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Before the Congressional-Executive Commission on China

**“Will China Protect Intellectual Property? New Developments in Counterfeiting,
Piracy, and Forced Technology Transfer”**

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Chairman Dorgan, Co-Chairman Levin, Members of the Commission, thank you for the invitation to participate in today’s important hearing on behalf of the eleven and a half million working men and women of the AFL-CIO.

Intellectual property rights enforcement is often assumed to be of interest only to business, but in fact, it is vitally important to American workers, as it impacts jobs, wages, innovation and growth, consumer safety, tax revenues, and the reputation of American products.

Other issues (including worker rights, currency manipulation, and subsidies) have often dominated labor’s policy priorities with respect to China, but the lax enforcement of IPR protections remains a key contributing factor to our lopsided trade relationship. Both in the arts and entertainment sector, where copyrights are routinely ignored, and in the manufacturing sector, where counterfeit parts and products are rampant, billions of dollars in revenues and thousands of good jobs are at stake.

Moreover, taking steps now to address the Chinese government’s flagrant violation of its international obligations with respect to IPR is crucial to setting a sustainable long-term trajectory for our bilateral relationship, especially with respect to technology transfer and innovation. This will impact American jobs for generations into the future.

We often hear business and government officials tout the promise of the Chinese market, and, of course, it is both large and fast-growing. But meaningful access to that market for American producers and workers is severely undercut by IPR infringement. If American entertainment products and software cannot sell at a reasonable price in the Chinese marketplace, and if the legitimate owners of those products are not able to receive their fair share of the revenues, then the “size” of the Chinese market is, for all intents and purposes, a tiny fraction of what it ought to be.

Similarly, American products are in direct competition with Chinese-produced counterfeits, costing jobs in third-country markets, as well as in the United States.

As Paul Almeida, president of the AFL-CIO Department for Professional Employees, told a Senate committee this summer, “Intellectual property equates to jobs and income for American workers. Theft of intellectual property raises unemployment and cuts income. For too many workers in the United States today, both jobs and income are hard to come by. If the United States allows attacks on intellectual property to go unanswered, it puts good livelihoods at risk.”

The breadth and depth of the IPR problem in China are vast. According to a 2008 USTR report on China: “IPR infringement continued to affect products, brands, and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, food and beverages, electrical equipment, automotive parts and industrial products, among many others.”

In addition, IPR infringement means that American consumers face risk of substandard or even dangerous products in a wide range of areas. According to USTR, “China’s widespread counterfeiting not only harms the business interests of foreign right holders, but also includes many products that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere, such as pharmaceuticals, food and beverages, batteries, automobile parts, industrial equipment, and toys, among many other products.”

In terms of the global IPR enforcement problem, China looms large, especially in terms of counterfeited and pirated products. The GAO reports that, “According to CBP data, seized counterfeit goods are dominated by products from China. During fiscal years 2004 through 2009, China accounted for about 77 percent of the aggregate value of goods seized in the United States” [GAO, “Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods,” 2010].

Over many years, the U.S. government has made repeated attempts to cajole, pressure, or convince the Chinese government to improve its IPR enforcement record, through the use of Special 301 cases, priority watch lists, the Joint Committee on Commerce and Trade, and, finally, WTO cases.

While there have certainly been some improvements in China’s legal framework, violations of IPR remain rampant, and the Chinese government continues to introduce new and problematic policies, including most recently the indigenous innovation policy, which sought to impose technology transfer and purchasing requirements on companies seeking to do business in China, violating China’s IPR and procurement commitments.

This summer USTR filed a request for a WTO dispute panel, challenging several aspects of China’s IPR law and enforcement regime. First, the request questioned quantitative thresholds in China’s criminal law that must be met in order to start criminal prosecutions or obtain criminal convictions for copyright piracy and trademark counterfeiting. Second, the request contested Chinese rules for allowing IPR-infringing goods seized by Chinese

customs authorities to be released into commerce following the removal of fake labels or other infringing features, contrary to WTO rules. Third, USTR challenged the denial of copyright protection for works awaiting Chinese censorship approval. Chinese copyright law provides no protection for copyright holders before censorship approval is granted.

We appreciate USTR's initiative in bringing this case to the WTO and hope that our government will continue to insist that the Chinese government fully comply with international norms in this important area.

Innovation and creativity fuel the most vibrant sectors of the U.S. economy, including the arts, entertainment and media sector and manufacturing. Both of these are enormously important to American workers, and both are hard hit by the Chinese government's failure to protect IPR.

A recent AFL-CIO Executive Council statement on piracy laid out the challenge in the arts, entertainment, and media sector: "Entertainment professionals may work for multiple employers on multiple projects and face gaps in their employment. Payment for the work they have completed helps sustain them and their families through underemployment and unemployment. For American Federation of Television and Radio Artists (AFTRA) recording artists in 2008, 90 percent of income derived from sound recordings was directly linked to royalties from physical CD sales and paid digital downloads. Screen Actors Guild (SAG) members working under the feature film and TV contract that same year derived 43 percent of their total compensation from residuals. Residuals derived from sales to secondary markets funded 65 percent of the International Alliance of Theatrical Stage Employees (IATSE) [Motion Picture Industry] Health Plan and 36 percent of the SAG Health and Pension Plan. Writers Guild of America, East (WGAE)-represented writers often depend on residual checks to pay their bills between jobs; in some cases, the residual amounts can be as much as initial compensation. Online theft robs hard-earned income and benefits from the professionals who created the works."

In the manufacturing sector, the estimates of losses from counterfeiting run to billions of dollars. Again, the victims include workers, who face lost jobs and income. From auto parts to circuit breakers, counterfeiting endangers all of us with unreliable products. It then taints the original products with the inferior quality of the counterfeits. As with the arts, entertainment, and media industries, the consequences include a diminished incentive to invest and a downward spiral for U.S. workers and our economy.

The question posed by the Commission is "Will China Protect Intellectual Property?" I believe that the answer depends on our government's actions. To date, despite many efforts, we have not done enough to insist that the Chinese government fully comply with its international obligations. Until the price for non-compliance exceeds the gains, American workers and businesses will continue to pay a high price, and the Chinese government will continue on its current short-sighted path.