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January 2018

# INTELLECTUAL PROPERTY

## Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market

Accessible Version

# GAO Highlights

Highlights of [GAO-18-216](#), a report to the Chairman, Committee on Finance, U.S. Senate

## Why GAO Did This Study

Infringement of IPR through the illegal importation and distribution of counterfeit goods harms the U.S. economy and can threaten the health and safety of U.S. consumers. CBP leads IPR enforcement at U.S. ports of entry by detecting and seizing counterfeit goods that enter the United States. CBP works with ICE, which investigates IPR violations and builds cases for prosecution.

GAO was asked to review CBP's and ICE's IPR enforcement at U.S. borders. In this report, GAO examines (1) what is known about counterfeit goods entering the United States and the challenges they present, (2) efforts CBP and ICE have undertaken to enhance IPR enforcement and the extent to which they have assessed the results, and (3) the extent of CBP's and ICE's collaboration on IPR enforcement and ways they coordinate with the private sector. GAO reviewed agency data and documents, interviewed agency officials, and conducted field work at port locations selected on the basis of factors such as the volume of IPR seizures and variety of modes of transportation at each location. GAO also conducted undercover purchases of commonly counterfeited consumer goods on popular consumer websites, using investigative tools and techniques.

## What GAO Recommends

GAO is making two recommendations to CBP, recommending that it (1) evaluate its efforts to enhance IPR enforcement and (2) assess potential additional information sharing with the private sector. CBP agreed with these recommendations.

View [GAO-18-216](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov)

January 2018

## INTELLECTUAL PROPERTY

### Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market

## What GAO Found

Changes in the market for counterfeit goods entering the United States pose new challenges for consumers, the private sector, and U.S. agencies that enforce intellectual property rights (IPR). Specifically, growth in e-commerce has contributed to a shift in the sale of counterfeit goods in the United States, with consumers increasingly purchasing goods online and counterfeiters producing a wider variety of goods that may be sold on websites alongside authentic products. For example, 20 of 47 items GAO purchased from third-party sellers on popular consumer websites were counterfeit, according to testing by the products' rights holders (see table), highlighting potential risks to consumers. The changes in the market for counterfeit goods can also pose challenges to the private sector—for example, the challenge of distinguishing counterfeit from authentic goods listed for sale online—and complicate the enforcement efforts of U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE).

**Results from GAO's Purchases of Four Frequently Counterfeited Consumer Products**

	Shoes	Travel mugs	Cosmetics	Phone chargers	Total
<b>Authentic</b>	15	3	0	9	27
<b>Counterfeit</b>	0	6	13	1	20
<b>Total</b>	15	9	13	10	47

Source: GAO | GAO-18-216

CBP and ICE engage in a number of activities to enhance IPR enforcement; however, while ICE has assessed some of its efforts, CBP has taken limited steps to do so. CBP's and ICE's IPR enforcement activities broadly include detecting imports of potentially IPR-infringing goods, conducting special operations at U.S. ports, engaging with international partners, and undertaking localized pilot programs or port-led initiatives. CBP and ICE have collected some performance data for each of the eight activities GAO reviewed, and ICE has taken some steps to understand the impact of its efforts. However, CBP has conducted limited evaluation of its efforts to enhance IPR enforcement. Consequently, CBP may lack information needed to ensure it is investing its resources in the most efficient and effective activities.

CBP and ICE generally collaborate on IPR enforcement, but according to private sector representatives, restrictions on CBP's information sharing limit private sector enforcement efforts. GAO found that CBP and ICE have undertaken efforts that align with selected key practices for interagency collaboration, such as participating in developing a national IPR enforcement strategy and agreeing on roles and responsibilities. However, sharing additional information about seized items with rights-holding companies and e-commerce websites could improve enforcement, according to private sector representatives. CBP officials said they share information to the extent allowed under current regulations, but CBP has not completed an assessment of what, if any, additional information would be beneficial to share with private sector entities. Without such an assessment, CBP will not know if sharing additional information requires regulatory or legal changes.

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**Abbreviations**

CBP	U.S. Customs and Border Protection
CEAR	Commercial Enforcement Analysis and Response
Centers	Centers of Excellence and Expertise
ICE	U.S. Immigration and Customs Enforcement
IP	intellectual property
IPR	intellectual property rights
IPR Center	National Intellectual Property Rights Coordination Center
MIPET	Mobile Intellectual Property Enforcement Team
TFTEA	Trade Facilitation and Trade Enforcement Act of 2015

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January 30, 2018

The Honorable Orrin G. Hatch  
Chairman  
Committee on Finance  
United States Senate

Dear Chairman Hatch:

Intellectual property (IP) is an important component of the U.S. economy, and the United States is an acknowledged global leader in its creation.<sup>1</sup> Infringement of intellectual property rights (IPR) through the illegal importation and distribution of counterfeit goods harms the U.S. economy by stifling innovation, slowing economic growth, weakening the competitiveness of U.S. employers, and threatening American jobs.<sup>2</sup> IPR infringement can also threaten the health and safety of American consumers. U.S. agencies and businesses have cited an expansion of IP crimes and an increasing use of Internet websites to facilitate the sale of counterfeit goods imported from overseas in recent years.

The Department of Homeland Security's U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE)—two of the many U.S. agencies involved in IPR enforcement—are responsible for IPR enforcement at U.S. borders.<sup>3</sup> CBP leads

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<sup>1</sup>The United States provides protections for IP through means such as copyrights, trademarks, and patents. A copyright is a set of exclusive rights subsisting in original works of authorship fixed in any tangible medium of expression now known or later developed, for a fixed period of time. For example, works may be literary, musical, or artistic. A trademark includes any word, name, symbol, or device, or any combination thereof, used to distinguish goods from those sold by or manufactured by others. Such words, names, symbols, devices, or any combination thereof are eligible for registration as trademarks. Patents grant "the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process." They are not enforced in the same way as trademarked and copyrighted works.

<sup>2</sup>In this report, "counterfeit goods" refers to any physical goods that are found to be in violation of trademark or copyright law.

<sup>3</sup>In addition to CBP and ICE, nearly 20 U.S. agencies play a role in IPR enforcement, including the Federal Bureau of Investigation, Food and Drug Administration, and Consumer Product Safety Commission, among others.

enforcement activity at the border by detecting and seizing counterfeit goods that enter the United States through its more than 300 ports of entry and by assessing penalties against IPR offenders. In fiscal year 2016, CBP processed over 32 million shipments and seized 31,560 shipments of IPR-infringing goods worth an estimated \$1.38 billion.<sup>4</sup> Sixteen percent of those seizures contained potential threats to consumer health and safety, according to CBP's analysis of its seizure data. CBP coordinates its efforts with ICE, which investigates IPR violations and builds cases for federal prosecution. In fiscal year 2016, ICE arrested 458 individuals, obtained 328 indictments, and received 276 convictions related to intellectual property crimes, according to ICE data.

You asked us to review CBP's and ICE's IPR enforcement at U.S. borders. This report examines (1) what is known about counterfeit goods entering the United States and the challenges they present, (2) efforts CBP and ICE have undertaken to enhance IPR enforcement and the extent to which they have assessed the results of these efforts, and (3) the extent to which CBP and ICE collaborate on IPR enforcement as well as ways in which they coordinate with the private sector in enforcing IPR.

To obtain information about IPR-infringing goods that enter the United States and the challenges they present, we analyzed CBP seizure data for fiscal years 2012 through 2016 and reviewed CBP and ICE documents and reports as well as reports from other U.S. government entities and international organizations.<sup>5</sup> We reviewed CBP's seizure data, conducted electronic tests of the data, and interviewed knowledgeable agency officials to determine that these data were sufficiently reliable for our purposes. We interviewed CBP and ICE officials in Washington, D.C., and at selected port locations in Chicago, Illinois; Los Angeles, California; Miami, Florida; and New York, New York. We also interviewed representatives of IP rights-holding companies (rights holders) and popular consumer websites that offer platforms for third-party sellers. We used undercover identities to purchase selected products from third-party sellers on popular consumer websites and subsequently asked the rights holders for the selected products to test their authenticity. To examine the extent to which CBP and ICE have undertaken efforts to improve enforcement at the border and assessed

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<sup>4</sup>In this report we use, consistent with CBP metrics, the manufacturer's suggested retail price as an estimate of the value of counterfeit goods if they were genuine.

<sup>5</sup>CBP's seizure data include seizures conducted by both CBP and ICE.

the results of those efforts, we reviewed agency plans and documents and interviewed agency officials. To examine the extent to which CBP and ICE collaborate on IPR enforcement, we assessed their collaboration against selected interagency collaboration practices, reviewed agency documentation, and analyzed the results of our interviews with CBP and ICE officials in field and headquarters locations.<sup>6</sup> To identify ways in which CBP and ICE collaborate with the private sector, we spoke with representatives of rights holders and popular consumer websites that offer platforms for third-party sellers, interviewed CBP and ICE officials, and reviewed agency documentation. (See app. I for more information about our objectives, scope, and methodology.)

We conducted this performance audit from September 2016 to January 2018 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. We conducted our related investigative work in accordance with investigation standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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## Background

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### Recent Legislation Related to IPR Enforcement

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The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) includes provisions related to IPR enforcement, among other things.<sup>7</sup> According to CBP, the act codified existing CBP activities and supports CBP's efforts to protect U.S. economic security through trade enforcement, to collaborate with the private sector, and to streamline and modernize business processes to meet the demands and complexities of

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<sup>6</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, DC: Oct. 21, 2005). Our October 2005 report listed eight practices that can enhance and sustain interagency collaboration. We evaluated CBP's and ICE's collaboration on IPR enforcement against five of these practices, which we selected because we determined they were most relevant to this review.

<sup>7</sup>Pub. L. No. 114-125, 130 Stat. 122 (2016).

a changing global supply chain.<sup>8</sup> The act defines trade enforcement as the enforcement of the customs and trade laws of the United States.<sup>9</sup> TFTEA requires the development and implementation of Centers of Excellence and Expertise (Centers), which CBP began piloting in 2010, and centralizes CBP's trade enforcement and trade facilitation efforts.<sup>10</sup> Among other things, TFTEA

- directs the CBP Commissioner to establish IPR as a priority trade issue;
- provides CBP with explicit authority to share certain information with trademark and copyright owners prior to completing a seizure;
- directs the Secretary of the Department of Homeland Security to establish the government-wide National Intellectual Property Rights Coordination Center (IPR Center) within ICE;
- requires the Assistant Director of the IPR Center to coordinate with CBP and ICE, along with other agencies; and
- requires the Assistant Director of the IPR Center to work with CBP and other federal agencies to conduct outreach to the private sector.<sup>11</sup>

TFTEA also includes reporting requirements for CBP and ICE. Specifically, TFTEA requires CBP and ICE to submit a joint strategic plan every 2 years that, among other things, describes their efforts to enforce IPR and makes recommendations for the optimal allocation of resources to ensure adequate enforcement.<sup>12</sup> TFTEA also requires the agencies to submit a joint report annually that includes specific IPR criminal and border enforcement metrics, a summary of outreach efforts, and a

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<sup>8</sup>TFTEA also included a requirement that the Secretary of Homeland Security develop and carry out an educational campaign to inform travelers entering or leaving the United States about the legal, economic, and public health and safety implications of acquiring IPR-infringing goods outside the United States and importing them into the United States. Pub. L. No. 114-125, § 311(a).

<sup>9</sup>Pub. L. No. 114-125, § 2(6).

<sup>10</sup>Pub. L. No. 114-125, § 110(a). GAO, *Customs and Border Protection: Improved Planning Needed to Strengthen Trade Enforcement*, [GAO-17-618](#) (Washington, DC: June 12, 2017).

<sup>11</sup>Pub. L. No. 114-125, §§ 117, 302, 305. Although TFTEA established the IPR Center in law in 2016, the Center began operating in 2000.

<sup>12</sup>Pub. L. No. 114-125, §§ 105, 306.

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summary of efforts to address the challenges presented by Internet commerce and the transit of small packages.<sup>13</sup>

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## Roles of CBP and ICE in IPR Enforcement

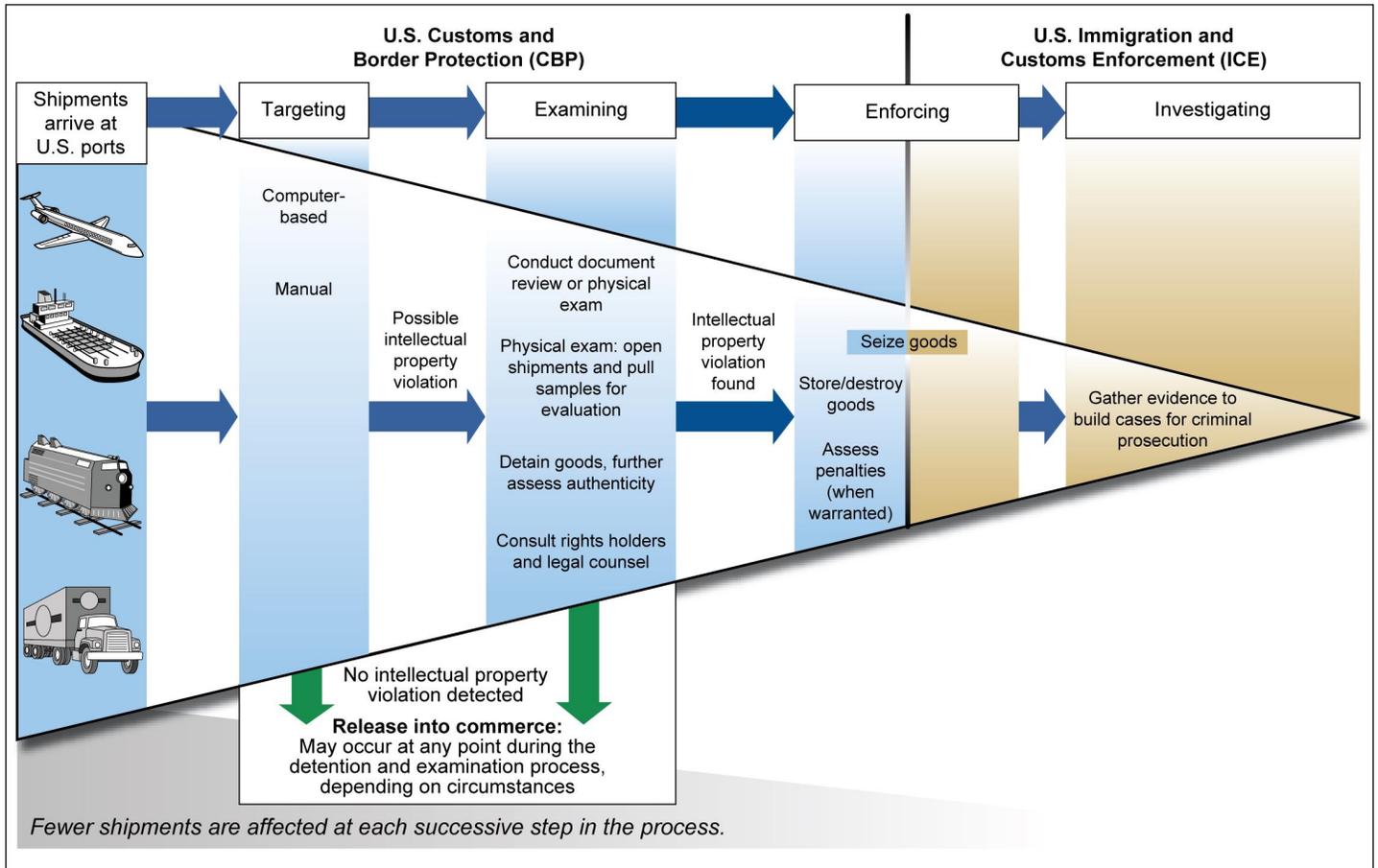
CBP and ICE both play critical roles in IPR enforcement. CBP's responsibilities include identifying and seizing IPR-infringing goods at the U.S. border, a function that also includes assessing penalties and denying entry to certain types of IPR-infringing goods.<sup>14</sup> ICE's responsibilities include investigating IPR violations, building cases for federal prosecution, and serving as the lead agency for the IPR Center. CBP employs a risk-based approach that uses targeting and other tools to identify for further examination a selection of imported goods that have arrived at U.S. ports; when violations are found, CBP seizes infringing goods and may refer cases to ICE for criminal investigation. Figure 1 shows CBP's and ICE's roles in IPR enforcement at the U.S. border.

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<sup>13</sup>Pub. L. No. 114-125, § 310.

<sup>14</sup>Under Section 337 of the Tariff Act of 1930, the U.S. International Trade Commission investigates allegations of unfair import practices, including unlicensed use of IPR such as patents, copyrights, and trademarks. If the commission finds a violation of this law, it generally issues an exclusion order that directs CBP to deny entry of infringing products into U.S. commerce. We previously reviewed CBP's enforcement of exclusion orders. See GAO, *Intellectual Property: U.S. Customs and Border Protection Could Better Manage Its Process to Enforce Exclusion Orders*, [GAO-15-78](#) (Washington, DC: Nov. 19, 2014).

**Figure 1: Roles of CBP and ICE in Enforcement of Intellectual Property Rights at U.S. Borders**



Source: GAO analysis of CBP and ICE documentation. | GAO-18-216

**CBP.** CBP’s trade policy, processing, and enforcement operations, including those related to IPR, are primarily carried out by two offices—the Office of Trade and the Office of Field Operations.

- The Office of Trade develops policies to guide trade enforcement efforts. The Office of Field Operations conducts a range of trade processing and enforcement activities at more than 300 ports, where people and goods enter the country by land, air, or sea. At these ports, CBP officers and import specialists target potentially IPR-infringing goods, conduct examinations, and detain items if officers suspect they are counterfeit.

- Import specialists working for the Office of Field Operations' 10 Centers appraise and evaluate detained goods to identify any IPR violation.<sup>15</sup> As we reported in June 2017, the creation of the Centers represented a shift in CBP's approach to trade operations, centralizing the processing of imported goods on a national scale through industry-focused Centers rather than individual ports of entry.<sup>16</sup>

In determining goods' authenticity, CBP relies on product information supplied by rights holders and prioritizes enforcement of IPR that rights holders have recorded with CBP, using the Intellectual Property Rights e-Recordation database. CBP also uses product identification manuals that are prepared by rights holders and linked to the database. In addition, CBP may consult with rights holders as part of the examination process. If CBP determines that a good is counterfeit, it seizes and destroys the good and may assess penalties if warranted.

IPR enforcement is one of seven priority trade issues around which CBP focuses its activities and resources for trade facilitation and enforcement.<sup>17</sup> Priority trade issues represent high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people, according to CBP. In 2017, we evaluated CBP's trade enforcement efforts and found that CBP's plans for its priority trade issues generally lacked performance targets that would enable it to assess the effectiveness of its enforcement activities.<sup>18</sup> We recommended that CBP include performance targets in its plans for priority trade issues; CBP concurred with this recommendation.

**ICE.** ICE's Homeland Security Investigations is responsible for a wide range of domestic and international criminal investigations arising from the illegal movement of people and goods into, within, and out of the

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<sup>15</sup>These Centers are managed out of the following cities and evaluate the following categories of goods: Chicago, IL (Base Metals); Detroit, MI (Automotive & Aerospace); Buffalo, NY (Industrial & Manufacturing Materials); New York, NY (Pharmaceuticals, Health, & Chemicals); Atlanta, GA (Consumer Products & Mass Merchandising); Miami, FL (Agriculture & Prepared Products); Houston, TX (Petroleum, Natural Gas, & Minerals); Laredo, TX (Machinery); Los Angeles, CA (Electronics); and San Francisco, CA (Apparel, Footwear, & Textiles).

<sup>16</sup>[GAO-17-618](#).

<sup>17</sup>CBP's other priority trade issues focus on agriculture, antidumping and countervailing duties, import safety, revenue, textiles and wearing apparel, and trade agreements.

<sup>18</sup>[GAO-17-618](#).

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United States, including the importation and exportation of counterfeit goods. ICE field agents work with CBP and various partners in their investigations of identified cases of IP crime. In addition, the ICE-led, multi-agency IPR Center coordinates with other federal agencies on IPR infringement investigations, law enforcement training, and private sector and public outreach. The IPR Center brings together many of the key domestic and foreign investigative agencies to leverage resources and promote a comprehensive response to IP crime.

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### Risks Associated with the Counterfeit Goods Market

Counterfeit goods may pose risks to the health and safety of consumers. CBP and ICE have seized and investigated counterfeit goods, such as health and personal care products and consumer electronics, that carried a number of health and safety risks. For example, CBP has seized counterfeit versions of personal care products such as contact lenses, perfume, hair removal devices, hair curlers and straighteners, skin cleansing devices, and condoms, which pose risks to the consumer that include damage to skin or eyes caused by dangerous chemicals and bacteria, burning or electrocution due to nonstandardized wiring, or ineffectual family planning protection. ICE has also investigated IP crimes involving counterfeit airbags, phone accessories, pharmaceuticals, and other items that present risks to the health and safety of consumers. Counterfeit electronics and batteries can also pose significant risks, including the risk of injury or death, according to CBP. For instance, in December 2015, CBP seized 1,378 hoverboards with counterfeit batteries that carried a risk of causing fires.

In addition, the sale of counterfeit goods can pose a threat to national security. For example, CBP and ICE have seized and investigated counterfeit goods, such as integrated circuits, destined for Department of Defense supply chains. Additionally, counterfeiting has been linked to transnational organized crime and terrorist organizations. According to the United Nations Office of Drugs and Crime, the illicit trafficking of counterfeit goods is an increasingly attractive avenue for criminal organizations to diversify their product range.<sup>19</sup> Criminal networks use similar routes and methods to move counterfeit goods as they use to

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<sup>19</sup>“Focus on: The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime,” United Nations Office on Drugs and Crime, accessed Feb. 28, 2017. [http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit\\_focussheet\\_EN\\_HIR\\_ES.pdf](http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIR_ES.pdf).

smuggle drugs, firearms, and people, according to reports from U.S. law enforcement and international organizations. The high rate of return on investment and perceived low risk of prosecution associated with IP crimes make counterfeiting attractive to criminal organizations as a lucrative source of revenue, according to the IPR Center.

In 2010, we reported that counterfeiting also posed a wide range of economic risks to consumers, industry, government, and the economy as a whole.<sup>20</sup> Counterfeiting's economic effects on consumers include, for example, financial losses resulting from counterfeit products that fail due to inferior quality. In addition, counterfeiting may pose risks to industry and government by increasing IPR protection and enforcement costs, by affecting sales and brand value for the businesses whose products are counterfeited, and by potentially reducing tax revenue collected by the government. Finally, counterfeiting may harm the U.S. economy as a whole by slowing economic growth, resulting in the loss of jobs in IP-intensive industries, according to the Congressional Research Service.<sup>21</sup>

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## Accelerated by E-Commerce, Changes in the Counterfeits Market Present Challenges to U.S. Agencies, Consumers, and the Private Sector

Driven in part by the rise of e-commerce, the market for counterfeit goods in the United States has shifted in recent years from one in which consumers often knowingly purchased counterfeits to one in which counterfeiters try to deceive consumers into buying goods they believe are authentic.<sup>22</sup> According to CBP officials and seizure data, the volume, value, and variety of counterfeit goods entering the United States increased in fiscal years 2012 through 2016, and counterfeit goods were

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<sup>20</sup>GAO, *Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods*, [GAO-10-423](#) (Washington, DC: Apr. 12, 2010).

<sup>21</sup>Congressional Research Service, *Intellectual Property Rights and International Trade*, CRS RL34292 (Washington, DC: Sept. 2, 2015).

<sup>22</sup>According to the Organisation for Economic Cooperation and Development, e-commerce is the sale or purchase of goods or services conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online.

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increasingly imported in smaller express-carrier or mail packages.<sup>23</sup> The results of our undercover purchases from third-party sellers indicate that counterfeit goods are available on a variety of popular e-commerce websites frequented by U.S. consumers. These changes in the marketplace present a number of challenges for U.S. agencies, the private sector, and consumers.

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### E-Commerce Has Contributed to a Shift in the Market for Counterfeit Goods

The rise of e-commerce has contributed to a fundamental change in the market for counterfeit goods, according to our analysis of documents from CBP, ICE, and international organizations and our interviews with CBP and ICE officials. U.S. agencies and international organizations have observed a shift in the sale of counterfeit goods from “underground” or secondary markets, such as flea markets or sidewalk vendors, to primary markets, including e-commerce websites, corporate and government supply chains, and traditional retail stores, where consumers typically believe they are purchasing authentic goods. This shift has been accompanied by changes in the ways in which counterfeit goods are sold, as shown in table 1.

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<sup>23</sup>Express carriers, also known as express consignment carriers, include companies such as FedEx and DHL.

**Table 1: Characteristics Accompanying the Shift from Secondary to Primary Market for Counterfeit Goods**

	<b>Secondary market</b>	<b>Primary market</b>
Appearance of good	Appears fake	Appears authentic
Price	Considerably lower than retail price for authentic goods	Close to retail price for authentic goods
Point of sale	In person (e.g., street vendors and flea markets)	Primarily online (e.g., illicit websites or third-party sellers on popular consumer websites)

Source: GAO analysis of U.S. agency documents, interviews, and data and international organization reports. | GAO-18-216

In the past, consumers could often rely on indicators such as appearance, price, or location of sale to identify counterfeit goods in the marketplace, but counterfeiters have adopted new ways to deceive consumers. Consumers may have difficulty differentiating between counterfeit and authentic goods in the primary market for several reasons:

- The physical appearance of counterfeit goods may no longer serve as a “red flag” for consumers that the good they are considering purchasing is not genuine. Counterfeit goods and their packaging are becoming more sophisticated and closely resemble genuine goods, making it difficult for consumers, law enforcement, and sometimes even manufacturers to identify counterfeit goods, according to CBP and ICE officials.
- When selling online, counterfeiters may post pictures of authentic goods on the websites where they are selling counterfeits and may post pseudonymous reviews of their products or businesses in order to appear legitimate.
- By setting the price of a counterfeit at, or close to, the retail price of a genuine good, counterfeiters are able to deceive consumers, who will pay the higher price because they believe the goods are real or who believe that they are getting a slight bargain on genuine goods.
- Counterfeiters exploit third-party online marketplaces to gain an appearance of legitimacy and access to consumers, according to the Federal Bureau of Investigation.<sup>24</sup>

The growth of e-commerce has provided additional opportunities for counterfeiters to deceive consumers, according to U.S. agencies and international organizations. In June 2000, approximately 22 percent of

<sup>24</sup>Federal Bureau of Investigation, *Countering the Growing Intellectual Property Theft Threat: Enhancing Ties Between Law Enforcement and Business* (Washington, DC: Jan. 22, 2016).

Americans reported having made a purchase online, but by December 2016 that portion of the population had risen to 79 percent, according to a study by Pew Research Center.<sup>25</sup> Worldwide e-commerce sales are expected to reach over \$4 trillion by 2020, and e-commerce retail sales are expected to reach nearly 15 percent of overall global retail spending in 2020, according to CBP's E-Commerce and Small Business Branch. CBP also has reported that e-commerce is increasing and altering global trade, as consumers import and export goods and services when they make purchases over the Internet, allowing for more cross-border transactions and giving counterfeiters direct access to consumers through the Internet.

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### CBP Data Indicate Changes in Several Key Characteristics of Counterfeit Goods Seized

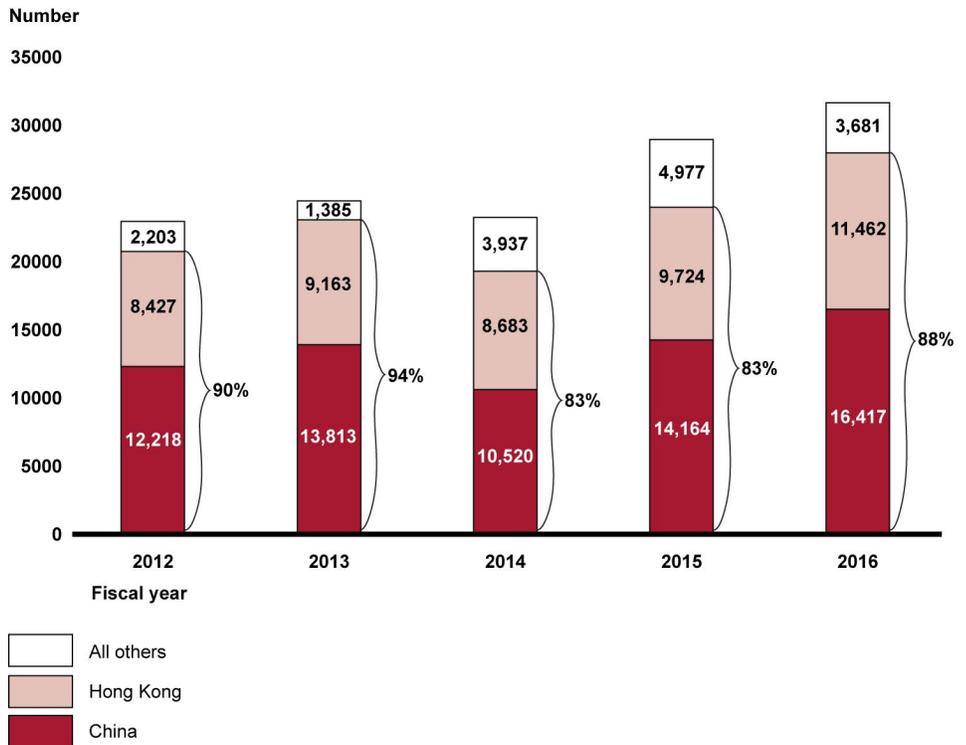
According to CBP seizure data and CBP officials, the volume, value, and variety of counterfeit goods seized by CBP and ICE have increased.<sup>26</sup> CBP reports indicate the number of IPR seizures increased by 38 percent in fiscal years 2012 through 2016, from approximately 22,850 seizures in fiscal year 2012 to an estimated 31,560 seizures in fiscal year 2016. The total estimated value of the seized goods, had they been genuine, increased by 10 percent, from about \$1.26 billion in fiscal year 2012 to an estimated value of over \$1.38 billion in fiscal year 2016. According to CBP data, most of the goods seized during this period were shipped from China and Hong Kong. Counterfeit goods originating in China accounted for approximately half of all IPR seizures in fiscal years 2012 through 2016, and counterfeit goods shipped from Hong Kong represented over one-third of all IPR seizures over the same time frame. As the number of IPR seizures increased from 2012 to 2016, the proportion of seizures shipped from China and Hong Kong remained fairly stable, ranging from 83 percent of all IPR seizures in 2014 and 2015 to 94 percent in 2013, as shown in figure 2.

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<sup>25</sup>Aaron Smith and Monica Anderson, *Online Shopping and E-Commerce* (Pew Research Center, December 2016).

<sup>26</sup>CBP's website lists annual IPR seizure statistics dating back to fiscal year 2003. See <http://www.cbp.gov/trade/priority-issues/ipr/statistics>.

**Figure 2: Seizures of Intellectual Property Rights–Infringing Goods, by Reported Country of Origin, Fiscal Years 2012-2016**



Source: GAO analysis of U.S. Customs and Border Protection (CBP) data. | GAO-18-216

Note: Although Hong Kong is a special administrative region of China, we are showing it as a country of origin to align with CBP data.

The variety of products being counterfeited has also increased, according to CBP officials. CBP and ICE noted that, while many consumers typically think of luxury handbags or watches as the most commonly counterfeited goods, counterfeiting occurs in nearly every industry and across a broad range of products. According to CBP officials we interviewed in headquarters and CBP and ICE port officials, almost any product can be counterfeited. For example, major seizure operations in fiscal year 2016 resulted in the confiscation of automobile parts, consumer electronics, pharmaceuticals, sports-related merchandise, semiconductor devices, furniture, and hoverboards. In fiscal year 2016, the commodity types with the highest number of seizures were apparel, consumer electronics, footwear, watches, and jewelry.

In addition, according to CBP data and officials, the ways in which counterfeit goods are imported into the United States have changed in

recent years. Specifically, express carriers and international mail have become the predominant forms of transportation for IPR-infringing goods entering the United States, constituting approximately 90 percent of all IPR seizures in fiscal years 2015 and 2016, according to CBP data and officials. The number of IPR seizures from express carrier shipments increased by 105 percent from fiscal year 2012 through fiscal year 2016, while the number of IPR seizures shipped by cargo increased by 6 percent over the same period. Similarly, the total value of express carrier seizures increased by 337 percent from fiscal year 2012 through fiscal year 2016, while the total value of cargo seizures decreased by 34 percent over the same period.

CBP and ICE have attributed the increase in seizures of mail and express carrier shipments to three factors:

- continued growth of online counterfeit merchandise sales, which facilitate direct-to-consumer shipments of infringing goods;
- training by rights holders and coordination between CBP and ICE, which have helped CBP and ICE to focus more enforcement efforts on express carrier operations; and
- counterfeiters' response to enforcement efforts.

According to an IPR Center report, counterfeiters may assume that multiple, smaller packages are more likely to elude seizure than a single large shipment and may view the seizure of a few packages as the cost of doing business.<sup>27</sup>

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### Twenty of 47 Items Purchased from Third-Party Sellers on Popular E-Commerce Websites Were Counterfeits, Highlighting Potential Risks to Consumers

In an attempt to understand the frequency with which consumers may unknowingly encounter counterfeit products online, we purchased a nongeneralizable sample of four types of consumer products—shoes, travel mugs, cosmetics, and phone chargers—from third-party sellers on

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<sup>27</sup>National Intellectual Property Rights Coordination Center, *Intellectual Property Rights Violations: A Report on Threats to United States Interests at Home and Abroad* (Washington, DC: November 2011).

five popular e-commerce websites.<sup>28</sup> According to CBP data and officials, CBP often seizes IPR-infringing counterfeits of these types of products. As table 2 shows, the rights holders for the four selected products determined 20 of the 47 items we purchased to be counterfeit.

**Table 2: Results from Rights-Holder Testing of GAO Undercover Purchases of Four Frequently Counterfeited Consumer Products**

	Nike Air Jordan shoes	Yeti travel mugs	Urban Decay cosmetics	UL-certified phone chargers	Total
Authentic	15	3	0	9	27
Counterfeit	0	6	13	1	20
<b>Total</b>	<b>15</b>	<b>9</b>	<b>13</b>	<b>10</b>	<b>47</b>

Source: GAO | GAO-18-216

Note: We asked the rights holders for the four products to test a total of 47 items that we purchased from third-party sellers on five popular e-commerce websites. These results do not include one charger that we excluded from testing. Despite being advertised as UL-certified, the product arrived without a certification seal and therefore could not be tested for authenticity.

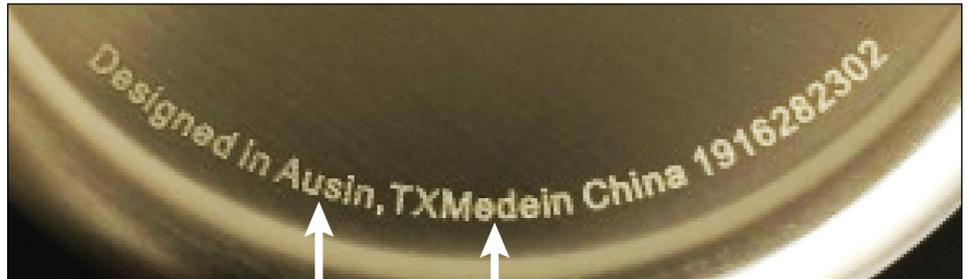
We did not identify any clear reasons for the variation among the counterfeit and authentic that we purchased based on the products they represented, the e-commerce websites from which they were purchased, or the third-party sellers from whom they were purchased. For three of the four product types, at least one item we purchased was determined to be counterfeit, with results varying considerably by product. Representatives of the rights holders could not provide a specific explanation for the variation among authentic and counterfeit goods that we received. They noted that the results of undercover purchases can fluctuate depending on enforcement activities and the variety of goods and sellers on a particular website on a given day. Rights-holder testing also showed that we purchased at least one counterfeit item and one authentic item from each of the five e-commerce websites. In addition, our analysis of the customer ratings of third-party sellers from whom we made purchases did not provide any clear indications that could warn consumers that a product marketed online may be counterfeit. For example, we received both counterfeit and authentic items from third-party sellers with ratings

<sup>28</sup>All 47 items we purchased were shipped from U.S. addresses, signifying that any items manufactured outside the United States were imported before being sent to us. Rights holders confirmed that at least a portion of the authentic versions of the products purchased are manufactured abroad. Additionally, according to a 2011 IPR Center report, most physical counterfeit goods are manufactured abroad. Final production of some counterfeit items, such as applying labels and packaging items, may take place after items are imported into the United States. See appendix I for additional information about our methodology for selecting the items we purchased.

that were less than 70 percent positive as well as sellers with ratings that were up to 100 percent positive.

Some counterfeit items we purchased were easily identifiable as likely counterfeit once we received them. Rights holders were able to determine that they were not authentic on the basis of inferior quality, incorrect markings or construction, and incorrect labeling. For example, one item contained misspellings of “Austin, TX” and “Made in China,” as figure 3 shows.

**Figure 3: Misspelled Label on Counterfeit Travel Mug**



“Austin” misspelled as “Ausin”

“Made” misspelled as “Mede”.

Source: GAO. | GAO-18-216

Other items could be more difficult for a typical consumer to identify as counterfeit. For example, the rights holder for a cosmetic product we purchased identified one counterfeit item on the basis of discrepancies in the color, composition, and design of the authentic and counterfeit items’ packaging, as figure 4 shows.

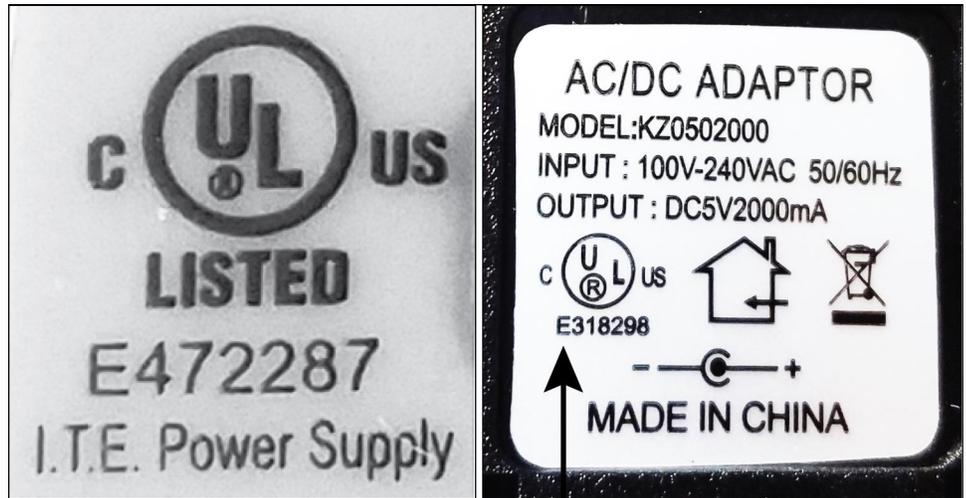
**Figure 4: Discrepancies between Authentic (left) and Counterfeit (right) Cosmetic Product**



Source: Urban Decay. | GAO-18-216

Counterfeit goods may also lack key elements of certification markings and other identifiers. For example, on a counterfeit phone charger we purchased, the UL certification mark did not include all components of the authentic mark, as shown in figure 5.

**Figure 5: Discrepancy between Authentic (left) and Counterfeit (right) UL Certification Marks**



The counterfeit trademark is missing the term “LISTED” as well as the product name.

Source: GAO. | GAO-18-216

The risks associated with the types of counterfeit goods we purchased can extend beyond the infringement of a company’s IPR. For example, a UL investigation of counterfeit iPhone adapters found a 99 percent failure rate in 400 counterfeit adapters tested for safety, fire, and shock hazards and found that 12 of the adapters posed a risk of lethal electrocution to the user.<sup>29</sup> Similarly, counterfeits of common consumer goods, such as Yeti travel mugs, may contain higher-than-approved concentrations of dangerous chemicals such as lead, posing health risks to consumers. According to ICE, seized counterfeit cosmetics have been found to contain hazardous substances, including cyanide, arsenic, mercury, lead, urine, and rat droppings.

Representatives of rights holders and e-commerce websites whom we interviewed reported taking independent action to try to protect IPR within their areas of responsibility. Both rights holders and e-commerce websites maintain IPR protection teams that work with one another and with law enforcement to address infringement issues. These teams may include global networks of investigators and contracted brand-protection

<sup>29</sup>UL, *Counterfeit iPhone Adapters: A UL Technical Investigation Shows a 99 Percent Failure Rate* (2016).

companies. E-commerce websites may also take a variety of steps to block and remove counterfeit items listed by third-party sellers. These efforts rely on data collected through a variety of means, including consumer reporting of counterfeits, notification by rights holders of IPR infringement, and corporate efforts to vet potential third-party sellers, according to private sector representatives. According to these representatives, both rights holders and e-commerce websites have utilized technology to aid their efforts. For example, one rights holder uses search-engine “crawlers” to find terms commonly associated with counterfeit sales, in an effort to identify illicit sites and the individuals behind them, while one e-commerce website maintains a large database of information on the history and activity of its sellers.

According to representatives of rights holders, consumers can best protect themselves by buying directly from the manufacturer or its authorized retailers online, avoiding prices that look “too good to be true,” and reporting counterfeit purchases. For additional actions that consumer protection organizations, government agencies, and private companies have recommended consumers take to limit the risk of purchasing counterfeits online, see appendix II.

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## Changes in the Marketplace Can Pose Challenges to U.S. Agencies and the Private Sector

We identified a number of key challenges that the changes in the market for counterfeit goods can pose to CBP and ICE as well as to the private sector. First, the increasing sophistication of counterfeits can make it difficult for law enforcement officers to distinguish between legitimate and counterfeit goods. According to CBP officers, because the quality of counterfeits is improving, inspecting and processing a seizure can be time consuming and often requires working with private industry to test potential counterfeits.

Second, the increased variety and quantity of counterfeit goods crossing the border complicate CBP and ICE enforcement efforts. As the range of counterfeit goods expands, CBP has a wider variety of goods to screen, which requires CBP officials to have in-depth knowledge of a broad range of products and of how to identify counterfeits. The overall volume of goods entering the country—including more than 11 million maritime containers; 13 million containers carried over land borders by truck or rail; and 250 million cargo, mail, and express carrier packages annually—can also be difficult to manage, according to CBP officials. CBP has

responsibility for facilitating trade as well as preventing the importation of illicit goods—missions that can conflict when attempts to identify illicit goods threaten to slow the movement of legitimate trade. Additionally, the increased volume of imports at specific locations can strain CBP resources. For example, CBP officials at one international mail facility noted that the volume of both incoming mail and counterfeit goods increased exponentially when some international mail shipments from China were rerouted to enter the United States through that port.

Third, shifts in the mode of transportation of counterfeit goods to the United States pose additional challenges to CBP and ICE. According to CBP officials, seizure processing takes roughly the same amount of time and costs the same regardless of shipment size or value, which means that CBP must expend the same resources to seize an express carrier shipment that contains a few infringing goods as it would to seize a large cargo container with hundreds of infringing goods. Another effect of the shift in transportation mode is that seizures have become less of a deterrent for counterfeiters who break up large shipments into multiple smaller express carrier or mail packages. Each of these smaller packages includes fewer goods than a single large shipment, decreasing the counterfeiter's risk of losing significant quantities of merchandise to a single seizure. Furthermore, the shift in mode of transportation affects CBP's ability to target shipments in advance. For example, as we have previously reported, the mail environment generally does not provide CBP with access to advance information that can be used for targeting or package retrieval.<sup>30</sup> In other shipping environments, CBP officials may have access to advance information that they can use to target potentially counterfeit goods.

Fourth, counterfeiters may use a variety of methods to try to deceive law enforcement or evade detection. A large majority of infringing products are produced overseas and shipped to the United States, according to the

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<sup>30</sup>GAO, *International Mail Security: Costs and Benefits of Using Electronic Data to Screen Mail Need to Be Assessed*, [GAO-17-606](#) (Washington, DC: Sept. 7, 2017).

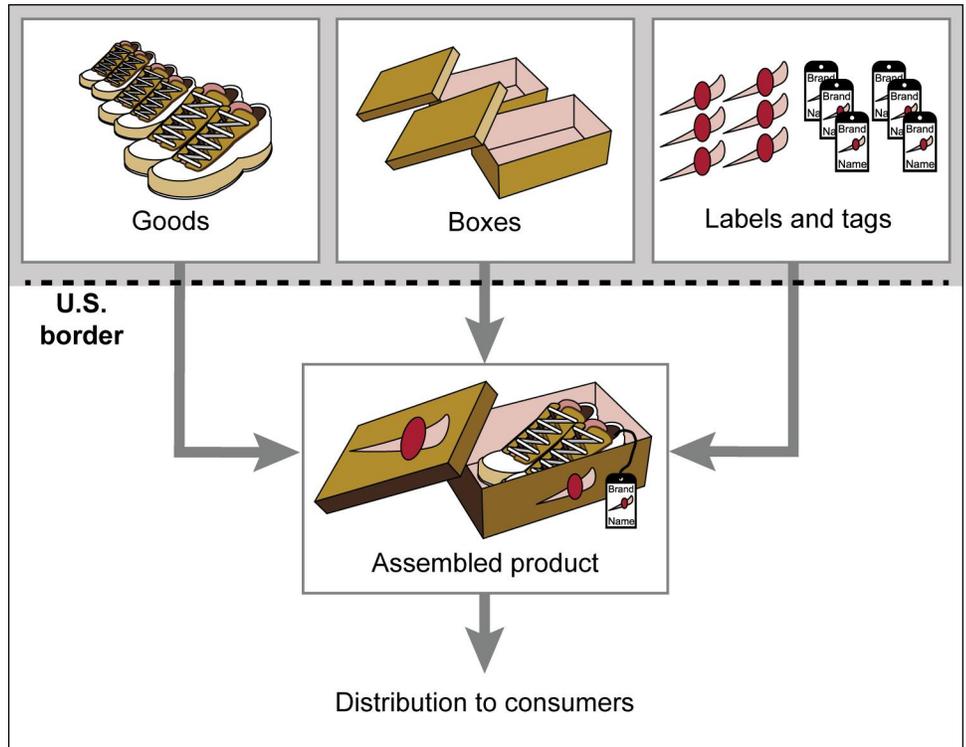
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Intellectual Property Enforcement Coordinator.<sup>31</sup> According to CBP officials and CBP, IPR Center, and Intellectual Property Enforcement Coordinator reports, counterfeiters may try to evade detection in a number of ways. For example, counterfeiters sometimes separate IPR-infringing labels from counterfeit goods during the transportation process and then complete the labeling and packaging of the goods in the United States (see fig. 6). In fiscal year 2016, CBP seized 572 shipments containing counterfeit labels and tags intended to be applied to articles after importation to create non-genuine products, which CBP estimated would be worth more than \$17 million if they were genuine.

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<sup>31</sup>In 2008, Congress passed a law that created the position of the Intellectual Property Enforcement Coordinator within the Executive Office of the President of the United States. The Intellectual Property Enforcement Coordinator has responsibility for coordinating the development of the Joint Strategic Plan against counterfeiting and infringement, a national strategy for the designated departments and agencies involved in IPR enforcement matters, including CBP and ICE; facilitating the issuance of policy guidance to departments and agencies to assure the coordination of IPR enforcement policy and consistency with other law; and reporting to the President and Congress, to the extent consistent with law, regarding domestic and international IPR enforcement programs. Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. No. 110-403, § 301(a), 122 Stat. 4256, 4265.

**Figure 6: Domestic Assembly of Foreign Manufactured Counterfeit Goods**



Source: GAO analysis of agency documentation. | GAO-18-216

Finally, CBP and ICE officials noted that targeting the root causes of IPR infringement requires international cooperation to disrupt the networks that produce, sell, and ship counterfeit goods. IPR enforcement is a global issue, as counterfeit operations may cross several borders; however, officials said some countries are more receptive to working with U.S. agencies than others. For example, ICE officials noted that some countries, such as China, do not have stringent IP laws in place or do not enforce existing laws. Officials added that it can be difficult to convince some countries to take IP theft seriously when it constitutes a large part of their economy.

The changing marketplace also presents challenges to the private sector, according to representatives from rights holders and e-commerce websites:

- It is more difficult for rights holders and e-commerce websites to identify and investigate individual counterfeit cases, as e-commerce websites face growing inventory from a larger registry of sellers.

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Tracking goods from known counterfeiters through various website fulfillment and delivery mechanisms is also a significant challenge for the private sector.<sup>32</sup>

- The growth of e-commerce has accelerated the pace at which counterfeiters can gain access to consumers or reinvent themselves if shut down. E-commerce platforms on mobile devices, for example, represent the newest space in which counterfeiters can operate.

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## CBP and ICE Engage in Activities to Enhance IPR Enforcement, but CBP Has Not Fully Evaluated the Results of Its Activities

CBP and ICE engage in a number of activities to enhance IPR enforcement and have collected performance data on the activities we reviewed. However, CBP has conducted limited evaluation of its IPR enforcement, while ICE has taken some steps to evaluate the impact of its efforts.

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### CBP and ICE Undertake Several Types of Activities to Enhance IPR Enforcement

According to our analysis of CBP and ICE documents and interviews with CBP and ICE officials, CBP and ICE undertake a variety of activities to enforce IPR, including (1) detecting potentially infringing goods, (2) conducting special operations, (3) engaging with international partners, and (4) undertaking localized pilot programs or port-led initiatives.

- **Detecting potentially IPR-infringing goods.** CBP and ICE engage in a number of activities to detect imports of potentially IPR-infringing goods. For example, CBP officers at each port have responsibilities for targeting such goods, and CBP conducts targeting and trend

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<sup>32</sup>In addition to identifying counterfeits, rights holders also must distinguish and control the distribution of “gray-market” goods on e-commerce websites, according to representatives of one rights holder. According to the Better Business Bureau, gray-market goods are items legally manufactured abroad and imported into the United States without the consent of the trademark holder. Gray-market goods are not counterfeits.

analysis at the national level. As we observed during our port visits, CBP also uses its Automated Targeting System to review data on inbound and outbound shipments and to identify shipments of potential concern.<sup>33</sup> CBP has created two IPR targeting models for the system. In addition, CBP and ICE both maintain online systems for reporting allegations of counterfeiting and other IPR infringements.

- **Conducting special operations.** CBP and ICE periodically conduct special operations—such as operations focused on particular products or surge operations that provide additional manpower to examine a larger number of shipments—at U.S. ports of entry. CBP’s Mobile Intellectual Property Enforcement Team (MIPET) and ICE’s national operations are examples of activities in this area of effort.
- **Engaging with international partners.** IPR enforcement requires coordination with international partners. The IPR Center includes representatives of the governments of Canada and Mexico, as well as international law enforcement entities like Interpol and Europol. CBP and ICE also work with the customs and law enforcement agencies in other countries to share information, provide training, and conduct joint operations.
- **Undertaking localized pilots and port-led initiatives.** CBP and ICE delegate much of the responsibility for day-to-day enforcement to ports, Centers, and field offices. This allows CBP’s headquarters offices to test pilot programs in a small number of ports and allows ports and Centers to initiate their own activities to enhance IPR enforcement. CBP engaged in localized pilots or port-led initiatives to enhance IPR enforcement at each of the locations we visited.

Within these areas of effort, CBP and ICE have undertaken activities to enhance their IPR enforcement. We selected and reviewed eight activities in these four categories, as shown in table 3.<sup>34</sup>

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<sup>33</sup>CBP’s Automated Targeting System evaluates all cargo to identify high-risk inbound cargo for examinations. The system uses rule and weight sets to analyze information from manifests, importer security filing, and entry data to prioritize shipments for review and generate targets by scoring each shipment. The system screens commodity information on the manifests, importer security filings, and entry data and also screens individuals identified in these data sources against alerts and prior violations.

<sup>34</sup>We selected these eight activities to highlight significant CBP and ICE efforts to enhance IPR enforcement; these activities do not constitute the entirety of such efforts. See app. I for more information.

**Table 3: Selected Agency Activities to Enhance Intellectual Property Rights (IPR) Enforcement**

Category	Agency	Activity	Description
Detecting potentially IPR-infringing goods	U.S Customs and Border Protection (CBP)	Automated Targeting System IPR enforcement models	CBP developed two models in its Automated Targeting System for IPR enforcement—one for maritime shipments and one for express carrier shipments. The models use a variety of CBP data to try to predict the incoming shipments that are most likely to contain IPR-infringing goods. The models assign a score to each shipment based on the predicted likelihood that a shipment will contain counterfeit goods.
Conducting special operations	CBP	Mobile Intellectual Property Enforcement Team (MIPET)	CBP created the MIPET as a way to combine the skills of agency IPR experts with frontline personnel in ports of entry to conduct specialized, focused operations. For example, officials said CBP may focus on popular toys during the holiday shopping season or sports apparel at peak sales times. In addition to increasing seizure rates, one goal of such operations is to help local officers enhance their IPR enforcement efforts after the operations are complete.
	U.S. Immigration and Customs Enforcement (ICE)	Commodity or industry-focused national operations	The National Intellectual Property Rights Coordination Center oversees national operations focused on particular commodities, industries, or areas of concern. For example, Operation Chain Reaction targets counterfeit semiconductors and integrated circuits entering Department of Defense and other U.S. government supply chains.
Engaging with international partners	CBP and ICE	Joint international operations	CBP and ICE have undertaken a number of activities to work with other countries to enhance IPR enforcement, including coordinating with foreign customs or law enforcement agencies on joint operations. For example, in April 2016, CBP and China’s General Administration of China Customs conducted a month-long joint operation focused on automobile parts, tags and labels, consumer electronics, and pharmaceuticals. CBP and ICE officials also noted that they participate in international operations with Interpol and Europol.
Undertaking localized pilots and port-led initiatives	CBP	Voluntary abandonments pilot	In fiscal year 2015, CBP implemented a voluntary-abandonment pilot program in a few ports as an alternative to seizure. Under this program, officers can choose to follow abandonment procedures for shipments with a value below a particular threshold. The importer is notified that CBP interdicted a package that may contain IPR-infringing goods and is given the option to voluntarily abandon the items or request that CBP commence formal seizure proceedings through which the importer can contest the detention of the goods. If the importer elects to do nothing, after 30 days the property is considered abandoned and is destroyed. As part of the pilot program, the importer of record—typically the express carrier—pays for the destruction of the goods.
	CBP	Streamlined seizure processing	In response to the growing volume of mail from China being processed at one international mail facility, the port piloted a program in which it embedded staff from the Fines, Penalties, and Forfeitures Office—which plays a substantial role in seizure processing—in the facility to process seizures on site. The goals of the effort were to reduce some of the administrative burden on frontline officers and streamline seizure processing.

Category	Agency	Activity	Description
	CBP	Special Operations Team	In fiscal year 2012, CBP created a Special Operations Team at one port to focus on detecting, disrupting, and dismantling entities that import IPR-infringing goods, among other things. Much of the team's activities focus on IPR crimes. According to CBP officials, the team seeks to develop investigative cases for ICE by targeting, examining, and seizing infringing shipments and conducting post-seizure analysis to link multiple shipments and build cases against high-volume importers with repeated violations.
	ICE	Field office plans to enhance trade enforcement	In April 2016, ICE instructed each of its field offices to develop a plan to expand its commercial fraud efforts and strengthen partnerships with CBP. The offices were to submit the plans, detailing efforts to work with CBP to enhance commercial fraud enforcement, including enforcement of IPR, by June 2016.

Source: GAO analysis of CBP and ICE documents and interviews with CBP and ICE officials. | GAO-18-216

## CBP and ICE Have Collected Some Performance Data on IPR Enforcement Activities

Consistent with federal internal control standards, CBP and ICE have collected some data on the results of each of the eight activities we reviewed.<sup>35</sup> Generally, the agencies collected information on the outputs of the selected activities, such as the number and value of seizures resulting from these activities (see table 4).

**Table 4: Data Collected for Selected Agency Activities to Enhance Intellectual Property Rights (IPR) Enforcement**

Category	Agency	Activity	Examples of data collected
Detecting potentially IPR-infringing goods	U.S Customs and Border Protection (CBP)	Automated Targeting System IPR enforcement models	CBP tracks the performance of the models by tracking the number and value of seizures resulting from high-scoring shipments. Additionally, CBP tracks the accuracy of the models by comparing the percentage of physically examined targeted shipments (i.e., those scoring above the threshold) that resulted in seizures with the expected seizure rate for items examined randomly. CBP officials stated that they have made revisions to the models to improve performance over time.
Conducting special operations	CBP	Mobile Intellectual Property Enforcement Team (MIPET)	CBP collects data on the MIPET operations conducted each fiscal year, including the number of exams conducted and the number and value of seizures made. CBP data shows MIPETs participated in 11 operations at 10 different ports of entry in fiscal year 2016, resulting in almost 2,700 seizures. The total estimated value of the seized items, had they been authentic, would have been over \$85 million. Additionally, MIPET operations in two ports participating in the voluntary abandonments pilot processed an additional 52 abandonments.

<sup>35</sup>Federal internal control standards state that agency management should obtain and process relevant data on its activities. See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, DC: September 2014).

Category	Agency	Activity	Examples of data collected
	U.S. Immigration and Customs Enforcement (ICE)	Commodity or industry-focused national operations	ICE tracks statistics related to these operations, which may include the number and value of seizures made, the number of arrests and prosecutions, and resulting actions, such as convictions, plea bargains, and asset forfeitures.  For example, in fiscal year 2016, under Operation Chain Reaction, ICE initiated 19 criminal investigations, conducted 15 criminal arrests, and helped secure 14 indictments and 9 convictions, as well as 103 seizures of counterfeit goods with a total estimated value of approximately \$3.5 million.
Engaging with international partners	CBP and ICE	Joint international operations	CBP and ICE track the results of operations conducted jointly with international partners. For example, CBP reported that the April 2016 joint operation with China's General Administration of China Customs resulted in over 1,400 seizures. In fiscal year 2016, ICE also conducted a joint investigation with China's Ministry of Public Security into the manufacturing and distribution of counterfeit airbags, which resulted in the arrest of the manufacturer and the seizure of counterfeit airbags.
Undertaking localized pilots and port-led initiatives	CBP	Voluntary abandonments pilot	CBP tracks data on the results of the voluntary abandonments pilot across all locations. In fiscal year 2016, the pilot program resulted in 3,763 voluntary abandonments of goods detained for suspected IPR violations and over \$3 million in estimated interdiction cost savings.
	CBP	Streamlined seizure processing	CBP has taken steps to collect data on the outcome of the expedited seizure processing pilot. Specifically, at the end of fiscal year 2016, CBP collected statistics on the number of seizures processed and cases adjudicated, among other things.
	CBP	Special Operations Team	CBP collects data on the results of the cases worked by the Special Operations Team. In fiscal years 2015 and 2016, the Special Operations Team reported 293 IPR seizures, including over 530,000 items valued at over \$335 million in total. Their efforts also resulted in 25 IP arrests and 22 IP criminal investigations.
	ICE	Field office plans to enhance trade enforcement	ICE has taken steps to track the plans submitted by each of its field offices. According to ICE, all 26 field offices completed their plans to expand their commercial fraud efforts and submitted them to the IPR Center.

Source: GAO analysis of CBP and ICE documents and interviews with CBP and ICE officials. | GAO-18-216

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## CBP Has Conducted Limited Evaluation of Its IPR Enforcement

We found that CBP has conducted limited evaluation of the impact of its efforts to enhance IPR enforcement.<sup>36</sup> In particular, (1) CBP's metrics for tracking the overall effectiveness of its IPR enforcement have limitations, (2) CBP has not systematically evaluated individual IPR enforcement activities, and (3) CBP lacks a defined process for assessing port-led initiatives and sharing information about effective practices.

First, CBP's metrics for tracking the overall effectiveness of its IPR enforcement have limitations. When asked how they assess effectiveness of CBP's IPR enforcement, CBP officials in headquarters cited an increase in the number and value of IPR seizures as an indication of the effectiveness of CBP's IPR enforcement efforts. However, while seizure statistics provide important information about CBP activities, using seizure data to measure the effectiveness of CBP's IPR enforcement has limitations. For example, according to the U.S. Joint Strategic Plan on Intellectual Property Enforcement for fiscal years 2017 through 2019, it is difficult to determine whether an increase in the number of IPR seizures represents a result of more-effective IPR enforcement or reflects a higher volume of trade in counterfeits. Also, according to CBP officials, the increasing shift from seizures of large cargo shipments to seizures of smaller express carrier and mail shipments may partially explain the growth in the number of reported seizures. Further, while CBP officials in headquarters noted that the overall value of IPR seizures has increased, CBP officials in the field observed that presenting CBP seizure statistics in relation to the overall volume of trade could provide additional context on whether CBP is seizing a larger portion of overall shipments or whether increased seizures might be partially attributable to an increase in the volume of trade. Other CBP officials noted that, in theory, effective enforcement could cause the number of seizures to decrease as the

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<sup>36</sup>We recently noted that CBP could improve its efforts to track performance in trade enforcement. Specifically, in June 2017, we noted that CBP's plans across its seven priority trade issues, including IPR enforcement, generally lacked performance targets that would enable it to assess the effectiveness of its enforcement activities. We recommended that CBP include performance targets in its strategic and annual plans; CBP concurred with this recommendation. See [GAO-17-618](#). Additionally, in August 2017, we found that CBP did not have performance targets for its pilot programs related to electronic advance data for international mail, and we recommended that it establish such targets and assess the performance of the pilots against them; CBP concurred with this recommendation. See [GAO-17-606](#).

number of counterfeits entering the country also decreases. Finally, given the volume of trade in counterfeits, CBP officials commented that CBP cannot “seize its way out of” the problem of IP theft.

Second, CBP has not systematically evaluated its individual IPR enforcement activities and has not followed through on previous plans to conduct such evaluations. We identified one instance in which CBP evaluated an IPR enforcement activity. Specifically, CBP officials conducted an analysis of the fiscal year 2016 expedited seizure processing pilot and identified several benefits, including savings of frontline officer hours and time and cost savings, associated with seizure processing. While CBP has acknowledged the need to evaluate other IPR enforcement activities, it has not followed through on previous plans to conduct evaluations. For example, CBP’s 2010 *IPR Enforcement Strategy: 5-Year Plan* laid out goals and corresponding activities that it planned to pursue. CBP outlined specific plans to evaluate all but one of these goals at least once over the course of the 5-year period covered by the strategy. In response to our questions about what activities had been undertaken and how they had been evaluated, CBP could not provide evidence that it had conducted evaluations of any of these activities as planned.

CBP has more recently said that it plans to evaluate other IPR enforcement efforts to better understand their impact. For example, one goal of MIPET and other surge operations is to build the capacity of officers at participating ports. The U.S. Joint Strategic Plan on Intellectual Property Enforcement for fiscal years 2017 through 2019 notes that CBP intends to assess ports after surge operations to determine their effect on long-term interdiction rates. Additionally, although CBP tracks the accuracy of its Automated Targeting System’s IPR targeting models, a CBP official stated that CBP has not evaluated the extent to which its officers use these models at ports of entry. Officials said that such evaluation would be beneficial for determining whether to continue using the models and, if so, whether policy changes are needed to improve their use. The U.S. Joint Strategic Plan on Intellectual Property Enforcement also states that CBP plans to evaluate the voluntary abandonments pilot, and CBP officials noted their intention to evaluate compliance rates in various e-commerce environments to inform future enforcement efforts.

Finally, CBP does not have a standard process for collecting information about the results of port-led initiatives to enhance IPR enforcement and for sharing this information internally. We have previously noted that

agencies can use pilots and demonstration projects to identify innovative ways to improve performance, because pilots and demonstration projects allow for experiences to be evaluated, shared systematically with others, and adjusted as appropriate.<sup>37</sup> CBP's decentralized structure allows it to pilot new activities at individual ports. CBP officials stated that they currently collect information on special operations conducted at ports but that they do not have a standardized process for assessing port-led efforts and sharing information on process improvements. Officials also noted that they sometimes share information about port-led efforts during quarterly phone calls and stated that they had shared information about the expedited seizure processing initiative and the Special Operations Team in such calls. However, they were unable to provide examples of information about other port-led initiatives that had been shared through this process. Officials we interviewed in the field and in headquarters indicated that sharing of such information could be useful.

Federal internal control standards state that agency management should use data it collects to make informed decisions and evaluate the agency's performance in achieving key objectives.<sup>38</sup> According to federal program evaluation guidance, which articulates best practices for program evaluation, a program evaluation is a systematic study using research methods to collect and analyze data to assess how well a program is working and why.<sup>39</sup> Program evaluation is closely related to performance measurement and reporting. Evaluations answer specific questions about program performance; may focus on assessing program operations or results; and can play a key role in strategic planning and program management, providing feedback on both program design and execution. CBP officials acknowledged that further steps to evaluate their IPR enforcement efforts would be useful. Without evaluations of, or more complete information about, the results of its efforts, CBP may not have the information it needs to direct its resources to the most effective enforcement activities.

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<sup>37</sup>GAO, *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, DC: Sept. 9, 2005).

<sup>38</sup>[GAO-14-704G](#).

<sup>39</sup>GAO, *Designing Evaluations: 2012 Revision*, [GAO-12-208G](#) (Washington, DC: January 2012).

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## ICE Has Taken Some Steps to Assess Its Efforts

While ICE officials identified a number of challenges that affect their ability to track the effectiveness of IPR enforcement activities, the agency has taken steps to understand the impacts of some of its efforts. ICE officials noted that evaluating the impacts of specific IPR enforcement activities, including those we reviewed, can be difficult, because these impacts ultimately rely on prosecutors' decisions to pursue criminal charges—that is, decisions over which ICE has no control. ICE officials also noted factors that limit the usefulness of enforcement statistics, such as arrests or convictions for IPR-related offenses, as measures of the effectiveness of ICE's IPR enforcement activities. First, according to ICE officials, prosecutors for some cases that start as IPR investigations ultimately pursue money laundering or other, related charges, because they carry harsher penalties. Second, while ICE collects data on enforcement outcomes by fiscal year, the complicated nature of some investigations often causes a significant amount of time to elapse between an investigation's start and any results. Thus, various IPR enforcement statistics reported for a single fiscal year, such as the number of cases initiated, arrests made, or convictions secured, may be unrelated, making it sometimes difficult to link enforcement outcomes to ICE investigations.

To address some of these challenges, ICE has created a process to track cases it deems significant, which, according to ICE officials, will allow it to better understand the impact of its efforts. ICE officials told us that ICE had developed a set of criteria for what constitutes a significant case and that a panel reviews proposals from the field to determine whether an investigation meets the criteria for a significant case. If a case is deemed significant, ICE tracks it until (1) the criminal activity is disrupted (i.e., actions taken as part of the investigation impede the operations of the target organization) or (2) a criminal organization is dismantled (i.e., the leadership, network, and financial base of the target organization are impeded to the point where it is unable to reconstitute itself). According to ICE, of the 115 IPR-related investigations that were deemed significant cases in fiscal years 2012 through 2016, 59 cases, or about 51 percent, had resulted in a disruption of criminal activity or dismantlement of a criminal organization as of January 2017.

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## CBP and ICE Generally Collaborate on IPR Enforcement, but CBP Is Restricted in Sharing Information with the Private Sector

Our analysis showed that CBP and ICE collaboration on IPR enforcement is generally consistent with selected key practices for interagency collaboration and that the agencies collaborated to address some challenges they have faced with the creation of the Centers. CBP and ICE also coordinate with the private sector in a variety of ways. However, according to private sector representatives we spoke to, restrictions on CBP's information sharing limit the ability of rights holders and e-commerce websites to protect IPR.

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### Collaboration between CBP and ICE on IPR Enforcement Is Generally Consistent with Selected Key Practices

CBP and ICE collaborate on IPR enforcement in ways that are generally consistent with the following selected key practices that we have previously identified as important for enhancing and sustaining collaboration among federal agencies: (1) define and articulate a common outcome; (2) establish mutually reinforcing or joint strategies; (3) identify and address needs by leveraging resources; (4) agree on roles and responsibilities; and (5) establish compatible policies, procedures, and other means to operate across agency boundaries.<sup>40</sup>

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<sup>40</sup>[GAO-06-15](#). Our October 2005 report listed eight practices that can enhance and sustain interagency collaboration. For our current report, we evaluated CBP's and ICE's collaboration on IPR enforcement against five of these practices, which we selected because they were most relevant to this review. We did not evaluate CBP and ICE collaboration on developing mechanisms to monitor, evaluate, and report the results of collaborative efforts, because we cover CBP and ICE monitoring and evaluation of their efforts extensively elsewhere in this review. We did not evaluate the extent to which CBP and ICE reinforce agency accountability for collaborative efforts through agency plans and reports, because two key agency documents had not been completed when we conducted our review. Finally, we did not evaluate the extent to which CBP and ICE reinforce individual accountability for collaborative efforts through agency performance management systems, because doing so would have required implementing additional methodologies that we determined were outside the scope of this review. See app. I for more information about our scope and methodology.

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### Define and Articulate a Common Outcome

In developing the U.S. Joint Strategic Plan on Intellectual Property Enforcement, CBP and ICE, among other agencies, defined and articulated common IPR enforcement outcomes, and they continue to define common outcomes through interagency efforts. The plan's seven objectives, mandated by the Prioritizing Resources and Organization for Intellectual Property Act of 2008, include reducing counterfeit and infringing goods in domestic and international supply chains, among others.<sup>41</sup> For example, through the IPR Center, CBP and ICE coordinate special interagency operations that target IPR violations for specific industries or product types, such as beauty products, pharmaceuticals, or automotive parts (e.g., airbags).

### Establish Mutually Reinforcing or Joint Strategies

CBP and ICE, among other agencies, participated in the development of the U.S. Joint Strategic Plan on Intellectual Property Enforcement for fiscal years 2017 through 2019 and completed a TFTEA-required joint strategic plan. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 requires the U.S. Intellectual Property Enforcement Coordinator to coordinate the development of the Joint Strategic Plan on Intellectual Property Enforcement.<sup>42</sup> This plan serves as a blueprint for the work CBP, ICE, and other federal agencies are to carry out in support of IPR enforcement. The joint strategic plan for fiscal years 2017 through 2019 notes that CBP and ICE will, among other things, engage in joint efforts, such as meeting at least annually with industry stakeholders to discuss potential new opportunities for employing technology to enhance identification and investigation of illicit trade. In addition, TFTEA required CBP and ICE to develop, by February 2017 and every 2 years thereafter, an interagency strategic plan for trade enforcement that includes information related to IPR enforcement.<sup>43</sup> The agencies finalized this strategy in October 2017 and provided us with a copy after we had sent them our draft report for comment.

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<sup>41</sup>Pub. L. No. 110-403, § 303(a)(1).

<sup>42</sup>Pub. L. No. 110-403, § 301.

<sup>43</sup>Pub. L. No. 114-125, §§ 105, 306.

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### Identify and Address Needs by Leveraging Resources

CBP and ICE have leveraged IPR enforcement resources in a variety of ways. For example, according to a strategy issued by the IPR Center, ports and field offices may establish Trade Enforcement Coordination Centers and colocate CBP and ICE personnel to enhance information sharing and foster collaboration on enforcement actions. Officials in three of the locations we visited told us that colocating CBP and ICE staff or temporarily assigning some agency staff to the other agency improves the two agencies' ability to work together. In addition, ICE officials at two of the locations we visited said that CBP officers share their expertise in operating the Automated Targeting System, which CBP officers use more frequently. ICE officials in one location also told us that CBP officers sometimes accompany ICE agents on investigative operations and that the ICE agents without IPR backgrounds find the CBP officers' expertise helpful.

Internally, CBP also has taken steps to leverage resources. For example, CBP conducts surge operations, such as MIPET operations, to temporarily focus resources on specific IPR violations. In addition, according to CBP, the agency created the Centers to increase CBP's industry knowledge.

### Agree on Roles and Responsibilities

CBP and ICE have defined roles and responsibilities for a variety of interagency IPR enforcement efforts. For example, after CBP established the Centers, CBP and ICE jointly issued guidance that explained the Centers' role in CBP and clarified CBP's and ICE's roles and responsibilities in the case-referral process. This guidance describes the process by which CBP may refer IPR-infringement cases to ICE, which is then responsible for determining whether to initiate an investigation. CBP defines intra-agency roles and responsibilities in its Trade Special Operations Standard Operating Procedures, which provide CBP personnel with direction for initiating, developing, and executing national-level trade targeting operations. For example, the standard operating procedures define the targeting roles for three CBP targeting groups—the National Targeting and Analysis Group, the Commercial Targeting and Analysis Center, and the Tactical Trade Targeting Unit—as well as for the Centers.

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Establish Compatible Policies, Procedures, and Other Means to Operate across Agency Boundaries

CBP and ICE have established compatible policies, procedures, and other means to operate across agency boundaries. For example, CBP and ICE developed standard operating procedures for the Commercial Enforcement Analysis Response (CEAR) process—a process to ensure coordination between the agencies when violations are detected, agree on a response best suited to remedy the problem, and follow up on actions taken.

CBP and ICE have also taken steps to address some challenges they encountered following the creation of the Centers. Both CBP and ICE officials noted that the creation of the Centers has posed communication challenges, but the agencies have taken steps to address some of the challenges posed by the new organizational structure. Officials at ports we visited and Centers we interviewed noted that there were challenges associated with integrating the Centers, which operate nationally, into local efforts, like the CEAR process. This is consistent with our June 2017 report, in which we noted that ICE officials have had to adjust to working in the new, nationwide environment of the Centers. For example, ICE officials in one city may be working on a case with an import specialist located in another city. This has diminished cooperation and communication between CBP and ICE and resulted in fewer investigations, according to ICE officials.<sup>44</sup> CBP and ICE have initiated steps to address some of the challenges posed by the new organizational structure. For example, CBP and ICE issued joint guidance in December 2016 outlining how the two agencies would coordinate with one another in light of the creation of the Centers. Additionally, according to CBP officials, the CEAR process was revised in September 2017 with the Centers in a lead role.

CBP officials also noted they have had to adapt to new ways of sharing information within the agency between officers and import specialists at Centers when processing a seizure. Officials at port locations we visited and at the Centers where we conducted interviews noted that the creation of the Centers has enhanced IPR enforcement. However, officials at the Centers and ports also noted challenges related to the sharing of information. For example, Center and port officials stated that sharing

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<sup>44</sup>[GAO-17-618](#).

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information about seizures via email and coordinating remotely—often across time zones—can extend the amount of time needed to process a seizure. Center officials also stated that ports may use different procedures for processing seizures, which can be challenging for the Centers because they operate on a national level and therefore may interact with a number of ports. CBP has initiated steps to address some challenges related to sharing information about seizures. For example, CBP is adding a function to upload photos and forms to its seizures database, allowing for enhanced information sharing across locations, according to CBP officials.

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## CBP and ICE Coordinate with the Private Sector in Several Ways, but Restrictions on CBP Information Sharing Limit Private Sector IPR Enforcement

### CBP and ICE Work with Various Private Sector Entities to Enforce IPR

CBP and ICE work with a variety of private sector entities—including rights holders, industry groups, importers, and e-commerce websites, among others—to enforce IPR and prevent the sale of counterfeit goods on e-commerce websites, according to CBP and ICE documents and our interviews with CBP and ICE officials and private sector representatives. In particular, CBP and ICE work with the private sector to encourage rights holders to record trademarks and copyrights, make determinations on the authenticity of goods, conduct training, and collaborate with e-commerce websites.

- **Recording trademarks and copyrights.** CBP and ICE conduct outreach with rights holders to ensure recordation of trademarks and copyrights in CBP's online recordation system. According to CBP officials, business owners are often unaware of CBP's recordation process, and many may not recognize that CBP prioritizes enforcement of IP that has been recorded with CBP after it has been registered with the U.S. Patent and Trademark Office or the U.S. Copyright Office. CBP engages in efforts to enhance awareness of this process, such as meeting with industry groups, according to CBP. Representatives of one rights holder told us that increasing the number of trademarks recorded with CBP was an important component of the company's enhanced IPR enforcement efforts.
- **Determining goods' authenticity.** CBP officials noted that they often coordinate with rights holders to determine whether a detained item is

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counterfeit. ICE also works with rights holders during criminal investigations, according to ICE officials. When CBP officers and import specialists are uncertain about the authenticity of a particular item, they work with rights holders to evaluate the item, because rights holders have the most detailed knowledge of how a product is made and packaged and therefore can determine whether seemingly authentic goods are in fact counterfeit. Representatives of all of the rights holders we spoke with noted that this was an important part of their interaction with CBP. In addition, representatives of rights holders and e-commerce websites stated that they share information to assist with law enforcement and with potential criminal prosecution.

- **Conducting training.** CBP and ICE coordinate with rights holders, industry groups, and other private sector entities to receive training on topics like detection, supply chains, and packaging. For example, CBP officials said they work with rights holders to arrange trainings about specific products to help officers identify potentially counterfeit goods. CBP reported that in fiscal year 2016, rights holders conducted 11 “webinars” and over 50 trainings for agency personnel to increase CBP expertise regarding their products. CBP also conducted three industry roundtables on IPR enforcement. In addition, to combat the illegal importation and distribution of counterfeit goods, the IPR Center engages in training and outreach to rights holders, manufacturers, importers, and others through its Operation Joint Venture initiative. The IPR Center reported that it reached out to more than 14,000 people at over 300 outreach and training events in fiscal year 2016 through Operation Joint Venture. Representatives of one rights holder we spoke with noted that the company hosts two large conferences every year to discuss issues in IPR enforcement with other private sector entities and U.S. and international law enforcement.
- **Working with e-commerce websites.** CBP and ICE officials noted that their agencies collaborate with e-commerce companies in a number of national and international working groups to better understand the challenges associated with IPR enforcement in e-commerce. In 2016, CBP created an E-Commerce and Small Business Branch within its Office of Trade, which, among other things, is charged with helping CBP understand the complexities resulting from the increasing volume of online trade. Representatives of one e-commerce website stated that the IPR Center, in particular, has been effective in private sector outreach. ICE officials noted that in November 2017, the IPR Center hosted a symposium on e-commerce with over 150 attendees from the private sector and government.

Representatives from most rights holders and websites we spoke with stated that coordination with U.S. agencies is effective and that CBP and ICE work well with the private sector. Rights holders told us they are aware that, due to competing priorities, CBP and ICE are unable to focus as extensively on IPR enforcement as rights-holding companies would like, but they noted that the agencies are willing partners in enforcement as resources permit.

#### Restrictions on CBP Information Sharing Reportedly Limit Private Sector IPR Enforcement

Private sector representatives of rights holders and e-commerce websites stated that restrictions on the amount and type of information that CBP shares about seized goods impede their ability to protect IPR. CBP officials stated that they share information about identified counterfeits with e-commerce websites and rights holders to the extent possible under current regulations. However, the officials noted that there are legal limitations to the amount and type of information they can share, particularly if the e-commerce website is not listed as the importer on forms submitted to CBP. One rights holder representative stated that the information CBP provides, such as importer names from bills of lading, is sometimes not useful, because counterfeiters use fake identities or otherwise mask their identities.

Several private sector representatives stated that receiving additional information from CBP would enhance their ability to protect IPR. Rights holders noted that additional identifying information about the counterfeiter would aid rights-holding companies in their own investigations and enforcement activities. One rights holder said that some European customs agencies are able to share more information than CBP, better enabling rights holders to take action following a seizure.<sup>45</sup> Representatives of one website noted that information on the exterior of seized packages, such as business identifiers on packages destined for distribution centers, would be helpful for identifying groups of counterfeit merchandise from the same seller.

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<sup>45</sup>CBP officials noted, that with regard to an IPR seizure, CBP is legally allowed to share (1) the date of importation, (2) the port of entry, (3) the description of the merchandise, (4) the quantity involved, (5) the name and address of the manufacturer, (6) the country of origin, (7) the name and address of the exporter, and (8) the name and address of the importer. 19 C.F.R. § 133.21.

However, according to CBP officials, CBP cannot provide such information to e-commerce websites. Without this information, websites may be unable to identify additional counterfeit goods from the same seller in their distribution centers. Representatives of one e-commerce website noted that ICE sometimes shares information when it relates to an investigation, but ICE's involvement in the enforcement process begins only after CBP has identified and seized counterfeit items. Representatives of two e-commerce websites stated that, because of the limited information shared by CBP, they may not be aware of IPR-infringing goods offered for sale on their website even if CBP has seized related items from the same seller. CBP officials stated that they have not yet determined whether changes to the amount and type of information provided to e-commerce websites would require regulatory changes or additional legal authorities. These officials noted that CBP is reviewing options for sharing additional information with rights holders and e-commerce websites and is assessing what, if any, additional information would be beneficial to share with private sector entities. They also said that they have discussed differences in CBP's and ICE's information sharing with ICE officials.

Representatives of rights holders and e-commerce websites noted that information shared by law enforcement is critical to private sector IPR enforcement, such as pursuing civil action against a counterfeiter or removing counterfeit items from websites. Congress has also demonstrated an interest in CBP's sharing information with the private sector in certain instances. Specifically, in TFTEA, Congress provided CBP with explicit authority to share certain information with trademark and copyright owners prior to completing a seizure.<sup>46</sup> However, CBP has not yet completed an assessment of additional information that would be beneficial to share with the private sector or determined whether it can share such information under current regulations and statutes. As a result, CBP does not know whether it needs to revise its regulations or seek additional authorities.

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## Conclusions

Counterfeit goods provide a lucrative market for criminal activity and can pose serious risks to consumers. Growth in e-commerce has changed the

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<sup>46</sup>This authority applies only with respect to goods suspected of infringing a trademark or copyright that is recorded with CBP. Pub. L. No. 114-125, § 302(a).

way counterfeiters interact with consumers, and the accompanying increase in the volume and sophistication of counterfeit goods has created challenges for CBP and ICE enforcement. While CBP and ICE have undertaken activities to enhance IPR enforcement and collected some performance data on their activities, CBP has conducted limited evaluation of its efforts. Managing the huge volume of both legitimate and counterfeit goods entering the country requires efficient use of resources. Without better information on the effectiveness of its activities, CBP may not be able to focus its resources on the most efficient or effective efforts. Additionally, without collecting and disseminating effective practices resulting from port-led initiatives, CBP may be missing an opportunity to scale up or improve on existing efforts.

With the growth of e-commerce, the private sector—including rights holders and e-commerce websites—can play an important role in helping to enforce IPR and protect consumers. Information shared by CBP plays an important role in facilitating private sector enforcement, but CBP has not determined what, if any, additional information would be beneficial to share with private sector entities. Until it completes an assessment of information sharing, CBP will not know whether sharing additional information requires regulatory or legal changes.

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## Recommendations for Executive Action

We are making the following two recommendations to CBP:

The Commissioner of CBP should take steps to evaluate the effectiveness of CBP's IPR enforcement efforts, such as by improving its metrics to track the overall effectiveness of its IPR enforcement efforts, evaluating selected activities to enhance IPR enforcement, and developing a process to assess and share information on port-led initiatives to enhance IPR enforcement (Recommendation 1)

The Commissioner of CBP, in consultation with ICE, should assess what, if any, additional information would be beneficial to share with the private sector and, as appropriate, take action to enhance information sharing, where possible, such as by proposing regulatory revisions or requesting additional legal authorities from Congress. (Recommendation 2)

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## Agency Comments

We provided a draft of this report to the Department of Homeland Security for comment. In its comments, reproduced in appendix III, the department concurred with our recommendations to (1) take steps to evaluate the effectiveness of CBP's IPR enforcement efforts and (2) assess what, if any, additional information would be beneficial to share with the private sector. The department also described actions that CBP plans to take to implement our recommendations. CBP and ICE also provided technical comments, which we incorporated as appropriate. Our draft report also included recommendations to CBP and to ICE to complete a joint strategic plan, as required by TFTEA. After the agencies received our draft report, they notified us that this plan had been completed in October 2017, and they provided us with a copy of the plan. As a result, we removed these recommendations from the final report. We also provided relevant excerpts of the draft report to the private sector companies mentioned in it and incorporated their technical comments as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees and the Secretary of Homeland Security. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>. If you or your staff has any questions about this report please contact me at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Sincerely yours,



Kimberly Gianopoulos  
Director, International Affairs and Trade

## Appendix I: Objectives, Scope, and Methodology

We examined (1) what is known about counterfeit goods entering the United States and the challenges they present, (2) efforts U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) have undertaken to enhance intellectual property rights (IPR) enforcement and the extent to which they have assessed the results of these efforts, and (3) the extent to which CBP and ICE collaborate on IPR enforcement as well as ways in which they coordinate with the private sector in enforcing IPR.<sup>1</sup>

To examine what is known about counterfeit goods that enter the United States and the challenges they present, we reviewed U.S. government reports and strategic plans, including those produced by CBP, ICE, the National Intellectual Property Rights Coordination Center (IPR Center), and the Office of the U.S. Intellectual Property Rights Enforcement Coordinator. We also reviewed reports on the counterfeits market and illicit trafficking from international organizations, including the Organisation for Economic Cooperation and Development and the United Nations Office on Drugs and Crime. In addition, we analyzed data from annual CBP public reports on IPR seizures from fiscal years 2012 through 2016 to identify the types of goods seized, the goods' countries' of origin, the modes of transportation used to import the goods, and the value of the goods. We analyzed data from CBP's public IPR reports because, according to CBP officials, those data are refined prior to the issuance of the reports and therefore are more accurate than data extracted directly from CBP's seizure database. We reviewed the data, conducted electronic tests of the data, and interviewed knowledgeable agency officials to determine that these data were sufficiently reliable for our purposes. We interviewed CBP and ICE officials in Washington, D.C., and in field locations in Chicago, Illinois; Los Angeles, California; Miami, Florida; and New York, New York, to discuss the composition of IPR-infringing goods and challenges the agencies face in enforcing IPR. We

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<sup>1</sup>For the purposes of this report, we use the term "counterfeit goods" to refer to any physical goods that violate a trademark or copyright authority. We did not review "gray market" goods—items legally manufactured abroad and imported into the United States without the consent of the trademark holder—because they are not counterfeit goods and are therefore outside the scope of this review.

selected these locations on the basis of the number and composition of IP seizures in each location, the availability of multiple ports of entry covering different modes of transportation, and geographic diversity. We also interviewed representatives of IP rights–holding companies and e-commerce websites to discuss the challenges counterfeit goods pose in online marketplaces.

In addition, in an attempt to understand the frequency with which consumers may unknowingly encounter counterfeit products online, we used investigative tools and techniques to conduct nongeneralizable, undercover purchases of consumer goods from third-party sellers on popular consumer websites and asked the rights holders to test the goods to determine whether they were authentic or counterfeit.

- We selected four trademarked consumer products of which CBP often seizes counterfeits, according to CBP seizure data and CBP officials, and that represented a range of consumer goods: Nike Air Jordan shoes, Yeti travel mugs, Urban Decay cosmetics, and UL–certified phone chargers.
- We selected five popular e-commerce websites that (1) were among the top 50 consumer shopping websites as of March 2017, according to Alexa, a data analytics company, and (2) received a rating of “B” or better from the Better Business Bureau. From the top 50 consumer shopping websites, we chose those that (1) offered platforms for third-party sales, (2) sold a variety of trademarked products to the public, and (3) offered a minimum of two items from at least two different third-party sellers.<sup>2</sup>
- We purchased, and had rights holders test, a total of 47 items from third-party sellers on the five e-commerce websites.<sup>3</sup> We selected items that were advertised as new, brand-name items, and we generally selected the lowest-priced items, factoring in both purchase price and shipping while also targeting a variety of sellers and product

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<sup>2</sup>The five e-commerce websites we selected were Amazon.com, Walmart.com, Sears Marketplace, Newegg.com, and eBay.com.

<sup>3</sup>All 47 items we purchased were shipped from U.S. addresses, signifying that any items manufactured outside the United States were imported prior to being sent to us. Rights holders confirmed that at least a portion of the supply of authentic versions of the products purchased are manufactured abroad. Additionally, according to a 2011 IPR Center report, most physical counterfeit goods are manufactured abroad. Final production of some counterfeit items, such as applying labels and packaging items, may occur after items are imported into the United States.

options.<sup>4</sup> We did not select items whose cost exceeded the manufacturer's suggested retail price or exceeded that of an identical item sold and fulfilled by the host website. Where seller ratings were available, we selected items from third-party sellers with ratings of 60 percent (or the equivalent, such as 3 of 5 stars) or higher; on average, the sellers of the items we selected had customer ratings above 90 percent as of August 2017.<sup>5</sup>

- For each selected product, we purchased a minimum of two items and a maximum of five items from different third-party sellers on any of the five e-commerce websites that listed the product. Across all the websites, we purchased a minimum of eight items for each product. On each website, we purchased a maximum of one item from any third-party seller.
- We contacted the companies that held the trademark or copyright for each of the four products, asking for their assistance in reviewing the items we purchased to determine whether they were authentic or counterfeit. These companies made their assessments with no knowledge of the websites or sellers from which we purchased the items. We discussed the results of these tests with representatives of the rights-holding companies and the e-commerce websites where we purchased the items.

To examine the efforts CBP and ICE have undertaken to improve IPR enforcement and the extent to which they have assessed the results of those efforts, we reviewed agency and government-wide strategic plans for IPR enforcement, and we spoke with agency officials in headquarters and selected field locations. We reviewed a selection of eight CBP and ICE activities, which we grouped under four major areas of effort on the basis of the activities highlighted in these strategic plans and agency interviews. The list of activities we reviewed does not constitute the entirety of activities undertaken by CBP and ICE to enhance IPR enforcement and is intended to highlight significant efforts. We did not

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<sup>4</sup>Because we bought only a single item from each third-party seller on each website, we did not always select all of the lowest-priced products on each website. For example, if one seller had two listings that were less expensive than the next-lowest-priced item, we purchased only one item from that seller and purchased the next-lowest-priced item from a different third-party seller.

<sup>5</sup>Ten of the 47 sellers from whom we made purchases did not have seller ratings as of August 2017, largely because the website did not offer ratings or the seller had not yet been rated. Of the 10 items sold by unrated sellers, rights holders determined that 5 items were authentic and 5 were counterfeit.

review activities that officials told us were in early stages, because it would not be reasonable to expect the agencies to have assessed the results of those activities. Our discussion of activities does not include activities related to private sector engagement, which we discuss elsewhere in the report. We reviewed documentation pertaining to the eight activities we reviewed, and we interviewed CBP and ICE officials about the activities and any efforts to assess their results. We reviewed federal internal control standards and prior GAO reports to identify good practices for assessing the results of activities, and we determined the extent to which CBP and ICE had followed those practices.

To examine the extent to which CBP and ICE follow selected practices for effective interagency collaboration, we reviewed agency documentation and spoke with CBP and ICE officials in headquarters and in selected field locations. We reviewed prior GAO reports to identify effective practices for interagency collaboration and selected five of eight practices that we had identified in a fiscal year 2006 report.<sup>6</sup> The five practices we selected as most relevant to the ways in which CBP and ICE coordinate with one another are (1) establish mutually reinforcing or joint strategies; (2) define and articulate a common outcome; (3) agree on roles and responsibilities; (4) identify and address needs by leveraging resources; and (5) establish compatible policies, procedures, and other means to operate across agency boundaries. We did not evaluate CBP and ICE's interagency collaboration against the remaining three practices identified in our fiscal year 2006 report.<sup>7</sup> We also assessed CBP's intra-agency collaboration against three of the five selected practices on the basis of interviews with CBP officials in headquarters and selected field locations and reviews of CBP documentation. We did not evaluate internal CBP collaboration against the other two practices—establish mutually

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<sup>6</sup>[GAO-06-15](#).

<sup>7</sup>The remaining three practices are (1) reinforce individual accountability for collaborative efforts through performance management systems, (2) develop mechanisms to monitor, evaluate, and report on results, and (3) reinforce agency accountability for collaborative efforts through agency plans and reports (see [GAO-06-15](#)). We did not evaluate CBP and ICE collaboration on developing mechanisms to monitor, evaluate, and report the results of collaborative efforts, because we cover CBP and ICE monitoring and evaluation of their efforts extensively elsewhere in this review. We did not evaluate the extent to which CBP and ICE reinforce agency accountability for collaborative efforts through agency plans and reports, because two key agency documents had not been completed when we conducted our review. Finally, we did not evaluate the extent to which CBP and ICE reinforce individual accountability for collaborative efforts through agency performance management systems, because doing so would have required implementing additional methodologies that we determined were outside the scope of this review.

reinforcing or joint strategies and define and articulate a common outcome—because we determined that such practices were not applicable to intra-CBP collaboration. To determine the ways in which CBP and ICE collaborate with the private sector, we interviewed CBP and ICE officials in headquarters and selected field locations, reviewed CBP and ICE documentation, and interviewed representatives of rights-holding companies and e-commerce websites.<sup>8</sup>

We conducted this performance audit from September 2016 to January 2018 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. We conducted our related investigative work in accordance with investigation standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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<sup>8</sup>We spoke with all four rights holders of the products we purchased. We also reached out to all five e-commerce websites from which we made purchases, and three of the websites provided information on their collaboration with law enforcement.

## Appendix II: Consumer Information and Advice for Avoiding Counterfeits Online

According to consumer protection organizations and government agencies, consumers can take the following steps to try to limit the risks of buying counterfeit goods online.<sup>1</sup>

1. Locate the listed retailer on the product page and determine whether it is a third party. “Fulfilled by” does not mean “Sold by.”
2. Look for external consumer trust–building features, such as a mailing address or telephone number, real-time customer service, customer reviews, or third-party accreditation that can be verified through the accreditor.
3. Buy products only from authorized retailers, such as official brand stores. If uncertain whether a retailer acquired its product from a legitimate distributor, ask for verifiable information from the retailer about the source of the goods.
4. Be aware of pricing. While some counterfeiters may try to legitimize their merchandise with realistic prices, others may attract buyers with low prices. If a price seems too good to be true, it probably is.
5. During checkout, ensure your payments are submitted via a website beginning with https:// and look for a lock symbol in your web browser.
6. After receiving an item, look for signs that it may be counterfeit, such as irregular brand markings; missing “use by” dates, safety seals, or markings; and missing warranty information. Verify the item’s serial number by checking the manufacturer’s website.
7. If you suspect that you have purchased a counterfeit product, notify the brand owner and contact the place of purchase.<sup>2</sup> Also, report the

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<sup>1</sup>In compiling this list, we gathered information from the U.S. Chamber of Commerce, the International Trade Administration, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the U.S. Consumer Product Safety Commission, the National Intellectual Property Rights Coordination Center, the European Consumer Centre, and Consumer Reports.

<sup>2</sup>Rights holders and e-commerce companies may provide reporting tools and have consumer protection policies.

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counterfeit at <http://www.iprcenter.gov/referral>. To report an unsafe consumer product, visit <http://www.SaferProducts.gov>.

According to the National Intellectual Property Rights Coordination Center, word-of-mouth is the best way to spread information about illegitimate products as well as sources of safe, affordable, and legal alternatives. For further information, consult <http://www.stopfakes.gov>.

## Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

December 27, 2017

Kimberly Gianopoulos  
Director, International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management's Response to Draft Report GAO-18-216, "INTELLECTUAL  
PROPERTY: Agencies Can Improve Efforts to Address Risks Posed by Changing  
Counterfeit Market"

Dear Ms. Gianopoulos:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the work of the U.S. Government Accountability Office (GAO) in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of the interagency collaboration between U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) on enforcement of intellectual property rights (IPR), including their joint efforts in developing a national IPR enforcement strategy. Counterfeit and pirated goods are associated with smuggling and other criminal activities, and the proceeds of such often fund criminal enterprises. DHS is committed to countering the trade in these goods which threatens America's innovation economy, the competitiveness of our businesses, the livelihoods of U.S. workers, and, in some cases, national security and the health and safety of consumers.

The draft report contained two recommendations with which the Department concurs. Attached find our detailed response to each recommendation.

Again, thank you for the opportunity to comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim H. CrumPACKER".

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to the Recommendations  
Contained in GAO-18-216**

GAO recommended that the Commissioner of U.S. Customs and Border Protection:

**Recommendation 1:** Take steps to evaluate the effectiveness of CBP's IPR enforcement efforts, such as by improving its metrics to track the overall effectiveness of its IPR enforcement efforts, evaluating selected activities to enhance IPR enforcement, and developing a process to assess and share information on port-led initiatives to enhance IPR enforcement.

**Response:** Concur. CBP's metrics for evaluating the effectiveness of its IPR enforcement efforts include the quantity and value of counterfeit and pirated goods seized for IPR violations, the results of IPR enforcement operations, and a breakdown of the modes of transportation in which IPR violations resulted in seizure. CBP's Office of Trade (OT) is implementing a comprehensive internal system for reporting and tracking trade enforcement metrics (including internal law enforcement sensitive IPR enforcement metrics) which will improve CBP's ability to monitor and assess overall IPR effectiveness. With the rapid worldwide expansion of internet and mobile technologies, companies have made significant changes to their business models to focus on shipping of small packages directly to customers. To adapt to these changes, CBP will issue an e-commerce strategy, developed by the CBP OT's E-Commerce and Small Business Branch. In addition, building on knowledge gained from the voluntary abandonment pilot program, CBP will continue to develop operational efficiencies, particularly regarding the processing of shipments of IPR-infringing goods in small packages, and will provide guidance to the ports on using alternative methods to seizure. CBP will also share information on port-led initiatives through regular inter-office conference calls involving key personnel that are assigned to IPR enforcement. Estimated Completion Date (ECD): September 30, 2018.

**Recommendation 2:** CBP, in consultation with ICE, should assess what, if any, additional information would be beneficial to share with the private sector and, as appropriate, take action to enhance information sharing, where possible, such as by proposing regulatory revisions or requesting additional legal authorities from Congress.

**Response:** Concur. CBP OT, as well as the Offices of Field Operations and Chief Counsel, in consultation with ICE, will assess where deficiencies in information sharing exist and what, if any, additional data can be provided to the private sector. CBP will determine whether revisions to current regulations and additional legal authorities from Congress are necessary in order to make additional data available to right holders. Upon completion, if additional data can be provided to the private sector, CBP, in consultation with ICE, will develop a process for sharing this additional information with the private sector. ECD: September 30, 2018.

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## Appendix IV: GAO Contact and Staff Acknowledgements

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### GAO Contact

Kimberly Gianopoulos, (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov).

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### Staff Acknowledgements

In addition to the contact named above, Joyee Dasgupta (Assistant Director), Kara Marshall (Analyst-in-Charge), Kristen Timko, Katie Bassion, Reid Lowe, Sarah Collins, Neil Doherty, Ramon Rodriguez, Helina Wong, Julie Spetz, Kevin Loh, Wayne McElrath, Grace Lui, James Murphy, Mary Moutsos, Justin Fisher, Rachel Stoiko, and Sarah Veale made key contributions to this report.

# Appendix V: Accessible Data

## Data Tables

**Data Table for Figure 2: Seizures of Intellectual Property Rights–Infringing Goods, by Reported Country of Origin, Fiscal Years 2012-2016**

	China	Hong Kong	All Others	China	Hong Kong	China and Hong Kong combined	All others
2012	12,218	8,427	2,203	53%	37%	90%	10%
2013	13,813	9,163	1,385	55%	39%	94%	6%
2014	10,520	8,683	3,937	45%	38%	83%	17%
2015	14,164	9,724	4,977	49%	34%	83%	17%
2016	16,417	11,462	3,681	52%	36%	88%	12%

## Agency Comment Letter

Text of Appendix III: Comments from the Department of Homeland Security

Page 1

December 27, 2017

Kimberly Gianopoulos

Director, International Affairs and Trade

U.S. Government Accountability Office 441 G Street, NW

Washington, DC 20548

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Jim H. CRUMPACKER, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

Attachment

Page 2

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**Response: Concur.**

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**Response: Concur.**

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