



May 7, 2024

The Honorable Darrell Issa
Chair
Subcommittee on Courts,
Intellectual Property, and the Internet
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry Johnson
Ranking Member
Subcommittee on Courts,
Intellectual Property, and the Internet
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa and Ranking Member Johnson:

The U.S. Chamber of Commerce Global Innovation Policy Center (GIPC) is grateful for the Subcommittee's oversight of the various U.S. law enforcement agencies tasked with protecting businesses and consumers from dangerous illicit trade activities like counterfeiting and digital piracy. We, therefore, appreciate tomorrow's hearing, "Intellectual Property: Enforcement Activities by the Executive Branch," that will focus attention on the challenges faced by American rightsholders attempting to safeguard and secure their intellectual property ("IP") from infringement. The Chamber's comments and concerns are outlined below.

I. IP Theft Costs American Businesses Billions of Dollars of Lost Revenue Every Year.

The U.S. Patent and Trademark Office (USPTO) reports that domestic IP-intensive industries account for 41% of all economic activity, directly support more than 47 million jobs, support an additional 15.5 million jobs in other industries, and generate \$7.8 trillion in GDP.¹ IP enforcement challenges like counterfeiting and digital piracy directly threaten U.S. economic competitiveness.

Counterfeiting and digital piracy are serious IP enforcement challenges felt by businesses of all sizes and across all industries. Bad actors – often multi-billion-dollar criminal enterprises – harm consumers; undermine customer trust; fund other illicit activities like trafficking in weapons, illegal drugs, wildlife, as well as human trafficking; and rob inventors, creators, and innovators of their hard-earned IP rights. The Organization for Economic Cooperation and Development has consistently measured global counterfeiting in the range of \$500 billion dollars, or as much as

¹ *Intellectual property and the U.S. economy: Third edition*, 2019, <https://www.uspto.gov/ip-policy/economic-research/intellectual-property-and-us-economy>

3.3% of world trade.² Digital piracy deprives the U.S. economy of up to \$77 billion in lost revenue each year, with 80% of piracy attributable to illegal streaming.³

Bad actors are meeting consumers where they shop, infiltrating online and physical marketplaces to traffic counterfeit and pirated products. Many counterfeiters and digital pirates operate websites that are nearly indistinguishable from websites selling legitimate products, opening customers up to fraud networks and directly undermining customer trust between consumers and legitimate business. Combating counterfeiting and piracy is not simply a matter of seizing fakes at the border or taking down illicit websites in whack-a-mole fashion, though both are vital enforcement tools. A whole of government approach to IP enforcement includes effective policy, strategic resourcing, and effective operational partnerships with rights holders and private businesses.

II. Successful Public-Private Partnerships Like Those Pioneered by the Chamber are critical to combatting IP Theft in the 21st Century.

Collaborative relationships among public agencies and private sector stakeholders are essential to optimal IP enforcement. The most successful example of public-private partnership in IP enforcement is the Chamber's 2021 Memorandum of Understanding (MOU) with U.S. Customs and Border Protection (CBP) that implemented a mutual program of IP enforcement work. The MOU was renewed in 2023 for an additional five-year term.

The Chamber works closely with CBP to regularly organize opportunities for IP rightsholders to receive detailed briefings from officials across a variety of U.S. enforcement agencies to stay apprised of ongoing IP enforcement developments through an ongoing speaker series. The MOU also includes dedicated, consistent sharing of foreign counterfeit seizure data with CBP's National Targeting Center by companies representative of commonly infringed-upon items.

Similarly, the Chamber partners closely with the National IPR Center on IP enforcement. In fact, in 2021 the Chamber was invited to designate a "Secondee" to the IPR Center to represent American business, and whose regular availability to agents at the Center enables them to quickly develop investigative leads, fact-check sources, and use limited resources and bandwidth in the most effective fashion possible. This Secondee works actively with Chamber members and data specialists at CBP's National Targeting Center to analyze counterfeit seizure data and to develop

² *Trends in Trade in Counterfeit and Pirated Goods*, <http://www.oecd.org/gov/risk/trends-in-trade-in-counterfeit-and-pirated-goods-g2g9f533-en.htm>

³ *Impacts of Digital Video Piracy on the U.S. Economy*, <https://www.uschamber.com/technology/data-privacy/impacts-of-digital-piracy-on-the-u-s-economy>

quality targeting packages to be used by Homeland Security Investigations (“HSI”) for criminal investigations.

These targeting packages give the IPR Center the information needed to conduct additional record checks of U.S. government systems to enhance the overall lead packages before sending them on to the appropriate HSI field office. Combining the resources of the private sector with the National IPR Center and CBP’s National Targeting Center has created significantly better leads for the field. Furthermore, the Secondee and private sector participants continue to assist with strengthening current, ongoing criminal investigations by identifying infringing importers and exporters that were otherwise unknown to HSI. CBP and the Secondee analyze data provided by the U.S. Chamber’s members in real time to identify transshipment routes and related information that is then utilized by CBP to conduct targeting of the counterfeit goods before they reach their ultimate destination.

The Chamber also uses public private partnerships to educate American consumers on the dangers of counterfeit and pirated goods and to promote common sense shopping habits. Through our *Shop Smart* campaign, the Chamber partners with CBP and industry stakeholders to reach American consumers through social media, radio, television, and written media such and collectively reach over 100 million Americans annually with our messaging. This initiative is a strong example of business and law enforcement combining resources to protect American IP and raise awareness of the harms associated with illicit trade. According to a European Union Intellectual Property Office report, approximately half of the counterfeit and pirated products seized between 2017 and 2019 were purchased by unwitting customers.⁴ The goal of our *Shop Smart* campaign is to give consumers the tools they need to make safe shopping choices that protect themselves and their families.

III. Effective enforcement of our trading partners’ IP commitments is critical to safeguarding American IP in markets abroad.

With 95% of global consumers outside of U.S. borders, the Chamber believes strongly in the power of the open, rules-based trading system. Trade supports specialization in the areas where the U.S. leads the way and empowers businesses to share the fruits of American innovation and creativity with global consumers. For these industries to continue to thrive, effective IP rules must be in place in markets abroad.

⁴ Why Do Countries Import Fakes? https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2023_Why_do_countries_import_fakes/2023_Why_do_countries_import_fakes_Report_FullR_en.pdf

The Office of the U.S. Trade Representative's (USTR) annual Special 301 report provides an important mechanism to assess the adequacy of U.S. trading partners' protection and enforcement of IP rights. However, the Chamber is concerned that the 2024 report fails to mention key shortcomings with countries' IP frameworks that present real challenges for America's creative and innovative industries.

For example, USTR's policy of declining to call out countries for exercising TRIPS flexibilities in a manner that goes beyond the letter and spirit of the agreement negates the severity of many countries utilizing these measures in ways that are inconsistent with TRIPS obligations, such as through the new compulsory license in Colombia. USTR's position on TRIPS flexibilities sends a greenlight to our allies (and adversaries) that IP protections are malleable and subject to the political pressures of the day. Meanwhile, 30 years after the TRIPS agreement was signed, many countries have yet to comply with the fundamental obligations of the agreement.⁵ At a time when the U.S. government's leadership in Geneva is desperately needed to stem the tide of anti-innovation proposals, USTR's endorsement of an excessively lenient approach to TRIPS flexibilities impedes efforts by our trading partners to use the multilateral rules-based trading system to create and enforce a set of global rules on IP rights.

Similarly, the Chamber was concerned that the report fails to substantively address the lack of implementation of the USMCA patent and copyright provisions as transition deadlines loom. The business community awaits meaningful efforts by the U.S. government to address the outstanding patent linkage, patent term restoration, and marketing approval issues, and the ongoing Supreme Court challenge to copyright provisions.

Through the passage of legislation implementing USMCA, the U.S.-Colombia Trade Promotion Agreement, and other trade agreements, these commitments have the force of law in the United States. The exclusion of key challenges related to IP enforcement in the Special 301 report calls into question whether stakeholders can rely on this Administration to ensure countries enforce their trade commitments. As a result, the Chamber believes it is critical that relevant committees on Capitol Hill actively engage with USTR to ensure that our trading partners are adhering to their trade commitments to more effectively protect IP.

⁵ https://www.uschamber.com/assets/documents/GIPC_IP_Index_Report_2017.pdf

IV. The Absence of a Senate Confirmed IPEC Undermines the Biden Administration's Ability to Effectively Combat IP Theft and Protect American Businesses.

Unfortunately, the necessary whole of government approach to fighting IP theft is falling short. The Chamber remains disappointed that an IPEC has not been confirmed during the current Administration. The IPEC's role is to coordinate and develop strategy across a myriad of federal departments and agencies, and the business community and American consumers are not being well-served in the absence of an Executive branch IP enforcement leader. A confirmed IPEC would provide top-level policy attention and energy at the highest levels to national security priorities, law enforcement needs, and overall IP diplomacy, and would further protect and promote American IP. The Chamber is committed to working with the Administration and with Congress to swiftly fill this critical role to adequately serve IP-intensive businesses and American consumers.

V. Conclusion

Thank you again for holding this hearing and for allowing us to provide our thoughts and comments. The Chamber stands ready to work with the Subcommittee to ensure effective IP enforcement, and we look forward to engaging in further discussions.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' with a long horizontal flourish extending to the right.

Tom Quaadman
Executive Vice President
Global Innovation Policy Center
U.S. Chamber of Commerce

cc: Members of the House Subcommittee on Courts, Intellectual Property, and the Internet