseas goes well beyond the software industry. Business software is a critical input of production for enterprises across all sectors of the economy.

- It is used by firms along with other inputs to produce a broad range of goods and services.

- It helps increase productivity by helping coordinate the inputs used in the production process *within* a firm.
- It helps boost GDP growth by increasing coordination *across* firms, industries and government.

The impact of software piracy has broad reaching consequences well outside of our industry. The end result is that when businesses from high-piracy countries disobey the law and steal the software they use to run their companies, they get significant productivity and other benefits and avoid a cost that their US competitors must bear. When their products enter the US market, they are competing unfairly with those US producers, undermining sales of US goods and displacing American jobs. This problem is repeated in every country where US businesses – in all economic sectors – compete against companies that use stolen software to reduce their costs of doing business.

BSA is working with economists to model the impact of this unfair competition on the US economy. Looking specifically at software piracy in China, preliminary results of this analysis show that the US employment impact of that piracy is substantial – particularly in the current slack US job market.

So how do we address this problem?

BSA enforces the IP rights of its member companies in the US and many countries overseas. But we are only one part of the equation. Governments need to do their part in punishing and deterring IP theft. This is particularly critical in countries like China where the problem is simply too massive for a company or a trade association to tackle on its own.

It is critical that the US government use its resources in a coordinated and effective fashion to combat software theft at home and abroad. That is why BSA ardently supported the establishment of the White House Office of Intellectual Property Enforcement Coordinator (IPEC) now under the able leadership of Victoria Espinel. This office has been in operation for a little more than a year, but has laid important groundwork by developing a comprehensive strategic plan for IP enforcement, developed with input from stakeholders, and working to ensure that agencies across the government are focused on executing this plan.

Concerted efforts by the US government are necessary to make progress on strengthening IP enforcement, specifically in three areas:

US Government Bilateral and Multilateral Engagement

One of the most critical elements in strengthening IP protection is through US government engagement with its trading partners.   The US government has a variety of tools at its disposal to pressure or persuade US trading partners to address inefficiencies and shortcomings in their IP protection practices and enforcement laws. These include the annual Special 301 review, negotiation of bilateral free trade agreements, and remedies under bilateral and multilateral agreements, including the WTO TRIPS Agreement. All of these tools should be considered. In particularly intractable situations, considerations should be given to bringing a non-violation "nullification or impairment" claim, under Article XXIII of the General Agreement on Tariffs and Trade. Such actions are appropriate where a WTO member's conduct, while not violating the letter of the agreement, nonetheless denies or impairs a benefit accruing to another party under the WTO.

At the recent session of the US- China Joint Commission on Commerce and Trade (JCCT) in December, the Chinese government made several important commitments to ensure legal software use by government agencies and state-owned enterprises (SOEs).

These included commitments to: (1) treat and manage software as it does other forms of property and establish software asset management systems for government agencies; (2) allocate current and future budgets for software purchases and upgrades; and (3) develop a software legalization pilot project for 30 major SOEs. President Obama and Chinese President Hu Jintao discussed this during and in the lead up to their summit in January. As part of this, the Chinese government made an additional commitment to undertake an audit to ensure legal software use at all levels of government and make the results public.

These are very specific and important commitments that were achieved thanks to considerable pressure on this issue from the Administration and bipartisan support in Congress. Yet they remain unfulfilled. Thus far, our members report no significant uptick in sales to the Chinese government, in contrast to what had been expected in light of the commitments.

In recent years the United States has also made good progress towards improved intellectual property regimes through free trade agreements. The BSA supports these initiatives and urges their prompt implementation. This must with coupled with affirmation of commitments and practices in countries like Korea to maintain a high volume of cases to deter future instances of software piracy.

US Government Leads by Example

The US government should set the highest possible example here at home. We are pleased to say that federal agencies are already subject to an executive order that requires them to use only legal software and to put the necessary controls in place to ensure that this happens. Building on this foundation, the Administration could take action to promote the use of only legal software by federal contractors. This is one of a number of important elements of the Joint Strategic Plan on IP Enforcement that was published last year as required under the PRO-IP Act. Other specific actions to coordinate and strengthen the government's enforcement efforts included:

- Promoting enforcement of IP overseas through trade policy tools;
- Improving communication between the US government and victims of IP theft;
- Improving coordination of federal, state and local law enforcement; and
- Preventing US government purchase of counterfeit products.

We urge the US government to execute on this plan and to provide the responsible agencies with sufficient resources to do so.

Software License Management Training and Education

BSA devotes significant resources in the US and overseas to train businesses how to manage their software licenses to protect themselves from the legal, technical and financial consequences of using unlicensed software. In late 2010, BSA introduced the first industry software asset management training course aligned to the International Standards Organization's (ISO) Software Asset Management (SAM) standard. Over the course of the year, BSA will expand the online course to multiple languages so that those

interested in getting the many business values associated with a world class SAM program may do so.

We also help with training as part of government capacity building efforts around the world. In Russia where the piracy rate stands at 67 percent, we have collaborated with the Russian government and other industry stakeholders on a series of trainings for judges, prosecutors and law enforcement officials on IP enforcement. Hundreds of Russian officials have participated in these trainings over the past two years. These trainings are funded by a European Commission technical assistance program and focus on addressing specific challenges the software and other copyright industries face in getting consistent and effective enforcement against IP infringement in Russia.

Conclusion

Ultimately we believe that the government should measure success or failure of these efforts the same way our member companies do – by looking at their impact on software sales. Above all else, the measure of success should be increased US sales and exports of software to key markets that today are largely shut off by high levels of piracy. The irony is that US software products dominate many of these markets in terms of use, but only capture a fraction of that in revenues due to piracy. This undercuts the ability of US software firms to drive sales and exports and contribute to their full potential to our nation's export goals. We urge the US government to measure progress based on sales results and not the often empty commitments of our trading partners.

Madam Chairwoman, the US Trade Representative has remarked that "[i]ntellectual property theft in overseas markets is an export killer for American businesses and a job

killer for American workers here at home." We couldn't agree more. We have suggested some approaches to the problem. We urge the members of the Committee to consider these approaches and to explore new solutions to address this challenge. What's at stake is the future of US innovators, US industry and US workers. We stand ready to assist the Committee in this endeavor.

Thank you for this opportunity to testify.