

Testimony of

**Brad Brekke
Vice President
Assets Protection
Target Corporation**

**before the
House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security**

“Organized Retail Theft: Fostering a Comprehensive Public-Private Response”

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Washington, DC 20515**



INTRODUCTION

I am pleased to provide written testimony on behalf of Target and to represent the Coalition Against Organized Retail Crime.

By way of background, the Coalition Against Organized Retail Crime, which has been together now for six years, is comprised of national manufacturing and retail organizations as well as individual companies from both sectors. In total, there are 32 members. A roster of all Coalition members can be found at the end of this written testimony. We are also pleased to recognize the formal support of the International Association of Chiefs of Police (IACP) in our effort to control retail crime and the Internet fencing of stolen property.

The Coalition wishes to commend Chairman Scott and Ranking Member Forbes for scheduling today's hearing. This new focus on this issue is a very timely and appropriate response to the problem of Organized Retail Crime that is victimizing practically every segment of the retail community from supermarkets and retail drug stores, to mass merchandisers, department stores, specialty shops, boutiques, and convenience stores among others. We commend the Chairman, Ranking Member, and this Committee for recognizing the runaway problem of organized retail crime (ORC) and its causes.

I would like to discuss three important issues concerning this problem:

- First, I will briefly describe the nature of retail crime today and how it has evolved;
- Second, I would like to describe our substantial efforts to combat retail crime and explain how the Internet fuels its dramatic growth.
- Finally, I will explain how we can join together in encouraging on-line auctions sites to help protect our communities by preventing their sites from becoming markets for stolen goods and without expending valuable criminal justice resources on more arrests and prosecutions.

BACKGROUND ON ORC

First of all, when I refer to Organized Retail Crime, I do not intend to discuss the different phenomenon of what is commonly referred to as "shoplifting." Obviously, this type of theft is well understood and within the experience of most retailers. Organized retail crime, however, refers to the growing problem of mostly gangs but sometimes individuals who are engaging in illegally obtaining retail merchandise through both theft

and fraud in substantial quantities and as part of a commercial enterprise in which the merchandise is resold through large scale distribution networks. The tactics can vary from multi-person diversionary efforts, to abuse of emergency exit doors and employing counter measures such as foil lined bags to defeat electronic merchandise protection tags. These criminal commercial enterprises are of a different nature and a different scale from what we have come to understand as “shoplifting.” As I will explain, the size of these enterprises is often a function of their ability to redistribute their stolen merchandise. And the Internet has transformed their ability to resell their stolen goods.

Yesterday, a for-profit retail theft may have focused on high-value individual items such as a watch or electronics that might garner economic return to the thief even if they had to sell it at a heavy discount. Today, commercial ORC gangs exhibit modern practices of inventory management to help them meet the growing demand for the entire range of stolen merchandise such as consumer electronics, heartburn medication, Dyson vacuum cleaners, printer cartridges, razors, DVDs, dental white strips, anti-histamines, over-the-counter painkillers, diabetes test kits, and increasingly, baby formula. The inclusion of baby formula is troubling since there is little likelihood that attention is paid to whether it is safely stored prior to resale.

Another interesting development is that some organized property rings actually use advanced “just-in-time” inventory control systems in which they first accept orders for goods and only then do they make up “shopping lists” that they direct their boosters to go out and steal.

These commercial rings are a growing problem throughout the United States affecting many sectors of the retail community from supermarkets and chain drug stores to mass merchandisers and specialty stores. Precise measurements of the true scope of this problem are impossible due to the inherently secretive nature of what is, after all, a criminal enterprise. Not surprisingly, criminal gangs do not publicly report either their sales or their thefts. Studies by different academics estimate the scope of the problem at different levels but consistently in the billions of dollars annually. The Federal Bureau of Investigation (FBI) interstate task force recently estimated that Organized Retail Crime accounted for up to \$30 billion in losses annually at the store level. By any measure, it is a significant issue affecting our communities.

RETAIL INDUSTRY EFFORTS

For years, the retailing industry has vigorously worked to control organized retail crime and other forms of retail theft. According to industry studies, retailers collectively spend an estimated \$12 billion annually to combat retail theft. These efforts include but are not limited to the following:

- new technologies in tamper resistant packaging,
- labeling technologies,
- merchandise protection fixtures,
- high tech surveillance camera with sophisticated computer analytics and remote monitoring,

- sophisticated background investigations for employees to identify ORC ring members,
- many thousands of dedicated loss prevention professionals and investigators,
- we at Target have even invested millions in establishing forensic laboratories with latent fingerprint and other capabilities that support not only our own ORC investigations but also other law enforcement prosecutions all at no charge to law enforcement.

Any suggestions that retailers are reducing their efforts to fight retail theft are erroneously misconstruing data by narrowly focusing on loss prevention staffing only. These estimates fail to consider the expenditures against retail theft that are part of our construction, human resources and information technology budgets. This is an enormously important and expensive effort for the retail industry. There is no question that these efforts will continue and grow. However, the continuing growth of retail crime and the damage it causes to communities must cause us all to recognize that something needs to be done to control the resale market for stolen goods.

E-FENCING

As has been recently reported in network news stories reported by both CNN and CNBC, (see attached) the explosive growth in retail crime has been fueled by the advent of technology in general and the Internet specifically.

Before the internet, the market for stolen goods was limited by several critical factors:

- First, buyers and sellers of stolen goods had to physically interact with one another face-to-face and this naturally limited the overall size of the market for stolen goods;
- Second, the face-to-face nature of stolen goods market meant buyers could usually recognize the questionable legality of the merchandise offered and were willing to pay much less for goods (generally in the range of \$.30 on the dollar); this made profits lower;
- Finally, the personal nature of the stolen goods market, along with state and local pawnshop regulations, meant that sellers of stolen goods had to identify themselves and identify their goods with serial numbers.

In the “bricks and mortar” world, it was difficult to operate with anonymity.

Today, that has all changed. The Internet has created a world wide market for stolen goods in which the sellers are anonymous and there is an enormous universe of buyers who are generally unaware of the nature of the goods sold. These unwitting buyers are usually willing to pay twice (close to \$0.70 on the dollar) that which was previously available to fences in the “bricks and mortar” world.

Moreover, Internet fences are routinely evading the traditional laws used by state and local governments to protect our communities by controlling sales of stolen property.

Virtually all state and local pawnshop regulations require sellers to identify themselves and identify the serial numbers of goods sold. But on the Internet, there are currently no controls. This means that there are no limits on fences operating in the Internet and no assurances that the property consumers are buying is not stolen.

Not surprisingly, the enormous new profits available to organized retail crime rings are resulting in more and more boosters in the stores.

PROPOSED REQUIREMENTS FOR ONLINE AUCTION COMPANIES

Retailers, in partnership with law enforcement, will continue to fight this problem. But the growth in organized retail crime - fueled by technology and Internet fencing - has reached such a scale that retail and law enforcement cannot successfully fight this problem one booster and one fence at a time.

Consideration of two statistics can put in perspective the scale of this problem relative to available criminal justice resources.

- In the most recent year, Target alone made approximately 75,000 theft apprehensions in its stores.
- By comparison, the total number of criminal cases in all federal district courts across the country is usually less than 60,000 cases in any one year.

What this means is that even if all of the U.S. Attorneys across the country stopped prosecuting bank robberies, fraud, drug trafficking and even terrorism, there still would not be enough capacity to prosecute even the apprehensions made by Target. Obviously, the entire industry makes hundreds of thousands of apprehensions annually. But sending even more people into the criminal justice system is not the answer and not what we are proposing. This also explains why cooperation from the Internet auction industry in individual cases and only when requested by law enforcement is also insufficient. We need to change behavior and the internet auction sites need to join us in this effort.

It was once said by some insightful observer that: "If the only tool you have is a hammer, then all of your problems begin to look like nails." Mr. Chairman, we can't keep addressing this issue by investigating and apprehending one fence at a time; we need to add a new approach to this problem.

Mr. Chairman, we need to have responsible internet auction sites make modest changes to their sites to help reduce sales of stolen property in the first place. And we can do this by applying traditional models of stolen property regulation to the Internet and inject some needed transparency to these transactions.

And, Mr. Chairman, transparency works. It is already being effectively used on other parts of the Internet. Today, every vehicle listed for sale on eBay Motors is accompanied by a Vehicle Identification Number (VIN) [the VIN itself can be verified

for accuracy through Carfax] which permits ready and automated identification of any stolen car posted for sale. This requirement of posting identifying information has virtually eliminated the sale of stolen vehicles through this service. It could have the same effect in preventing sales of stolen iPods and vacuum cleaners.

Opponents to this proposal frequently cite alleged privacy concerns to oppose these requirements but the United Kingdom has employed a similar requirement for high volume Internet sellers for years without adverse consequences. Moreover, our suggestion is to limit the required identification of sellers to only the high dollar volume sellers. This will protect the privacy of infrequent sellers while preventing high volume commercial sellers from hiding in unnecessary anonymity.

These requirements are not unorthodox. As I mentioned earlier, these requirements, identification of sellers and providing serial numbers, are the very same features that are common in almost all state and local pawnshop laws. These simple requirements have been used by virtually all communities to protect themselves from property crime problems. These are the same requirements that sellers are evading by going on-line. This means that the advent of e-fencing has taken this traditional state and local issue and made it impossible for local law enforcement to control. Every local fencing operation with access to the Internet can now operate internationally and beyond the reach of local law enforcement. A federal solution is necessary to protect our communities.

We believe that law enforcement needs new tools to prosecute irresponsible internet auction sites and marketplaces that refuse to exercise due diligence over persons using their facilities. In this regard, what we are suggesting is that Internet auction sites who fail to exercise due diligence to prevent the facilitation of stolen property sales should be treated not unlike financial institutions that fail to exercise due diligence to identify and prevent money laundering by their customers.

RETAILERS WANT TO PARTNER WITH INTERNET AUCTION SITES

I want to make clear that we are not seeking the criminal prosecution of responsible Internet auction sites. Rather, we want to encourage them to join us in protecting our communities. In fact, we would expect that responsible Internet auction sites and their customers would welcome this opportunity to reduce the sale of stolen property online.

Retailers have already formed critical partnerships that will pay important dividends under the proposed legislation, if passed. For example, certain Coalition members, such as the National Retail Federation (NRF), the Retail Industry Leaders Association (RILA) and the Food Marketing Institute (FMI) have recently partnered with the Federal Bureau of Investigations (FBI) to create a national data base, the Law Enforcement Retail Partnership Network (LRPNet) that tracks where ORC crimes are being committed throughout the country. This same database could be used to house and match the serial numbers of stolen merchandise to the serial numbers posted by online

auctions sites. The partnership with the FBI could also be relied upon to ensure that the serial numbers and this database are used only to control criminal conduct and not misused for other purposes.

CONCLUSION

While retailers will continue to invest billions in trying to prevent organized retail crime and apprehend and prosecute the perpetrators, it is clear that the problem can not be solved by fighting these cases one by one and only in the shopping aisles. At the rate the Internet is growing and the constantly and rapidly escalating scale at which any criminal is now able to operate, it is clear that there is an immediate need to update the law to cover these 21st century criminal operations.

We can do this by applying proven methods such as transparency and the posting of serial numbers that permit the tracing of stolen property. These modest measures have already been proven to be effective, even in the Internet age. And these measures can reduce property crime without more arrests and incarceration.

Coalition Against Organized Retail Crime

- **Abbott Laboratories**
- **Ahold USA, Inc.**
- **Consumer Healthcare Products Association**
- **Cosmetic, Toiletry, and Fragrance Association**
- **CVS/pharmacy**
- **Duane Reade**
- **Eastman Kodak Company**
- **Eckerd Corporation**
- **Food Lion, LLC**
- **Food Marketing Institute**
- **Giant Food LLC**
- **Giant Food Stores LLC**
- **GlaxoSmithKline**
- **Grocery Manufacturers/Food Products Association**
- **International Formula Council**
- **National Association of Chain Drug Stores**
- **National Association of Convenience Stores**
- **National Community Pharmacists Association**
- **National Retail Federation**
- **Nestle**
- **Publix Super Markets, Inc.**
- **Retail Alliance**
- **Retail Industry Leaders Association**
- **Rite Aid Corporation**
- **Safeway Inc.**
- **Security Industry Association**
- **The Stop & Shop Supermarket Company**
- **Target Corporation**
- **Tops Markets, LLC**
- **Wal-Mart Stores, Inc.**
- **Walgreen Co.**