



# Organized Retail Crime

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January 17, 2012

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R41118

## Summary

Organized retail crime (ORC) involves the large-scale theft of everyday consumer items and potentially has much broader implications. Organized groups of professional shoplifters, or “boosters,” steal or fraudulently obtain merchandise that is then sold, or “fenced,” to individuals and retailers through a variety of venues. In an increasingly globalized society, more and more transactions take place online rather than face-to-face. As such, in addition to relying on physical resale markets, organized retail thieves have turned to online marketplaces as means to fence their ill-gotten goods.

ORC exposes the United States to costs and harms in the economic, public health, and domestic security arenas. The exact loss from ORC to the retail industry is unknown, but estimates have ranged from \$15 billion to \$37 billion annually. The economic impact, however, extends beyond the manufacturing and retail industry and includes costs incurred by consumers and taxes lost by the states. The theft and resale of stolen consumable or health and beauty products such as infant formula (that may have been repackaged, relabeled, and subjected to altered expiration dates) poses potential safety concerns for individuals purchasing such goods from ORC fences. In addition, some industry experts and policy makers have expressed concern about the possibility that proceeds from ORC may be used to fund terrorist activities.

Current efforts to combat ORC largely come from retailers, online marketplaces, and law enforcement alike. Retailers responding to the 2010 National Retail Security Survey spent an average of 0.46% of their annual sales on loss prevention measures. These loss prevention costs are ultimately borne by consumers in the form of higher prices on goods. Also, online marketplaces report taking various measures to combat the sale of stolen and fraudulently obtained goods on their websites, including educating sellers and consumers, monitoring suspicious activity, and partnering with retailers and law enforcement. Combating retail theft has traditionally been handled by state law enforcement under state criminal laws. Some, however, have begun to question whether state laws—which vary in the quantity of monetary losses that constitute major theft—are adequate to combat ORC.

While many agree that ORC is a national problem, there is debate over the federal government’s role in deterring ORC and sanctioning various actors that may be involved in committing or aiding these crimes. One policy issue facing Congress is whether criminalizing organized retail crime in the *U.S. Code* would allow for more effective investigation and prosecution of these criminals. Congress may also wish to consider whether regulating resale marketplaces (online markets, in particular), to require such entities to increase information sharing with retailers and law enforcement, would strengthen investigations and prosecutions of ORC as well as decrease the prevalence of retail thieves relying on legitimate online marketplaces to fence stolen goods.

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## Introduction

Organized retail crime (ORC), often referred to as organized retail theft, typically refers to large-scale retail theft and fraud by organized groups of professional shoplifters, or “boosters.”<sup>1</sup> It is an umbrella term encompassing a variety of retail crimes, including theft, gift card fraud, receipt fraud, ticket switching,<sup>2</sup> and cargo theft, just to name a few. Stolen and fraudulently obtained goods may be taken not only from retailers, but from manufacturers and distributors as well. The organized crime rings resell this illegally acquired merchandise via a variety of “fencing” operations such as flea markets, swap meets, pawn shops, and online marketplaces; these goods are sold to both individual buyers as well as retailers—potentially the very retailers from where the merchandise was originally stolen. ORC differs fundamentally from shoplifting in that amateur shoplifters tend to steal merchandise for personal consumption. Boosters, on the other hand, are professional thieves who make money by stealing merchandise from retail and other venues and reselling it to fences who in turn sell the goods—through legal or illegal economic outlets—for a fraction of the retail cost.

Organized retail crime exposes the United States to economic, public health, and domestic security dangers. It is a national problem, not only for retailers, but for manufacturers, consumers, taxpayers, and the states as well. According to one industry survey, about 95% of retailers surveyed in 2011 reported having been victimized by ORC in the previous 12 months. This is an increase from the about 90% that reported victimization in 2010.<sup>3</sup> Estimates of retail losses to ORC range from as low as \$15 billion to as high as \$37 billion annually.<sup>4</sup> And this is the loss to retailers alone. The monetary loss, however, extends beyond the retail industry to the taxpayers and states. Consumers pay for these losses in the form of higher prices on goods, and states lose the tax revenue that would otherwise be generated from the sale of these goods by legitimate retailers.

In addition to the economic impact of ORC, the theft and resale of stolen consumable or health and beauty products, such as infant formula, may pose safety risks to individuals purchasing such goods from ORC fences. This is because such products may have been repackaged, relabeled, subjected to altered expiration dates, or stored improperly before being reentered into commerce. In addition, industry experts, law enforcement, and policy makers have expressed concern about

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<sup>1</sup> A “booster” is someone who steals merchandise and then sells it to a fence for a profit. A “fence” is someone who knowingly buys illegally obtained goods from a “booster” and then sells the goods for a profit.

<sup>2</sup> Ticket switching involves thieves utilizing devices that create fake barcodes that they adhere to packages, covering the original barcodes. When scanned, these new barcodes ring up items at lower prices than their retail values.

<sup>3</sup> See the National Retail Federation, *2011 Organized Retail Crime Survey*, 2011, p. 4. The percentage of surveyed retailers who reported victimization generally increased between 2005 and 2009 and then decreased slightly in 2010 before increasing again in 2011.

<sup>4</sup> Issues involved in determining the exact losses are discussed later in the report. The National Retail Federation (NRF) has estimated that losses amass to between \$15 billion and \$30 billion annually. The Federal Bureau of Investigation (FBI) has provided varying estimates. In 2005, the FBI cited losses as between \$15 billion and \$30 billion annually. See testimony of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Responding to Organized Crimes Against Manufacturers and Retailers*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., March 17, 2005. As of 2007, the FBI estimated losses as between \$30 billion and \$37 billion annually. See the Federal Bureau of Investigation, *Organized Retail Theft: New Initiative to Tackle the Problem*, April 6, 2007, <http://www.fbi.gov/page2/april07/retail040607.htm>.

the possibility that proceeds from ORC may be used to fund terrorist activities.<sup>5</sup> In particular, federal law enforcement has reputedly traced the illicit proceeds from the theft and resale of infant formula to terrorist organizations and insurgent groups, including Hamas and Hezbollah.<sup>6</sup>

Combating retail theft has traditionally been handled by state law enforcement under state criminal laws.<sup>7</sup> Some, however, have begun to question whether state laws—which vary in the quantity of monetary losses that constitute major theft—are adequate to combat ORC. While many agree that ORC is a national problem, there is debate over the federal government’s role in deterring ORC and sanctioning various actors that may be involved in committing or aiding these crimes. One policy issue facing Congress is whether criminalizing organized retail crime in the *U.S. Code* would allow for more effective investigation and prosecution of these criminals. Another related issue that Congress may wish to consider is whether regulating resale marketplaces (online markets, in particular), to require such entities to increase information sharing with retailers and law enforcement, would strengthen investigations and prosecutions of ORC as well as decrease the prevalence of retail thieves relying on legitimate online marketplaces to fence stolen goods.

This report provides an overview of organized retail crime rings, their operations, and goods targeted. It then examines the domestic impact of ORC in the arenas of the economy, public health and safety, and domestic security. The report also outlines current efforts by retailers, resale markets, and the federal government to combat ORC. It then analyzes various policy issues that Congress may wish to consider, including whether current federal resources provided for the investigation of ORC are adequate, whether to amend the *U.S. Code* to criminalize ORC, and whether to regulate resale marketplaces that may be utilized as fences for criminals to sell stolen goods.

## Challenges in Defining Organized Retail Crime

The concept of organized retail crime tends to be discussed in terms of criminal networks engaged in large-scale theft. Descriptions of ORC also generally entail criminals fraudulently obtaining goods in quantities beyond what would normally be intended for personal consumption; reselling these ill-gotten goods; receiving, concealing, transporting, or disposing of these goods; or coordinating individuals to commit these retail crimes.<sup>8</sup> There is a lack of consensus, however,

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<sup>5</sup> See testimony of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Responding to Organized Crimes Against Manufacturers and Retailers*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., March 17, 2005. See also Federal Bureau of Investigation, *Organized Retail Theft: A \$30 Billion-a-Year Industry*, January 3, 2011, [http://www.fbi.gov/news/stories/2011/january/retail\\_010311](http://www.fbi.gov/news/stories/2011/january/retail_010311).

<sup>6</sup> Charles I. Miller, *Organized Retail Theft: Raising Awareness, Offering Solutions*, National Retail Federation Foundation, 2005, p. 4. See also Food Marketing Institute, *Media Reports—Middle East Connection: Organized Retail Crime*, <http://www.fmi.org/docs/loss/ORCMiddleEast.pdf>. See also testimony by David Johnson, Section Chief, Criminal Investigative Division, Federal Bureau of Investigation, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>7</sup> From a statement by Representative Robert C. “Bobby” Scott before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *E-Fencing Enforcement Act of 2008, The Organized Retail Crime Act of 2008, and The Combating Organized Retail Crime Act of 2008*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 22, 2008.

<sup>8</sup> Walter E. Palmer and Chris Richardson, *Organized Retail Crime: Assessing the Risk and Developing Effective* (continued...)

on the specific activities—particularly of boosters—that constitute ORC. On the one hand, most agree that ORC involves store theft or fraud schemes designed to obtain retail merchandise at a cost significantly below retail value or for free. However, some also include specific activities, such as cargo theft,<sup>9</sup> in the definition of ORC,<sup>10</sup> while others either omit certain activities or do not specify the range of ORC activities.<sup>11</sup> For example, federal law enforcement agencies, such as the Federal Bureau of Investigation (FBI), tend to constrain discussions of ORC to situations in which boosters steal merchandise from retail establishments and resell it for profit. Similarly, retail organizations have generally focused on store theft when describing the problem of ORC. One possible explanation for this focus on store theft is that, although ORC may encompass multiple activities, including store theft and cargo theft, store theft has been cited as the most common.<sup>12</sup> Because retail organizations, scholars, industry experts, and law enforcement have provided varying definitions of ORC, this complicates analysts’ abilities to evaluate the exact impact of ORC.<sup>13</sup>

## Federal Definition

Currently, ORC is not a federal crime. Issues surrounding the debate over whether it should be included in the federal criminal code are analyzed later in this report. For data collection purposes, however, Congress has defined ORC as

- violating a state ban against shoplifting or retail merchandise theft—if the quantities of items stolen are of the amount that would not normally be purchased for personal use or consumption—and stealing for the purposes of reselling the items or reentering them into commerce;
- receiving, possessing, concealing, bartering, selling, transporting, or disposing of any property that is known to have been taken in the violation outlined above; or

(...continued)

*Strategies*, ASIS Foundation Research Council, 2009, p. 4.

<sup>9</sup> For statistical purposes, the FBI defines cargo theft as “the criminal taking of any cargo including, but not limited to, goods, chattels, money, or baggage that constitutes, in whole or in part, a commercial shipment of freight moving in commerce, from any pipeline system, railroad car, motortruck, or other vehicle, or from any tank or storage facility, station house, platform, or depot, or from any vessel or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility, or from any intermodal container, intermodal chassis, trailer, container freight station, warehouse, freight distribution facility, or freight consolidation facility. For purposes of this definition, cargo shall be deemed as moving in commerce at all points between the point of origin and the final destination, regardless of any temporary stop while awaiting transshipment or otherwise.” U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reporting Program, *National Incident-Based Reporting System Addendum for Submitting Cargo Theft Data*, January 2010, p. iii, [http://www.fbi.gov/uct/nibrs/downloadables/nibrs\\_cargo\\_theft\\_downloadable.pdf](http://www.fbi.gov/uct/nibrs/downloadables/nibrs_cargo_theft_downloadable.pdf).

<sup>10</sup> See, for example, Read Hayes, *Organized Retail Crime Annual Report 2008: Describing a Major Problem*, Loss Prevention Research Council, 2008, hereafter *Organized Retail Crime Annual Report 2008: Describing a Major Problem*. The issue of cargo theft will be discussed in more detail in the section, “Methods Used by Boosters.”

<sup>11</sup> See, for example, Walter E. Palmer and Chris Richardson, *Organized Retail Crime: Assessing the Risk and Developing Effective Strategies*, ASIS Foundation Research Council, 2009.

<sup>12</sup> *Organized Retail Crime Annual Report 2008: Describing a Major Problem*.

<sup>13</sup> This issue is discussed further in the section “Domestic Impact of Organized Retail Crime.”

- coordinating, organizing, or recruiting persons to undertake either of the two violations outlined above.<sup>14</sup>

## Operation of Organized Retail Crime Groups

As mentioned, organized retail crime rings generally include individuals serving in one of two main capacities: boosters or fences. Generally, boosters act as professional shoplifters who steal or illegally obtain merchandise. Fences pay boosters for stolen goods and then resell them to witting or unwitting consumers and businesses.

Boosters work either alone or in groups to steal goods that they will later sell to fences for about 10% to 25% of the ticket value.<sup>15</sup> They often carry “fence sheets,” or shopping lists provided to boosters by fences. These shopping lists itemize the goods fences desire, the amounts fences will pay for each item, and retail store locations where each item may be.<sup>16</sup> In some cases, boosters may travel across state lines to target specific establishments in multiple states. Consequently, many boosters will at some point transport stolen merchandise across state lines, either when shipping stolen goods to a fence or when physically delivering merchandise to a fence after stealing it in another state.

Fencing operations can be very straightforward or can involve multiple stages and a degree of operational sophistication. Most stolen merchandise is sold to a low-level fence, commonly called a “street fence.” Street fences will either sell these goods directly to the public—through flea markets, swap meets, or the Internet—or will sell the merchandise to mid-level fences who run “cleaning operations.” Cleaning operations remove security tags and store labels as well as repackage stolen goods so they appear as though they came directly from the manufacturer. A notable concern for public health and safety, this cleaning process may even involve changing the expiration date on perishable goods.<sup>17</sup> The “clean” goods may then be sold to the public or to higher-level fences, who often operate illegitimate wholesale businesses. Through these businesses, the fences can supply merchandise to retailers, often mixing stolen merchandise with legitimate goods. The illegal activities of fences may be of concern for policy makers and federal law enforcement because—like boosters—fences’ activities may cross state lines. They may, for instance, purchase stolen goods from boosters in one state and send them to another state to be cleaned; they may then sell this “clean” merchandise to illegitimate wholesalers in another state. In addition, fences selling goods via online marketplaces may ship stolen goods across state or national lines.

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<sup>14</sup> P.L. 109-162, §1105, codified at 28 U.S.C. §509 note. In the Violence Against Women and Department of Justice Reauthorization Act of 2005, Congress defined organized retail theft and directed the Attorney General and FBI to establish a task force to combat organized retail theft as well as a clearinghouse within the private sector for information sharing between retailers and law enforcement.

<sup>15</sup> Charles I. Miller, *Organized Retail Theft: Raising Awareness, Offering Solutions*, National Retail Federation Foundation, 2005, p. 17.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, pp. 17-20. The public health and safety risks and possible repercussions of these cleaning operations are discussed elsewhere in this report.

## Targeted Products

Investigations of organized retail crime rings have uncovered a wide variety of goods targeted to be stolen and resold on the black market. One researcher has noted that CRAVED items (meaning those goods that are Concealable, Removable, Available, Valuable, Enjoyable, and Disposable) are more often targeted because of the ease with which criminals can remove these items from stores and convert them into cash or other valuables.<sup>18</sup> On the one hand, some desirable—or “hot”<sup>19</sup>—products, such as cigarettes and alcohol, may always be popular products for thieves. The desirability of other products may be based on their current popularity (such as new movies, video games, and music titles) or on their use in drug manufacturing activities (such as ephedrine-based cold medications and lithium batteries). In addition, the popularity of products may also be brand-specific. For example, while certain brands of razor blades, printer cartridges, and designer clothing may be frequently targeted for theft, competing brands may be ignored.<sup>20</sup> Desirable items, in no specific order, include

- tobacco products;
- premium razor blades;
- face creams;
- analgesics;
- smoking cessation products;
- designer, logo, and leather apparel and shoes (particularly athletic);
- name-brand power tools;
- vacuum cleaners;
- printer ink cartridges;
- steaks;
- coffee;
- consumer electronics (such as DVD players and GPS units);
- fragrances;
- infant formula;
- batteries;
- music and game DVDs; and
- over-the-counter (OTC) medications and test kits.<sup>21</sup>

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<sup>18</sup> Ronald V. Clarke, “Hot Products: Understanding, Anticipating, and Reducing Demand for Stolen Goods,” *Police Research Series*, Paper 112 (1999), p. 23.

<sup>19</sup> *Ibid.*, p. 1.

<sup>20</sup> *Organized Retail Crime Annual Report 2008: Describing a Major Problem*, p. 20. Benadryl, for instance, has been identified as one of the over-the-counter medications targeted by ORC groups, where competing brands of antihistamines have not.

<sup>21</sup> *Ibid.*



## Methods Used by Boosters

Boosters working in groups rather than alone often have at least one member of the group act as a lookout who scouts for employees, plain clothes security officers, or cameras. These lookouts may create diversions or distract employees to facilitate the work of the boosters actually stealing the merchandise.<sup>22</sup>

To help prevent thieves from stealing these goods, many retailers place electronic detection tags on merchandise. Boosters often circumvent detection systems by cutting off or melting the tags, covering the tags in foil or concealing the merchandise in foil-lined bags (often referred to as “magic” bags), or lifting goods over the antennas of the electronic detection systems.<sup>23</sup> In some instances, boosters take shopping bags directly from the store, fill them with merchandise, and walk out of the store, appearing as though they are carrying purchased goods. Store employees may be less likely to stop and question boosters carrying shopping bags from the store because they incorrectly assume that the merchandise has indeed been paid for.<sup>24</sup>

In addition, boosters do not always steal merchandise from retailers during business hours. Some may hide in stores and wait for all employees to leave before removing large amounts of goods through emergency exits. Others conduct “smash-and-grab” burglaries, in which they steal trucks and vans to ram through store walls and windows, load the vehicles with merchandise, and drive away.<sup>25</sup>

## Employee Collusion

At times, boosters also conspire with current or former store employees. Employees may take goods from storage rooms or receiving areas in stores and provide them directly to boosters. They may also help thieves by disabling store alarms, leaving doors unlocked, or providing information about computer passwords, alarm codes, keys, and management and security schedules.<sup>26</sup> Industry studies estimated the proportion of inventory loss due to employee theft.<sup>27</sup> However, it is currently unknown how often employee theft or fraud is directly implicated in cases of organized retail crime. For example, the 2010 National Retail Security Survey reports that retailers estimate about 45% of retail losses are due to employee theft. They further estimate that slightly over 18% of these internal losses involve employees colluding with individuals outside of the given retail store. Of this 18% of internal loss cases, an unknown proportion may be attributed to employees working with organized retail criminals.<sup>28</sup>

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<sup>22</sup> Read Hayes and King Rogers, “Catch Them if You Can: This Study of Organized Retail Crime Looks at How These Criminal Groups Operate and What Measures Might Help Stores Fight Back,” *Security Management*, vol. 47, no. 10 (2003), hereafter “Catch Them if You Can.”

<sup>23</sup> Ibid.

<sup>24</sup> From information provided to CRS during an organized retail crime briefing by members of the Retail Leaders Industry Association and the Coalition Against Organized Retail Crime, June 4, 2009.

<sup>25</sup> “Catch Them if You Can.”

<sup>26</sup> Ibid.

<sup>27</sup> Richard C. Hollinger and Amanda Adams, *2010 National Retail Security Survey Final Report*, Security Research Project, Department of Sociology and Criminology & Law, University of Florida, 2011, hereafter *2010 National Retail Security Survey Final Report*.

<sup>28</sup> Ibid. In addition to employees colluding with ORC thieves, they may also conspire with individuals to steal merchandise for personal use—either for the employees’ own use or for the co-conspirators’ use.

## **Fraud Schemes**

Not all organized retail crime involves traditional theft from retail stores. ORC groups have employed numerous tactics to defraud retailers and obtain merchandise. In receipt fraud, for example, thieves steal merchandise, create counterfeit receipts for the stolen goods, return these stolen goods to the retailers using the counterfeit receipts, and collect money off of the fraudulent returns.<sup>29</sup> This cuts out the fence altogether, potentially netting a higher return.

Another method by which ORC groups defraud retailers is through gift card fraud, of which there are several forms. For one, thieves may purchase legitimate gift cards using stolen credit cards and then sell the gift cards to the highest bidder using an online auction website. In other instances, thieves may purchase low-value gift cards, electronically reprogram the cards to contain a higher value, and resell these reprogrammed cards.<sup>30</sup>

Similarly, ORC thieves may use ticket-switching scams to fraudulently obtain high-value items at a relatively low cost. Thieves use devices that create fake barcodes that they adhere to packages, covering the original barcodes; when scanned, these new barcodes ring up the items at lower costs. If, at check-out, a retail employee scanning the barcodes is not paying close attention or does not have a strong knowledge of items' values, the thief may get away with paying the price indicated by the counterfeit barcode. Criminals can then resell, or fence, the goods at prices higher than those which they paid, but still lower than their retail values.<sup>31</sup>

## **Cargo Theft**

As mentioned, some scholars and experts include cargo theft as an element of organized retail crime while others do not. It is nonetheless of value to note how retail goods are vulnerable to criminals at various points throughout the supply chain. Further, goods that are stolen from either cargo trucks or from retail stores may be fenced by criminals for a profit, and both affect society's economy, public health, and domestic security.

Because trains and trucks of cargo often travel with large quantities of desirable products, some have suggested that this presents a low-risk, high-reward situation appealing to criminals.<sup>32</sup> Thieves use a variety of methods to obtain merchandise from cargo, from hijacking entire trucks to colluding with current or former employees. These criminals may break or compromise security locks on trucks (possibly with the aid of security codes provided by dishonest employees) to remove entire boxes of desired goods. Other times, they may pilfer cargo boxes of their goods and then reseal them so the boxes appear as though they have not been tampered with.<sup>33</sup>

Researchers have begun studying how cargo theft—under the broader context of ORC—impacts retailers. According to the National Retail Federation's 2011 survey on ORC, "almost half

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<sup>29</sup> From information provided to CRS during an organized retail crime briefing by members of the Retail Leaders Industry Association and the Coalition Against Organized Retail Crime, June 4, 2009.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> *Organized Retail Crime Annual Report 2008: Describing a Major Problem*, pp. 17-18.

<sup>33</sup> Ibid., Walter E. Palmer and Chris Richardson, *Organized Retail Crime: Assessing the Risk and Developing Effective Strategies*, ASIS Foundation Research Council, 2009, p. 14.

(49.6%) of retailers [surveyed] were victims of cargo theft within the past year. Most of these thefts occurred en route from the distribution center to the store (57.4%).<sup>34</sup> Other cargo thefts, however, occurred en route from the manufacturer to the distribution center, at the distribution center, at the store, and en route from one store to another.

## Methods Used by Fences

Fences use various methods to sell stolen goods that they purchase from boosters. As mentioned, some fences may sell stolen merchandise back to retailers through illegitimate wholesale operations. They may also operate legitimate businesses, such as pawn shops, convenience stores, repair shops, second-hand stores, and salvage yards, that serve as fronts for their illegal fencing operations.<sup>35</sup> In addition, fences may sell their goods at a variety of resale marketplaces, including flea markets. At flea markets, illegitimate wholesalers are able to sell stolen goods that have been damaged and cannot be resold to retailers. Also, flea markets have been known to serve as recruiting grounds for fences looking for boosters, and vice-versa.<sup>36</sup>

## Impact of Globalization and Technology

In an increasingly globalized society, more and more transactions take place online rather than face-to-face. As such, in addition to relying on physical resale markets, organized retail thieves have turned to the Internet and online marketplaces as means to fence their ill-gotten goods.<sup>37</sup> This practice of fencing via the Internet is commonly referred to as “e-fencing.” According to the most recent National Retail Federation survey of retailers, about 70% of surveyed retailers indicated that they had identified or recovered stolen merchandise (including gift cards) that was being fenced online.<sup>38</sup>

E-fencing has affected organized retail crime in several arenas, including criminal anonymity, global reach, and profitability. Whereas criminals fencing goods at physical locations (such as flea markets) must have face-to-face interactions, those who rely on e-fencing are better able to remain anonymous to customers, victimized retailers, and law enforcement alike. Further, the use of online markets has allowed criminals to more easily distribute stolen goods not only within the metropolitan areas where they were originally obtained, but throughout the United States and across the globe. E-fencing has also proven to be more profitable to criminals than has fencing at physical locations; while criminals may profit about 30 cents on the dollar (30% of the retail price) by selling goods at physical fencing locations, they can make about 70 cents on the dollar via e-fencing.<sup>39</sup> It has been suggested that the face-to-face nature of physical marketplaces allows consumers to recognize the questionable legality of goods, and thus consumers are willing to pay less for goods in these physical markets than online.<sup>40</sup>

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<sup>34</sup> National Retail Federation, *2011 Organized Retail Crime Survey*, 2011, p. 9.

<sup>35</sup> Tracy Johnson and Read Hayes, “Behind the Fence: Buying and Selling Stolen Merchandise,” *Security Journal*, vol. 16, no. 4 (2003).

<sup>36</sup> *Organized Retail Crime Annual Report 2008: Describing a Major Problem*.

<sup>37</sup> King Rogers, “Organized Retail Theft,” in *Retail Crime, Security, and Loss Prevention: An Encyclopedic Reference*, ed. Charles A. Sennewald and John H. Christman (Elsevier Inc., 2008).

<sup>38</sup> National Retail Federation, *2011 Organized Retail Crime Survey*, 2011, p. 17.

<sup>39</sup> National Retail Federation, *2009 Organized Retail Crime Survey*, 2009, p. 8.

<sup>40</sup> See, for example, testimony of Brad Brekke, Vice President of Assets Protection, Target Corporation, before the U.S. (continued...)

## Domestic Impact of Organized Retail Crime

At first glance, the impact of organized retail crime may appear to be limited to monetary losses to retailers. The economic impact, however, extends beyond the manufacturing and retail industry and affects costs incurred by consumers and taxes lost by the states. Beyond the economic impact, the theft of stolen consumable or health and beauty products may pose safety risks to individuals purchasing such goods from ORC fences. In addition, some industry experts and policy makers have expressed concern about the possibility that proceeds from ORC may be used to fund terrorist activities.

### Economic Impact: A Lack of Consensus

The exact loss from organized retail crime to the retail industry is unknown.<sup>41</sup> An often-cited estimate of this loss is \$15 billion to \$30 billion annually.<sup>42</sup> The original source of this figure, however, has not been identified; while the FBI cites this figure as coming from retail industry estimates,<sup>43</sup> industry experts cite the FBI.<sup>44</sup> As of 2007, the FBI revised the estimated annual loss from ORC and placed it between \$30 billion and \$37 billion.<sup>45</sup> Of note, these ranges are broad estimates, and it is not precisely evident what the estimated loss includes. On one hand, it may include only the retail value of the merchandise stolen. Alternatively, it may include collateral costs, such as replacement costs or costs for implementing and maintaining various loss prevention measures.

Another unanswered question is whether estimates of losses from ORC include or overlap with estimates of losses from cargo theft. The FBI estimates that cargo theft costs \$15 billion to \$30 billion annually in the United States<sup>46</sup> and notes that it is a growing crime.<sup>47</sup> It is not specified, however, what proportion—if any—of cargo theft losses may be attributed to ORC groups. Other estimates have placed the losses from cargo theft at \$30 billion to \$50 billion annually, with about

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(...continued)

Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Organized Retail Theft Prevention: Fostering a Comprehensive Public-Private Response*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2007, H.Hrg. 110-122.

<sup>41</sup> Walter E. Palmer and Chris Richardson, *Organized Retail Crime: Assessing the Risk and Developing Effective Strategies*, ASIS Foundation Research Council, 2009, p. 5.

<sup>42</sup> See, for example, testimony of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Responding to Organized Crimes Against Manufacturers and Retailers*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., March 17, 2005.

<sup>43</sup> Ibid.

<sup>44</sup> Testimony of Karl Langhorst, Director of Loss Prevention, Randall's/Tom Thumb, a Safeway Company before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Organized Retail Theft: Fostering a Comprehensive Public-Private Response*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., October 25, 2007.

<sup>45</sup> Federal Bureau of Investigation, *Organized Retail Theft: New Initiative to Tackle the Problem*, April 6, 2007, <http://www.fbi.gov/page2/april07/retail040607.htm>.

<sup>46</sup> Federal Bureau of Investigation, *Cargo Theft's High Cost: Thieves Stealing Billions Annually*, July 21, 2006, [http://www.fbi.gov/page2/july06/cargo\\_theft072106.htm](http://www.fbi.gov/page2/july06/cargo_theft072106.htm).

<sup>47</sup> Federal Bureau of Investigation, *Inside Cargo Theft: A Growing, Multi-Billion-Dollar Problem*, November 12, 2010, [http://www.fbi.gov/news/stories/2010/november/cargo\\_111210/cargo\\_111210](http://www.fbi.gov/news/stories/2010/november/cargo_111210/cargo_111210).

half of these losses (roughly \$15 billion to \$25 billion annually) attributed to ORC.<sup>48</sup> If these data are correct, it suggests that the FBI's estimate of cargo theft losses may be largely attributed to either the proportion of cargo theft committed by ORC groups or the proportion of cargo theft not committed by ORC groups. Another explanation may be that industry estimates of losses may differ from law enforcement estimates based on differing criteria for counting an incident as a loss.

The National Retail Security Survey (NRSS) collects data on the levels and causes of inventory “shrinkage”—the reduction in physical inventory caused by shoplifting, employee and vendor theft, and administrative error—as well as data on loss prevention budgets, personnel, and strategies, and responses to shoplifting and employee theft.<sup>49</sup> For the retail sectors surveyed by the NRSS, total sales for 2010 were estimated at over \$2.374 trillion<sup>50</sup>—54% of the more than \$4.4 trillion annual sales estimated for the entire retail industry.<sup>51</sup> As outlined in the NRSS, not all retailers are equally susceptible to “shrinkage,” and therefore, the NRSS surveys only those sectors that are able to generate “shrinkage” data.<sup>52</sup> Therefore, any conclusions drawn from the NRSS are only generalizable to those retail sectors included in the survey—comprising about 54% of total retail sales.

As illustrated in **Figure 1**, data from the 2010 NRSS indicate that total inventory shrinkage costs amounted to about \$35.3 billion in 2010.<sup>53</sup> Of this shrinkage, theft (both internal/employee theft and shoplifting) cost retailers about \$26.8 billion. In other words, theft accounted for about 76% of overall 2010 shrinkage.<sup>54</sup> Within the broad category of theft, internal/employee theft accounted for about \$15.9 billion in losses to retailers, and shoplifting led to about \$10.9 billion in losses. As mentioned, although retailers estimate that over 18% of internal theft cases involve collusion with outsiders, it is unknown what proportion (if any) of these involve collusion with organized retail crime groups.

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<sup>48</sup> As cited by Claire Mayhew, “The Detection and Prevention of Cargo Theft,” *Trends & Issues in Crime and Criminal Justice*, no. 214 (September 2001), p. 1.

<sup>49</sup> *2010 National Retail Security Survey Final Report*.

<sup>50</sup> *2010 National Retail Security Survey Final Report*, p. 7.

<sup>51</sup> National Retail Federation, *Retail Sales Growth 2009 – 2010*, [http://www.nrf.com/modules.php?name=Pages&sp\\_id=1237](http://www.nrf.com/modules.php?name=Pages&sp_id=1237).

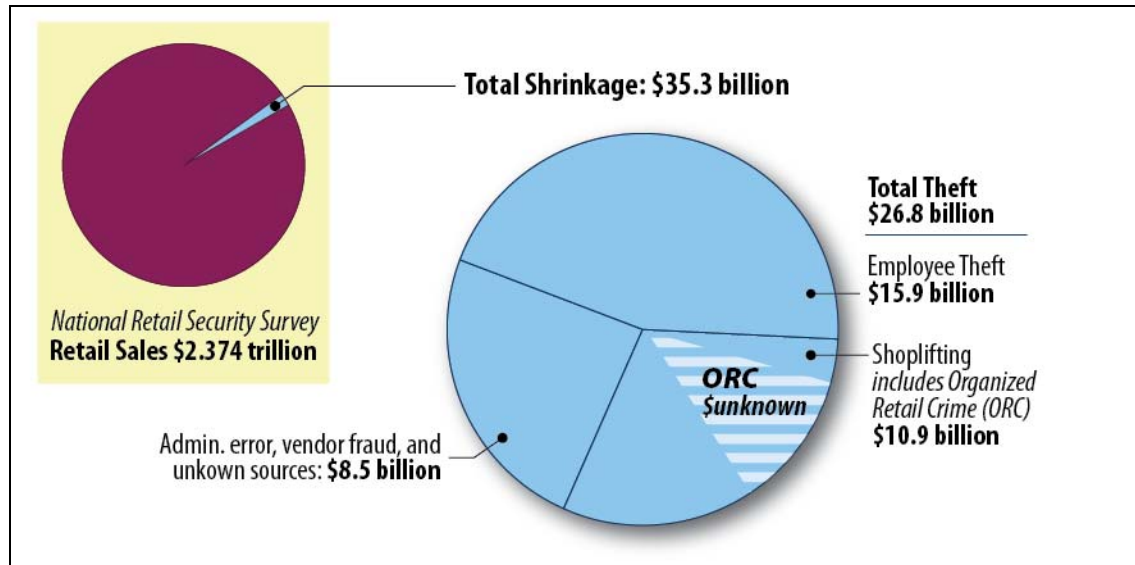
<sup>52</sup> The NRSS surveyed retailers from the following sectors: optical; children’s apparel; strip center; women’s apparel; discount store; crafts and hobbies; men’s and women’s apparel; entertainment, media, games, video, and music; sporting goods and recreational products; shoes; department store; accessories; supermarket and grocery; household furnishings and housewares; cards, gifts, floral, and novelties; office supplies; stationery; books, magazines, and music; drug store; homecenter, hardware, lumber, and garden; electronics, computers, and appliances; and furniture. Of note, the NRSS does not include data from retailers such as restaurants, bars, motor vehicle dealers, auto service stations, direct catalog sale outlets, and Internet “e-tailers” because these sectors do not produce comparable “shrinkage” data to the other retailers that are included in the survey.

<sup>53</sup> *2010 National Retail Security Survey Final Report*, p. 7.

<sup>54</sup> The other known sources of shrinkage were administrative errors and vendor fraud.

### Figure I. 2010 Retail Shrinkage Costs

Costs to retailers participating in the 2010 National Retail Security Survey



**Source:** CRS presentation of data from the 2010 National Retail Security Survey Final Report. Graphic prepared by CRS Graphics.

**Note:** This does not include losses to ORC as a result of cargo theft.

As a direct result of retailers' losses to ORC, retailers may take various measures to strengthen retail security and mitigate any financial deficit from the lost revenue. In order to increase merchandise security, prevent future losses, and recoup the lost profits from the retail crime, retailers take measures such as hiring additional loss prevention personnel or increasing the price of goods. These costs are then borne by consumers. The price increase may result in some consumers declining to purchase a given product, which may then have a circular effect and result in a loss in sales (and revenue) for the retailers. Retailers may also lock up "hot" products, which, in addition to making the products harder to steal, makes it more difficult for consumers to find and purchase the merchandise. In other cases, the products are simply not available for the customer to purchase because the entire inventory of the product has been stolen.<sup>55</sup>

In addition to the cost of organized retail crime to retailers and consumers, ORC can negatively affect state tax revenue. When goods are stolen rather than purchased, the state does not collect sales tax on the merchandise. The Food Marketing Institute (on behalf of the Coalition Against Organized Retail Crime) estimated that for 2007, the loss of sales tax revenue across the United States totaled about \$1.6 billion.<sup>56</sup>

## Public Health and Safety Risks

Several of the goods targeted by organized retail crime groups are consumable items or health and beauty products—infant formula, diabetic test strips, and over-the-counter and prescription

<sup>55</sup> From information provided to CRS during an organized retail crime briefing by members of the Retail Leaders Industry Association and the Coalition Against Organized Retail Crime, June 4, 2009.

<sup>56</sup> Food Marketing Institute, on behalf of the Coalition Against Organized Retail Crime, *Organized Retail Crime: Estimated Lost Sales Tax Revenue by State (2007)*, September 2009. The most recent data available come from 2007.

medications, to name a few. There are public health and safety issues associated with the theft and resale of this merchandise by ORC rings. For instance, after boosters steal perishable goods, these goods may be sold to fencing operations that “clean” the products; as mentioned, this cleaning process may involve repackaging goods (sometimes incorrectly relabeling them) and altering expiration dates before selling the merchandise back to retailers or to the general public. Further, these goods may be stored for indefinite periods of time in trucks or warehouses that are not climate-controlled. These factors may pose risks to the health of people who consume perishable goods that they believe to be safe, but have actually been tampered with or expired.

## Potential Links to Terrorism

In addition to the economic and potential public health risks associated with ORC, law enforcement and policy makers have expressed concern that proceeds from organized retail crime may be used to finance terrorist activities.<sup>57</sup> In fact, federal concern over the link between ORC and terrorism was present even before the terrorist attacks of September 11, 2001.<sup>58</sup> Federal law enforcement has traced the illicit proceeds from retail crime, specifically from the theft and resale of infant formula, to terrorist organizations and insurgent groups, including Hamas and Hezbollah.<sup>59</sup> For instance, following the terrorist attacks of 2001, the former U.S. Customs Service established Operation Green Quest—a now-defunct, multi-agency terrorist financing task force—to combat the various sources of terrorist financing; one such source was identified as the “theft, adulteration, and resale of infant formula.”<sup>60</sup>

While there may be suspicions that profits from ORC rings have been sent to certain countries to support terrorist activities, it is important to note that no members of ORC rings discussed in the organized retail crime literature have been convicted of providing material support to terrorist organizations. Nevertheless, there are instances in which profits—often from the sale of stolen infant formula—have been transferred to certain countries known to support terrorists, though it has not been determined whether these profits have ultimately been transferred to terrorist organizations.

Three notable investigations of large organized retail crime rings uncovered evidence that the ORC ringleaders had transferred profits from their fencing operations to several countries known to support terrorists. In one case, an investigation into the Jamal Trading Company in Phoenix, AZ, uncovered a money-laundering operation that allegedly funneled the illicit proceeds to countries where several members of the crime ring had ties, such as Iraq, Jordan, and Lebanon.

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<sup>57</sup> See testimony of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Responding to Organized Crimes Against Manufacturers and Retailers*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., March 17, 2005.

<sup>58</sup> Karen E. Thuermer, “Retailers Organize Against Crime,” *Security Management*, July 2007.

<sup>59</sup> Charles I. Miller, *Organized Retail Theft: Raising Awareness, Offering Solutions*, National Retail Federation Foundation, 2005, p. 4. See also Food Marketing Institute, *Media Reports—Middle East Connection: Organized Retail Crime*, <http://www.fmi.org/docs/loss/ORCMiddleEast.pdf>. See also testimony by David Johnson, Section Chief, Criminal Investigative Division, Federal Bureau of Investigation, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>60</sup> U.S. Department of the Treasury, U.S. Customs Service, Office of Investigations, *Green Quest*, Customs Publication No. 0000-0171, October 2002, p. 2, [http://www.portal.state.pa.us/portal/server.pt/document/437021/green\\_quest\\_brochure\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/437021/green_quest_brochure_pdf).

The ringleader, Samih Fadl Jamal, and 15 co-conspirators had been profiting on the sale of stolen infant formula worth \$22 million.<sup>61</sup> Another case involved the Ghali organized retail crime ring, led by Mohammed Khalil Ghali, which was involved in the sale of stolen infant formula and other “hot” products, as well as the laundering of the proceeds. An investigation into the Ghali organization found that some of the profits were wired to financial institutions in Jordan, Egypt, and Palestine, and some were smuggled out of the United States on international flights. Further, the Immigration and Customs Enforcement (ICE) has indicated that several members of the Ghali organization allegedly had direct ties to terrorist acts and/or organizations.<sup>62</sup> In a third case, an investigation by the FBI’s Joint Terrorism Task Force (JTTF) revealed that the Hamed Organization was a criminal enterprise involved in purchasing and selling stolen and contraband goods, including infant formula, computers, Global Positioning System devices, and cigarettes.<sup>63</sup> Members of the Hamed Organization used convenience stores in which they worked or managed to fence stolen goods and then illegally transferred the proceeds to the Palestinian territories. None of these investigations, however, resulted in defendants being charged with providing material support to terrorists.

There have also been reports of Hamas receiving material support from non-government organizations (NGOs) in the United States, some of which may have received funds from criminal activities such as the sale of stolen infant formula.<sup>64</sup> For instance, it has been suggested that one Muslim charity organization previously operating in the United States, the Holy Land Foundation of Relief and Development (HLF), may have been supported in part by proceeds generated by ORC rings.<sup>65</sup> In 2001, the federal government seized HLF’s assets and ordered the organization closed. Five members of HLF were convicted of providing funding, over a period of six years, to Hamas—a specially designated terrorist organization.<sup>66</sup>

As policy makers continue to consider the potential nexus between organized retail crime and terrorism, one important note is that, similar to other organized crime groups, ORC rings are motivated by money. Although this differs from the ideological motivation of terrorist organizations, both organized criminals and terrorists require money.<sup>67</sup> As a means of bringing in

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<sup>61</sup> Charles I. Miller, *Organized Retail Theft: Raising Awareness, Offering Solutions*, National Retail Federation Foundation, 2005, pp. 25 - 27.

<sup>62</sup> Testimony by Janice Ayala, Assistant Director for Investigative Programs, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>63</sup> United States Attorney’s Office Eastern District of Missouri, “Eight Area Men Plead Guilty to Federal Racketeering Charges Involving Conspiracy to Transfer Cash and Checks to the Palestinian Territories,” press release, November 24, 2009, <http://stlouis.fbi.gov/dojpressrel/pressrel09/sl112409a.htm>.

<sup>64</sup> From testimony by John S. Pistole, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, before the U.S. Congress, House Committee on Financial Services, Subcommittee on Oversight and Investigations, *Hamas Asset Freeze and Other Government Efforts To Stop Terrorist Funding*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., September 24, 2003.

<sup>65</sup> Charles I. Miller, *Organized Retail Theft: Raising Awareness, Offering Solutions*, National Retail Federation Foundation, 2005, pp. 12 – 13.

<sup>66</sup> In November, 2008, a federal jury returned convictions for five members of the HLF accused of providing about \$12.4 million in material support to Hamas. For more information, see [http://www.fbi.gov/page2/nov08/hlf\\_112508.html](http://www.fbi.gov/page2/nov08/hlf_112508.html) and <http://www.justice.gov/opa/pr/2008/November/08-nsd-1046.html>.

<sup>67</sup> For more information on the potential links between organized crime in the United States and terrorist organizations, see CRS Report R40525, *Organized Crime in the United States: Trends and Issues for Congress*, by Kristin M. Finklea.



this needed income, terrorist groups may model their money-generating criminal activities after those of organized crime groups—including ORC rings. Indeed, federal law enforcement continues to be concerned that organized crime groups may form short-term business partnerships with terrorist organizations if offered enough money.<sup>68</sup>

## Current Domestic Efforts to Combat ORC

### Retailers

There is a growing awareness among retailers about the consequences of organized retail crime. In its 2011 survey of organized retail crime, the National Retail Federation (NRF) reported that about 95% of the retailers surveyed indicated that their companies had been victimized by ORC, an increase from the 90% that reported victimization in 2010. In addition to the percentage of retailers reporting victimization increasing in 2011, about 64% of all retailers surveyed also reported an increase in ORC activity over the previous year.<sup>69</sup> Further, of the retailers responding to the NRF's 2011 survey, nearly half (46.5%) indicated that they were allocating additional resources to combating ORC.<sup>70</sup> It is unknown, however, whether these trends in *reported* victimization and in *reported* ORC activity levels are clear reflections of *actual* ORC activity or whether these reports are a reflection of the level of attention that retailers pay to ORC.

Despite this knowledge about ORC activity, special ORC task forces had been established only in about 23% of loss prevention departments as of 2009.<sup>71</sup> Retailers have, however, reported an increase in the proportion of annual sales allocated to loss prevention. In 2010, retailers spent an average of 0.46% of annual sales on loss prevention. This proportion has been increasing over the past two years after being on a steady decline. Prior to 2004, the proportion of annual sales allocated to loss prevention had generally remained above 0.50%.<sup>72</sup>

Retailers' loss prevention strategies can take various different forms, including pre-employment integrity screening measures, employee awareness programs, asset control policies, and loss prevention systems. Data from the 2010 NRSS indicate that over half of retailers use the following loss prevention systems or personnel:

- burglar alarms;
- digital video recording systems;
- live, visible closed circuit TV (CCTV);
- point of sale (POS) data mining software;

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<sup>68</sup> Pat Milton, "FBI Worries About an Osama-Sopranos Link," *Associated Press*, October 1, 2006, [http://www.redorbit.com/news/general/676652/fbi\\_worries\\_about\\_an\\_osamasopranos\\_link/index.html](http://www.redorbit.com/news/general/676652/fbi_worries_about_an_osamasopranos_link/index.html). See also *Mapping the Global Structure*, National Intelligence Council, Report of the National Intelligence Council's 2020 Project, Based on consultations with nongovernmental experts around the world, Washington, D.C., December 2004, p. 96.

<sup>69</sup> National Retail Federation, *2011 Organized Retail Crime Survey*, 2011, p. 8.

<sup>70</sup> *Ibid.*, p. 16.

<sup>71</sup> *2009 National Retail Security Survey Final Report*, p. 30.

<sup>72</sup> *2010 National Retail Security Survey Final Report*, p. 16.

- armored car deposit pickups;
- check approval database screening systems;
- acousto-magnetic, electronic security tags;
- live, hidden CCTV;
- uniformed guards;
- cables, locks, and chains;
- web-based case management and reporting;
- drop safes; and
- remote CCTV video and audio.<sup>73</sup>

However, data also indicate that less than half of retailers are using other available loss prevention measures, such as secured display fixtures, audible and silent alarms, observation mirrors, and mystery/honesty shopper programs.

In addition to their in-house loss prevention measures, some retailers and retail organizations also partner with law enforcement to share information about potential cases of organized retail crime (for more information on these partnerships, see the “Federal Law Enforcement” section). Retailers indicated that almost 58% of ORC investigations were coordinated with local, state, or federal law enforcement in 2009. As a result, almost 49% of those ORC cases were prosecuted.<sup>74</sup>

## Online Marketplaces

With an increase in the e-fencing of stolen merchandise, attention has recently turned to the role of Internet marketplaces such as eBay and Overstock in combating ORC. These marketplaces take various measures to combat the sale of stolen and fraudulently obtained goods—not solely by organized retail criminals—on their websites, including educating sellers and consumers, monitoring suspicious activity, and partnering with retailers and law enforcement. For instance, these marketplaces may provide guidelines for website use and require users to acknowledge policies regarding goods that may or may not be sold through the website. In addition, online markets may create filters to search for prohibited items up for auction. They may then take actions such as removing the prohibited items, sanctioning the policy violator, or referring the case to law enforcement. For example, eBay has created such filters based on input from regulatory agencies, law enforcement agencies, the retail industry, and member reports.<sup>75</sup>

Another means by which Internet auction sites may combat the sale of stolen goods is to collaborate with retailers and law enforcement. This could occur through the establishment of investigative task forces or information sharing programs. Of the e-commerce websites most commonly used by criminals to fence stolen goods, eBay claims to be the leader in working with retailers and law enforcement to combat the online sale of stolen goods. For instance, in April 2008, eBay created PROACT (Partnering with Retailers Offensively to Attack Crime and Theft),

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<sup>73</sup> Ibid., pp. 23-26.

<sup>74</sup> 2009 National Retail Security Survey Final Report, p. 30.

<sup>75</sup> From information provided to CRS during ORC briefing by representatives from eBay on July 27, 2009.

a program designed to combat the sale of stolen goods on eBay. In this program, retailers voluntarily submit and can receive information about potentially stolen or fraudulently obtained goods being sold on eBay. Between the start of the program and January 2011, eBay received 2,340 requests for information through the PROACT program.<sup>76</sup> It is unknown, however, how many of the cases brought forth by retailers may be directly related to organized retail crime. In addition to creating its own programs to combat ORC, eBay partnered with the NRF in March 2010 to fight this growing crime. The NRF/eBay partnership utilizes PROACT and Law Enforcement Retail Partnership Network (LERPnet) technologies to help track ORC rings, collaborate with the FBI to identify retail crime enterprises, and promote legislation to provide law enforcement with adequate tools to combat ORC thieves.<sup>77</sup>

## Federal Law Enforcement

As mentioned, state and local law enforcement have held the primary responsibility for investigating and prosecuting organized retail crime. However, as the scope of the crime has increased, so too has the involvement of federal law enforcement. Retail criminals are no longer selling goods simply at local flea markets; rather, they are using interstate transportation routes to move stolen goods, as well as the Internet to ship this merchandise across the country and around the world.

Much like other forms of organized crime,<sup>78</sup> organized retail crime is becoming increasingly transnational. For law enforcement to effectively combat ORC, it must rely on multilateral coordination, via both domestic and international task forces and partnerships. In addition to expanding multilateral law enforcement partnerships, federal law enforcement has partnered with the retail industry and online markets to combat the theft and illicit resale of stolen goods. Law enforcement has also indicated that it has built cooperative relationships with retailers and online markets and has generally not had trouble obtaining the needed information to investigate potential cases of ORC.<sup>79</sup>

The following section provides a discussion of various federal law enforcement agencies' current efforts to combat organized retail crime.

## Federal Bureau of Investigation (FBI)

In December 2003, the FBI established an Organized Retail Theft (ORT) Initiative aimed at identifying and dismantling multi-jurisdictional retail crime rings.<sup>80</sup> The Initiative focuses on

<sup>76</sup> U.S. Government Accountability Office, *Organized Retail Crime: Private Sector and Law Enforcement Collaborate to Deter and Investigate Theft*, GAO-11-675, June 14, 2011, <http://www.gao.gov/assets/320/319548.pdf>.

<sup>77</sup> National Retail Federation, "National Retail Federation, eBay Announce Partnership to Fight Organized Retail Crime," press release, March 22, 2010, [http://www.nrf.com/modules.php?name=News&op=viewlive&sp\\_id=906](http://www.nrf.com/modules.php?name=News&op=viewlive&sp_id=906).

<sup>78</sup> For further information on organized crime, see CRS Report R40525, *Organized Crime in the United States: Trends and Issues for Congress*, by Kristin M. Finklea as well as CRS Report R41547, *Organized Crime: An Evolving Challenge for U.S. Law Enforcement*, by Jerome P. Bjelopera and Kristin M. Finklea.

<sup>79</sup> Testimony by law enforcement representatives from the FBI, ICE, USSS, and USFIS before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009. Also from an ICE briefing for CRS, October 14, 2009 and a USSS briefing for CRS, November 13, 2009.

<sup>80</sup> The FBI utilizes the term ORT rather than ORC so as not to create a confusion between organized retail crime and (continued...)

information sharing between law enforcement and the private sector in order to investigate ORC and develop a greater understanding of the nature and extent of ORC around the country. The Initiative relies on federal statutes such as the Money Laundering,<sup>81</sup> Interstate Transportation of Stolen Property,<sup>82</sup> and Racketeer Influenced and Corrupt Organizations (RICO)<sup>83</sup> to investigate and prosecute ORC rings. In addition to the Initiative, the FBI leads seven Major Theft Task Forces around the country that are responsible for investigating a host of major theft areas, including ORC. These task forces are composed of local, state, and federal law enforcement agencies, as well as retail industry loss prevention experts.<sup>84</sup>

In the Violence Against Women and Department of Justice Reauthorization Act of 2005, Congress directed the Attorney General and FBI to establish a clearinghouse within the private sector for information sharing between retailers and law enforcement.<sup>85</sup> The result was LERPnet.<sup>86</sup> LERPnet began as a partnership between the FBI, ICE, various local police departments, individual retailers, and retail organizations including the Food Marketing Institute (FMI), National Retail Federation (NRF), and Retail Industry Leaders Association (RILA). As of January 2010, LERPnet has been linked with the FBI's Law Enforcement Online (LEO) system, providing federal and local law enforcement a direct link to retail industry crime reports.

Despite the establishment of the ORT Initiative, the use of the Major Theft Task Forces to investigate ORC rings, and the creation of LERPnet, the FBI continues to focus most of its resources on counterterrorism efforts. The FBI has indicated that the primary barrier to increasing its involvement in ORC investigations is the lack of resources dedicated directly to combating retail crime. Although the FBI has reportedly requested this directed funding, it has yet to be realized.<sup>87</sup>

## **U.S. Immigration and Customs Enforcement (ICE)**

Because ORC often involves interstate and international transportation of stolen goods and the movement of illicit proceeds associated with the sale of these goods, ICE has become increasingly involved in investigating ORC. Further, ICE may become ever more involved in ORC investigations if reports indicating that ORC rings rely on unauthorized (illegal) aliens<sup>88</sup>

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(...continued)

traditional organized crime.

<sup>81</sup> 18 U.S.C. §1956.

<sup>82</sup> 18 U.S.C. §2314.

<sup>83</sup> 18 U.S.C., Chapter 96.

<sup>84</sup> Testimony by David Johnson, Section Chief, Criminal Investigative Division, Federal Bureau of Investigation, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>85</sup> P.L. 109-162, §1105, codified at 28 U.S.C. §509 note.

<sup>86</sup> For more information on LERPnet, see <http://www.lerpnet2.com/>.

<sup>87</sup> Testimony by David Johnson, Section Chief, Criminal Investigative Division, Federal Bureau of Investigation, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>88</sup> An alien is anyone who is not a citizen or national of the United States and is synonymous with non-citizen.

(particularly from Mexico) to act as boosters are true.<sup>89</sup> Employing these aliens as low-level boosters allows them to earn an income while protecting the higher-ups in the organization from being apprehended while stealing; if apprehended, unauthorized aliens may be jailed and then deported, saving higher-ups from the fines or jail time that they could otherwise face if arrested.

In July 2009, ICE launched an ORC Pilot Program. This program, originally slated to last for six months in Houston, Los Angeles, Miami, and New York, focused on developing (1) an ORC threat assessment, (2) a tracking system for ORC cases, (3) a database of retail industry contacts to complement the LERPnet database, and (4) an investigation of how ORC groups exploit vulnerabilities in the nation's banking systems to launder illicit proceeds.<sup>90</sup> In February 2011, this program was expanded into a national initiative—the Seizing Earnings and Assets from Retail Crime Heists (SEARCH) Initiative.<sup>91</sup> As of May 2011, over 93 cases were initiated through SEARCH, resulting in 41 criminal arrests, 29 indictments, and 15 convictions.<sup>92</sup> Through these cases, about \$4.9 million in cash, property, and monetary instruments was seized.

### U.S. Secret Service (USSS)

The USSS is most well known for protecting the President and Vice President of the United States, as well as visiting heads of state and government.<sup>93</sup> However, it was originally established as a law enforcement agency charged with investigating and preventing the counterfeiting of U.S. currency. The USSS's authorities have expanded, and the agency now investigates crimes ranging from counterfeiting and financial institution fraud to identity crimes, computer crimes, and money laundering.<sup>94</sup> Through investigations into crimes such as credit card fraud,<sup>95</sup> access device fraud,<sup>96</sup> and computer fraud,<sup>97</sup> the USSS has occasionally become involved in investigating organized retail crime groups who steal or fraudulently purchase merchandise from retailers (both traditional and online) and then resell these goods for a profit online.<sup>98</sup> The USSS receives ORC

<sup>89</sup> See, for example, Charles I. Miller, *Organized Retail Theft: Raising Awareness, Offering Solutions*, National Retail Federation Foundation, 2005, p. 1. Some have suggested that unauthorized aliens may be particularly vulnerable to being recruited by ORC groups because they are looking to earn money while in the United States and may be seen as expendable by higher-ups in the organization.

<sup>90</sup> Testimony by Janice Ayala, Assistant Director for Investigative Programs, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>91</sup> For more information on this Initiative, see <http://www.ice.gov/search/>.

<sup>92</sup> National Retail Federation, *2011 Organized Retail Crime Survey*, 2011, p. 15.

<sup>93</sup> See <http://www.secretservice.gov/investigations.shtml>.

<sup>94</sup> According to the USSS, “investigations include counterfeiting of U.S. currency (to include coins); counterfeiting of foreign currency (occurring domestically); identity crimes such as access device fraud, identity theft, false identification fraud, bank fraud and check fraud; telemarketing fraud; telecommunications fraud (cellular and hard wire); computer fraud; fraud targeting automated payment systems and teller machines; direct deposit fraud; investigations of forgery, uttering, alterations, false impersonations or false claims involving U.S. Treasury Checks, U.S. Saving Bonds, U.S. Treasury Notes, Bonds and Bills; electronic funds transfer (EFT) including Treasury disbursements and fraud within the Treasury payment systems; Federal Deposit Insurance Corporation investigations; Farm Credit Administration violations; and fictitious or fraudulent commercial instruments and foreign securities.” For more information, see <http://www.secretservice.gov/criminal.shtml>.

<sup>95</sup> 18 U.S.C. §1029(a)(10).

<sup>96</sup> 18 U.S.C. §1029.

<sup>97</sup> 18 U.S.C. §1030.

<sup>98</sup> USSS briefing for CRS, November 13, 2009.

case referrals from state and local law enforcement, retail industry investigators, and online marketplaces fighting the sale of stolen goods.

The USSS has 31 Electronic Fraud Task Forces and 38 Financial Crimes Task Forces that investigate various financial crimes, including ORC.<sup>99</sup> In addition to state and local law enforcement agencies, these task forces consist of investigators from retail stores, online auction houses, and the banking and finance industries. There are an estimated 100 or more retail investigators participating in the USSS task forces.<sup>100</sup>

### **U.S. Postal Inspection Service (USPIS)**

The USPIS works to prevent mail fraud as well as illegal substances, contraband, and dangerous products from entering the mail system. When investigating cases of ORC, the USPIS investigates individuals using the mail to ship stolen products or to transmit payment to a seller. These ORC schemes tend to fall into the categories of Internet auction fraud and re-shipper fraud.<sup>101</sup> In cases of Internet auction fraud, the criminals sell stolen goods and ship them domestically and internationally. In cases of re-shipper fraud, criminals may recruit individuals (often unwitting accomplices<sup>102</sup>) to receive the stolen goods and then ship them (often internationally) to other members of the criminal organization or to the buyer of the goods.<sup>103</sup>

## **Issues for Consideration**

When debating the federal government's role in combating organized retail crime, including sanctioning various actors that may be involved in committing or aiding these crimes, there are several issues that policy makers may consider. One is whether retailers are taking sufficient preventive measures to prevent retail theft. Another issue is whether criminalizing organized retail crime at the federal level would allow for more effective investigation and prosecution of these criminals. Yet another issue is whether regulating online marketplaces to require that such entities increase information sharing with retailers and law enforcement would improve investigations and prosecutions of ORC as well as decrease the prevalence of retail thieves fencing stolen goods via legitimate online marketplaces.

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<sup>99</sup> Information provided to CRS by USSS Congressional Affairs, November 22, 2011.

<sup>100</sup> Ibid., See also testimony by John R. Large, Special Agent in Charge, Criminal Investigative Division, Office of Investigations, U.S. Secret Service before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>101</sup> Testimony of Zane M. Hill, Deputy Chief Postal Inspector, U.S. Postal Inspection Service before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>102</sup> One common method of recruiting these unwitting accomplices is through employment websites where the criminals advertise work-from-home jobs as shippers.

<sup>103</sup> For more information on re-shipping scams, see <https://postalinspectors.uspis.gov/radDocs/consumer/ReshippingScam.html>.

## Are Retailers Doing Enough?

The first line of defense against organized retail crime is preventing the crimes from ever occurring. This involves security at the manufacturing sites, distribution centers, retail stores, and in the transportation throughout this supply chain.<sup>104</sup> The NRSS presents trends in retail industry loss prevention measures since 1991. The 2010 NRSS reports that retailers spent 0.46% of annual sales on loss prevention measures such as contract services, security equipment, and loss prevention personnel.<sup>105</sup> This includes about 33 loss prevention employees for every \$100 million in annual sales—nearly half of the 70 employees reported in the 2009 survey and less than one-quarter of the 170 employees reported in the 2008 survey.<sup>106</sup> As mentioned, prior to 2004, the percent of annual sales spent on loss prevention was consistently above 0.50%, but that amount then decreased through 2008 before rising to 0.46% in 2010. Some experts explained this trend in loss prevention spending as a reaction to changes in overall inventory shrinkage.<sup>107</sup> Also trending along with the 2010 increase in loss prevention budgets, 64% of surveyed retailers reported an increase in ORC activity—an increase over the 59% who reported an increase in 2009.<sup>108</sup> It is unknown, however, whether retailers are making changes to their loss prevention budgets based on overall inventory shrinkage or based on specific threats such as ORC.

For multiple reasons, it is difficult to empirically determine whether retailers are doing “enough” to combat ORC. For one, retailers typically try to strike a balance between protecting their merchandise from thieves and creating an environment where honest consumers can easily find and purchase the desired products. If retailers take every precaution to lock up “hot” products and install security measures that make it difficult for consumers to get the desired product in a hassle-free and timely fashion, they may risk losing customers to competitors who provide a more relaxed shopping environment. If, on the other hand, retailers err on the side of being “customer friendly” by keeping products out in the open, they may open themselves up to thieves.

There are several policy options that may enhance retailers’ abilities to combat ORC that policy makers may consider. In the literature, there appears to be a lack of research on the effectiveness of various loss prevention strategies on combating retail theft in general and ORC in particular. Understanding the strategies that have proven to reduce retail theft related to ORC may enhance retailers’ abilities to secure their merchandise. Consequently, one option may be for Congress to commission a national study to examine promising loss prevention strategies. A second option may be for Congress to consider establishing a grant program that would provide funding to retailers to install or upgrade security systems and loss prevention measures in their stores. Congress could require that retailers comply with various benchmarks in order to receive grant funding; for instance, a grant program may require that retailers work with law enforcement to identify and apprehend members of ORC rings. Another potential requirement could be that retailers join LERPnet in order to be eligible for grant funding. Yet another eligibility requirement could be that retailers provide matching loss prevention funds.

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<sup>104</sup> Detailed information on retailers’ efforts to combat ORC is provided in the “Retailers” section of this report.

<sup>105</sup> *2010 National Retail Security Survey Final Report*, p. 16.

<sup>106</sup> *Ibid.*, p. 17.

<sup>107</sup> *2009 National Retail Security Survey Final Report*, pp. 12-15.

<sup>108</sup> National Retail Federation, *2011 Organized Retail Crime Survey*, 2011, p. 8.

## Federally Criminalizing ORC

Combating retail theft has primarily been handled by state law enforcement under state criminal laws. In particular, major theft laws are the statutes that states have relied upon most to investigate and prosecute ORC. These major theft laws, however, vary from state to state with respect to the monetary threshold that constitutes major theft. While some states, such as New Jersey and Massachusetts, have relatively low thresholds, other states, such as Wisconsin and Pennsylvania, have relatively higher thresholds. Over one-third of states have felony theft thresholds that meet or exceed \$1,000. With respect to organized retail crime, in 2009, at least 16 states had passed legislation criminalizing ORC, and 8 others had pending legislation.<sup>109</sup>

There is currently no federal law specifically prohibiting organized retail crime as such. There are, however, provisions in the *U.S. Code* that federal law enforcement uses to bring forth cases against ORC rings. Examples of such provisions include

- 18 U.S.C. Section 1956, “Laundering of monetary instruments”;
- 18 U.S.C. Section 1957, “Engaging in monetary transactions in property derived from specified unlawful activity”;
- 18 U.S.C., Chapter 96, the Racketeer Influenced and Corrupt Organizations (RICO) provisions;
- 18 U.S.C. Section 2314, “Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting”; and
- 18 U.S.C. Section 2315, “Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps.”

Current federal law addressing theft does not criminalize the theft itself, but rather prohibits the transportation of stolen goods across state lines<sup>110</sup> as well as the sale or receipt of these goods.<sup>111</sup> For these activities to be considered federal crimes, the monetary value of the stolen goods must meet or exceed \$5,000.

When debating the federal government’s role in combating organized retail crime, Congress may consider whether current law should be amended to create new provisions that would provide penalties for ORC. Proponents of such legislation argue that criminalizing ORC may benefit law enforcement in several ways, including (1) illuminating the growing problem of ORC and (2) providing a statutory framework for tracking ORC case data rather than lumping these cases into other categories for statistical purposes. Opponents of legislation criminalizing ORC argue that already existing statutes allow for effective investigation and prosecution of ORC (as outlined above) and that creating a separate provision for ORC would be redundant. Representatives from federal law enforcement agencies have provided congressional testimony indicating that they indeed have sufficient laws and procedural tools to investigate ORC.<sup>112</sup> As mentioned,

<sup>109</sup> From an organized retail crime and felony theft level database maintained and provided to CRS by Frank Muscato, ORC Investigations Supervisor, Organized Retail Crime Division, Walgreens, November 9, 2009.

<sup>110</sup> 18 U.S.C. §2314.

<sup>111</sup> 18 U.S.C. §2315.

<sup>112</sup> Testimony by law enforcement representatives from the FBI, ICE, USSS, and USPIS before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.



impediments to investigating and prosecuting these cases may come more from a lack of resources than from a need for better investigative and prosecutorial tools.

Another policy option that Congress may consider could be enacting provisions that would lower the monetary threshold from \$5,000 for the sale, receipt, or transportation of stolen goods across state lines (18 U.S.C. §2314 and 18 U.S.C. §2315). Savvy criminals know each state's felony theft level and steal merchandise valuing just under this level so as to avoid state felony charges if caught. Federal investigators and prosecutors may rely upon the sum total of merchandise stolen in various states and moved across state lines in order to prosecute these thieves. The average value of goods transported, sold, or received by members of ORC rings is currently unknown. If this value were under the current federal threshold of \$5,000, the data may support legislation decreasing the threshold. One issue that Congress may face if it amends the \$5,000 limit for the sale, receipt, or transportation of stolen goods across state lines may be whether such a policy shift would also open the doors for the federal government to prosecute individuals not involved in ORC rings.

If Congress determines that there are sufficient investigative and prosecutorial tools available for law enforcement to combat ORC, one issue that policy makers may face is whether to provide dedicated funding to law enforcement to enhance their ability to take on more ORC cases. Law enforcement has suggested that although the investigative tools are available, it may prioritize and utilize resources in higher-priority areas<sup>113</sup>—such as counterterrorism and fraud investigations.<sup>114</sup> Therefore, another policy option may be to provide directed resources to federal law enforcement to investigate and prosecute ORC cases.

## **Regulation of Online and Physical Marketplaces**

As mentioned, organized retail criminals use both physical and online marketplaces as fences to sell stolen goods. With an increasingly globalized society, these criminals take advantage of the Internet for their illegal activities. In an effort to curb sales of stolen goods online, one policy option that Congress may consider is increased regulation of certain actions on the Internet. In the past, Congress has regulated actions on the Internet that involve interstate commerce. For example, Congress enacted legislation that prohibited unlawful Internet gambling.<sup>115</sup> Among other things, this legislation also included provisions holding certain computer services, Internet websites, telecommunications services, and financial transaction providers liable for illegal gambling if they aid or have knowledge of the Internet gambling.<sup>116</sup> Along the same lines, Congress may consider whether to regulate online auction websites to require them to document, retain, and disclose—to designated law enforcement—information about specified sellers, including those suspected of fencing stolen goods. Proponents of such regulation argue that this

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<sup>113</sup> Testimony by David Johnson, Section Chief, Criminal Investigative Division, Federal Bureau of Investigation, before the U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Combating Organized Retail Crime: The Role of Federal Law Enforcement*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., November 5, 2009.

<sup>114</sup> Testimony by Robert S. Mueller, III, Director, Federal Bureau of Investigation, before the U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., September 16, 2009.

<sup>115</sup> See 18 U.S.C. §1084 and Title VIII of P.L. 109-347, Unlawful Internet Gambling Enforcement, codified at 31 U.S.C. §5361 et seq.

<sup>116</sup> See 31 U.S.C. §5365 - 5366.

could better enable law enforcement to track suspected fences and that it may act as a deterrent, discouraging potential thieves from fencing stolen goods. Opponents of this type of regulation argue that online marketplaces already share such information because it is in their best interests to prevent the sale of stolen goods, promote the business of legitimate sellers, and ensure that customers receive genuine and safe products.

Another policy option that policy makers may consider is the regulation of physical marketplaces, such as flea markets. On the one hand, some may argue that flea markets should be regulated by state laws because the face-to-face transactions at these markets do not directly involve interstate commerce. Others, however, may contend that the federal government could regulate the goods sold at flea markets because they were likely involved in interstate commerce before being sold at the market. Further, it could be argued that the federal government could direct this regulation toward the sale of certain, already-regulated products such as goods regulated by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act.<sup>117</sup>

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<sup>117</sup> 21 U.S.C. §301.