

The United States' Fight Against the Menace of IP Theft

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ABSTRACT

America's innovation and creativity have long been the driving forces behind America's competitiveness and economic growth. Neither can thrive without the strong intellectual property (IP) rights—embodied in patents, copyrights, and trademarks—that incentivize creation, encourage investment and commercialization, and help advance the spread of knowledge globally. However, the theft of IP, through counterfeiting and piracy, is a growing problem that has a detrimental economic impact on America's IP-industries and poses serious risks to consumers around the world. This article examines these threats and highlights the numerous legislative measures and policies that the U.S. government has taken to fight back these crimes.

Introduction

America's standing as the world's leader of economic growth and competitiveness reflects the nation's powerful ideas and ingenuity. Indeed, America's history is rooted in big ideas—from the Wright Brother's invention of the airplane and Henry Ford's first automobile to Intel's creation of the microprocessors and Walt Disney's first animated motion picture. In this evolving global economy, intellectual property (IP) rights have served as a key driver of innovation and creativity, incentivizing both investors and inventors alike as they risk their time and money to pursue new ideas. This entrepreneurial spirit is one of America's greatest strengths—leading to better standard of living, new technologies, new means of production and manufacturing, increased economic growth, and new jobs for America—making intellectual property one of America's greatest asset.

Intellectual property-based industries—from

entertainment and electronic sectors to pharmaceuticals, automotive and computer software industries—account for more than \$5 trillion of the U.S. gross domestic product, which is more than the nominal gross domestic product (GDP) of any other country.¹⁾ Additionally, IP-based industries employ over 18 million Americans, and these jobs are expected to grow faster than the national rate in the next decade.²⁾ A recent study found that from 2000 to 2007, IP-intensive industries accounted for approximately 60 percent of total U.S. exports—rising from \$665 billion in 2000 to \$910 billion in 2007.³⁾

In addition to America's economy, the global economy, and indeed the march of human progress, owes much to the incentives and protections that patents, copyrights, trademarks and other IP rights afford us all. In order for the innovation and creativity to continue to flourish—which leads to job creation and economic growth—a strong IP rights system needs to be preserved and promoted. However, the livelihood of those around the globe who rely on IP is under attack by criminal networks engaged in counterfeiting and piracy, eroding

1) Robert J. Shapiro and Kevin A. Hassett, *The Economic Value Of Intellectual Property*, USA For Innovation, October 2005.

2) Stephen E. Siwek, *Engines of Growth: Economic Contributions of the US Intellectual Property Industries*, Economists Inc. commissioned by NBC Universal, 2005.

3) Nam D. Pham, PhD. *The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages and Exports*, NDP Consulting, 2010.



not only American jobs, but employment globally, while endangering consumers everywhere. An Organisation for Economic Cooperation and Development (OECD) 2008 study concluded that international trade in counterfeit and pirated goods could have accounted for up to \$200 billion in 2005, an amount equivalent to two percent of world trade and higher than the GDP of 150 countries. The updated estimates suggest that counterfeit and pirated goods in international trade grew steadily from 2000 to 2007 and amounting to \$250 billion.⁴⁾

Not surprisingly, as businesses and consumers embrace e-commerce, counterfeiters and pirates have also used the Internet to expand their operations and reach even more consumers. The sale of counterfeit and pirated goods over the internet is rampant across the world. There are thousands of rogue websites that take part in this illegal activity. Studies indicate that each year, copyright piracy from motion pictures, sound recordings, business and entertainment software and video games costs the U.S. economy \$58.0 billion in total output. This adds up to costing American workers 373,375 jobs and \$16.3 billion in earnings, and costs federal, state, and local governments \$2.6 billion in tax revenue.⁵⁾ Indeed, these damages are not exclusive to the United States, Internet counterfeiting and piracy adversely affects all innovative economies. Unless something is done to address online piracy, these numbers will only get exponentially worse as Internet access expands and broadband speeds increase.

PRO-IP Act

Recognizing the detrimental effects of IP theft, the U.S. Chamber of Commerce established the Global Intellectual Property Center in 2007 to lead a worldwide effort promoting the value of IP rights and protecting IP from counterfeiting and piracy-crimes that cost businesses billions in lost earnings, governments billions in lost revenue and society millions in lost jobs. We work closely with U.S. Congress, the Obama Administration, organized labor, and other IP stakeholders to further policies that promote the value of IP and protect IP

rights, which in turn help advance our economic growth and create jobs.

Supported by the diligent efforts of the GIPC, the U.S. Congress passed and enacted the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act in October 2008. This sweeping legislation, approved overwhelmingly by lawmakers in both political parties, strengthens civil and criminal laws against counterfeiting and piracy. The legislation also provides for enhanced IP enforcement and prosecutorial resources to the Department of Justice (DOJ) and improves IP coordination across executive branch agencies by establishing the first-ever position of the U.S. intellectual property enforcement coordinator (IPEC) within the executive office of the president.

In the past year, the GIPC has worked with Congress to secure funding for programs and personnel authorized by the PRO-IP Act. Our efforts have helped secure funding of \$8 million for new FBI agents, \$2 million for DOJ prosecutorial activities, and \$20 million for state and local IP enforcement grants. Furthermore, since the PRO-IP was implemented, numerous advancements have taken place to boost IP enforcement efforts. These include the deployment of more than 50 new FBI agents, dedicated solely to IP enforcement, across the country and the creation of four enhanced enforcement squads in Los Angeles, the Washington Field Office, New York, and San Francisco. Additionally, 15 new Assistant U.S. Attorneys have also been appointed and assigned to focus on IP issues.

U.S. Intellectual Property Enforcement Coordinator (IPEC) and Joint Strategic Plan

As mandated by the 2008 PRO-IP Act, the Obama Administration appointed Victoria Espinel, who was later confirmed by the U.S. Senate, as the nation's first-ever IPEC. In this position, Ms. Espinel was tasked with crafting a national IP enforcement strategy that proposes how the government can best utilize its various agencies and resources to confront the growing problem of IP

4) The Organisation for Economic Co-Operation and Development (OECD), *The Economic Impact of Counterfeiting and Piracy*, June 2008.

5) Stephen E. Siwek. *The True Cost of Copyright Industry Piracy to the U.S. Economy*. The Institute for Policy Innovation. Policy Report 189. October 2007.

theft. The plan, called the Joint Strategic Plan, was delivered to Congress on June 22 by Vice President Joe Biden and Ms. Victoria Espinel with numerous cabinet members in attendance. The GIPC fully supports the strategy and has continued to build support and awareness for it. We have also begun working with Congress to ensure the IPEC has the authority, staff and resources to successfully implement the Joint Strategic Plan.

Federal Level Efforts

Since the introduction of the Joint Strategic Plan, IP enforcement efforts at both the state and federal level have stepped up tremendously. In June of this year, the U.S. Immigration and Customs Enforcement (ICE) agency and the U.S. Attorney for the Southern District of New York announced the launch of "Operation In Our Sites," a new initiative aimed at fighting counterfeiting and piracy over the Internet.

As part of the initiative, investigators seized the domain names of seven websites that were among the most prolific at illegally distributing copies of motion pictures - including popular blockbusters such as "The Twilight Saga: Eclipse" and "Toy Story 3." Combined, these sites attracted an estimated 6 million visitors a month, or more than 70 million visitors annually. Despite the success of recent operation such as this, there are still thousands of other sites profiting from online IP theft, through either the sale of counterfeit goods and copyright piracy, or the free distribution of content that generates ad revenues.

In another example of stepped up enforcement-last month, DOJ and ICE made arrests of 11 San Francisco merchants, who have been charged with trafficking counterfeit apparel and accessories worth millions of dollars. Protecting IP and job creation go hand in hand and in this economic downturn, we simply cannot afford to allow these crimes to stall our economic recovery and eat away at our jobs. Efforts such as "Operation in Our Sites" and the San Francisco arrests are prime examples of strengthened IP enforcement efforts that will help eliminate the growing problem of counterfeiting and piracy.

Border Control

Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (CBP Reauthorization)

Although domestic enforcement efforts within the United States have proven to be increasingly successful, another key component of the U.S. anti-counterfeiting and anti-piracy measures is improving efforts to prevent counterfeit and pirated goods from entering the United States. According to the Bureau of U.S. Customs and Border Protection (CBP), there were 14,841 IPR seizures with a domestic value of \$260.7 million in 2009. Moreover, seizures of products violating IP rights posing potential safety and security risks increased from \$27.8 million to \$62.5 million.⁶⁾ Therefore, the GIPC is working diligently to encourage Congress to pass the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009, a bill that, once implemented, would reform the CBP to better prevent counterfeit goods from entering the United States.

The customs bill, which was introduced by Senate Finance Chairman Max Baucus (D-Montana) and Senate Finance Ranking Member Chuck Grassley (R-Iowa), sets out three key courses of action:

- (1) establishes high-level leadership that will prioritize IP enforcement by combining the international and commercial offices of the CBP under a single Assistant Commissioner and formally authorizes the National Intellectual Property Coordinating Center under an Assistant Director at ICE.
- (2) increases resources to improve training of the field officers by ensuring that CBP personnel have adequate training to detect and identify imported goods that violate IP laws.
- (3) enhances the enforcement capabilities of CBP and ICE by calling for the development of a joint strategic plan that address IP enforcement while establishing individual National Targeting and Analysis Groups to assist port inspectors.

The bill also calls for a list of previous offenders as

6) Customs and Border Protection, Intellectual Property Rights - Seizure Statistics: Fiscal Year 2009.



well as trustworthy partners; lessens administrative barriers to information sharing between the rights holders and the CBP; and launches educational campaigns to inform travelers on the consequences of transporting IP-infringing goods.

Although this legislation could significantly reduce counterfeiting and piracy, the GIPC has suggested Congress consider strengthening the bill by:

- (1) authorizing the establishment of a one-step process for registering and recording trademarks with CBP;
- (2) granting CBP officers explicit authority to prevent counterfeit and pirated goods from being released in U.S. markets, while allowing rights holders access to the counterfeit products; and
- (3) requires customs entry forms to include a declaration stating that a person is not knowingly bringing IP-infringing goods into the United States.

International Cooperation

Anti-Counterfeiting Trade Agreement (ACTA)

In order to enhance the protection of our borders against the surge of counterfeit and pirated goods, an international legal framework is needed to strengthen the standards of IP enforcement. In 2006, the United States and several key trading partners, including Japan, launched negotiations for the Anti-Counterfeiting Trade Agreement (ACTA). ACTA is an agreement that would establish international standards for more effective enforcement of IP in both the physical and digital environment through greater international cooperation and enhanced enforcement practices. When formal negotiations were launched in June 2008, the number of ACTA participants had grown to nearly forty countries: Australia, Canada, the 27 Member States of the European Union, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, Switzerland, and the United States.

This agreement is intended to go well beyond the minimum Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) standards, and seeks to address a number of enforcement areas identified by negotiating partners as critical to strengthening the current legal framework.

An ambitious and comprehensive ACTA promises to

help ensure that like-minded trading partners address counterfeiting and piracy and its detrimental effects on investment, innovation, economic sustainability, and jobs. ACTA will raise the bar on enforcement, improve cooperation among the partners, harmonize how the partners confront IP theft, and put forth a positive example for nations that aspire to have strong IP enforcement regimes.

Proactive policies to curb IP theft such as ACTA are absolutely necessary to ensure global economic recovery. ACTA will defend businesses—both large and small—from various industries such as pharmaceuticals, automobiles, consumer goods, etc.... Additionally, ACTA will also protect innovators, creators, and consumers across the globe. To that end, the GIPC has been a steadfast supporter of the negotiators' efforts to conclude this important agreement by the end of 2010.

Throughout the negotiations, anti-IP activists and critics of ACTA have made numerous false accusations in an effort to derail the agreement. The negotiators have taken various actions to address their concerns and dispel the myths. For instance, the negotiations have addressed the transparency concerns by releasing the draft text, holding public meetings, requesting public comments, and instituting an open door policy for those interested in discussing the agreement. Additionally, negotiators have also confirmed that ACTA will be consistent with TRIPS and the Declaration on TRIPS and Public Health, and will respect fundamental rights and liberties.

Special 301

On the international level, the Special 301 Report, prepared by USTR annually, is another useful tool that enables the United States to assess the adequacy and effectiveness of IP rights protection of nations across the globe—identifying which trading partners are playing by the rules of the global trading system, and more importantly, whether countries are adhering to their obligations to protect IP. This tool is vital for policymakers to ensure that the countries are adequately and effectively protecting the innovation and creativity of the American people. The report also shows the investment climate for U.S. businesses that plan to export their products to or buy from these foreign markets.

In 2010, USTR reviewed 77 trading partners for the

Special 301 Report, and placed 41 countries on the Priority Watch List, Watch List, or the Section 306 monitoring list. Since the enactment of Section 182 of the Trade Act of 1974--which mandated the Special 301 Report--the report has played a critical role in improving trading partners' ineffective IP policies. This was the case for Saudi Arabia, Israel, Poland, Czech Republic, and Hungary--all were removed from the Special 301 Watch List due to commitments to significantly improve their IP rights system.

While the Special 301 Report has led to successful results, the process could and must be improved. The GIPC has urged Congress to enact legislation to enhance the tools available to the Administration to engage more effectively with countries that fail to respect and enforce IP rights and live up to their international IP commitments. This legislation should also call for an action plan for the Priority Watch List countries that includes clear benchmarks to measure performance, meaningful consequences for nations that fail to perform, authorization of new IP attaches at key U.S. embassies to monitor priority countries, and assist U.S. businesses with protecting their IP rights in those countries.

Conclusion

IP crimes are growing as the resources, sophistication and creativity of the counterfeiters and pirates increase. The legislative proposals supported by the GIPC will offer powerful new tools in the fight against IP theft. The key to success, however, is two-fold. First, domestic enforcement efforts must continue to be strengthened and improved to thwart the growing tsunami of counterfeit and pirated goods. Secondly, there must be a concerted effort by the U.S. and key trading partners to improve their own laws and enforcement, while enhancing cross-border cooperation and coordination.

The Global IP Center will continue its efforts to advance these ideas and others, working closely with our partners while advocating for stronger IP rights and enforcement both in the United States and abroad. Doing so is critical to our collective job creation, economic growth, and the continued advancement of mankind.



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profile

Rob Calia

Rob Calia is the senior director of Counterfeiting and Piracy for the GIPC at the U.S. Chamber of Commerce. He leads the Chamber's anti-counterfeiting and piracy team, serving as the principal coordinator, strategist, and representative of member interests before the administration, Congress, and state and local policymakers. Calia also leads the Chamber's counterfeiting and piracy business and consumer education effort, disseminating a clear and concise message.

In addition, Calia serves as the secretariat for the Chamber-led Coalition Against Counterfeiting and Piracy (CACP), a broad-business coalition with more than 650 members. CACP represents companies small and large from nearly every industry affected counterfeiting and piracy. He joined the Chamber in March 2006.

Previously, Calia worked at the U.S. Department of Commerce as special assistant in the office of USA Trade Promotion, a division of the U.S. and Foreign Commercial Service. There he advised the executive director on day-to-day operations and served as an advance and travel aide for the secretary of Commerce.

Calia attended the University of California, Davis where he graduated with highest honors in political science and history.

